

# **Mark Schemes for the Units**

---

**June 2006**

**3839/7839/MS/R/06**

OCR (Oxford, Cambridge and RSA Examinations) is a unitary awarding body, established by the University of Cambridge Local Examinations Syndicate and the RSA Examinations Board in January 1998. OCR provides a full range of GCSE, A level, GNVQ, Key Skills and other qualifications for schools and colleges in the United Kingdom, including those previously provided by MEG and OCEAC. It is also responsible for developing new syllabuses to meet national requirements and the needs of students and teachers.

This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by Examiners. It does not indicate the details of the discussions which took place at an Examiners' meeting before marking commenced.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the Report on the Examination.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

© OCR 2006

Any enquiries about publications should be addressed to:

OCR Publications  
PO Box 5050  
Annersley  
NOTTINGHAM  
NG15 0DL

Telephone: 0870 870 6622  
Facsimile: 0870 870 6621  
E-mail: [publications@ocr.org.uk](mailto:publications@ocr.org.uk)

## CONTENTS

### Advanced GCE Law (7839)

### Advanced Subsidiary GCE Law (3839)

### MARK SCHEMES FOR THE UNITS

<b>Unit</b>	<b>Content</b>	<b>Page</b>
2568	Machinery of Justice	1
2569	Legal Personnel	14
2570	Sources of Law	25
2571	Criminal Law 1	35
2572	Criminal Law 2	45
2573	Criminal Law Special Study	53
2574	Law of Contract 1	63
2575	Law of Contract 2	71
2576	Law of Contract Special Study	81
2577	Law of Torts 1	91
2578	Law of Torts 2	103
2579	Law of Torts Special Study	115
*	Grade Thresholds	125



**Mark Scheme 2568**  
**June 2006**

This mark scheme must be used in conjunction with the Advanced Subsidiary Assessment Grid.

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

Overall marks should be allocated among the assessment objectives as follows. Questions from Section A focus entirely on AO1 material; questions from Section B focus entirely on AO2 material; AO3 marks are equally distributed between all three questions.

Assessment Objective 1	36 marks
Assessment Objective 2	18 marks
Assessment Objective 3	6 marks

- 1 Describe the powers of the police to detain, interview and search an individual at the police station. [20]

**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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Demonstrate knowledge of powers set out under the Police and Criminal Evidence Act 1984 and the codes of practice and the Criminal Justice Act 2003.

- To detain only if suspect has been lawfully arrested
- To detain a person initially for no longer than 24 hours but this can be extended to 36 hours with permission of a police officer of the rank of superintendent or above for an arrestable offence or up to 96 hours if authorised by magistrates.
- To interview a person but it must be recorded and a caution given.
- To interview where suspect is under age 17 or vulnerable or where the suspect is mentally ill only when an appropriate adult is present.
- To delay a suspect's right to have someone informed of their detention for up to 36 hours if necessary.
- To delay a suspect's right to see a solicitor by up to 36 hours if necessary.
- Show knowledge that searches can only be done in certain situations – no automatic right to search.
- Strip search may be done if there is reasonable suspicion that the suspect has concealed an article he should not be allowed to keep and only in private with same sex officer with only half the clothing removed at any one time.
- Intimate search only if authorised by a superintendent if it is believed that a weapon or drug has been concealed and must be carried out by a doctor or nurse.
- Non intimate samples may be taken without consent.
- Intimate samples may only be taken with consent.
- Point out that breach of codes of practice may lead to evidence being excluded from court.

Credit will be given for knowledge of the different detention times for suspected terrorists.

**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using 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 Describe the aims of sentencing and other factors that should be taken into account when sentencing an offender. [20]

### 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. Candidates can be rewarded for either depth or breadth of knowledge.

### Assessment Objective 1

Describe the main purposes of sentencing as set out in the Criminal Justice Act 2003.

- Punishment – retribution for wrongdoing, society’s revenge for the offence. ‘Let the punishment fit the crime’. Based on proportionality or ‘just desserts’ it contains an element of denunciation – society’s outrage at the offence committed. Failure by courts to punish according to society’s expectations can lead to vigilante action but if used in isolation from other aims a sentence may be disproportionate.
- Reduction of crime – this includes both deterrence and rehabilitation.
  - Deterrence has two types – individual and general. Individual – aimed at particular offender to put him off re-offending by either imprisonment e.g. a suspended sentence or conditional discharge. General – put society off committing crimes by exemplary sentences of minimum sentences not concerned with fairness and may be harsher than the usual tariff for the offence so can lead to injustice in particular case e.g. very severe sentences for the theft of mobile phones on the street.
  - Rehabilitation – aims to reform the offender to stop them re-offending. It is focused on the longer term looking at the potential of the offender to reform. Usually more individualised sentences rather than tariff sentences and can lead to inconsistency in sentencing. It is now accepted that custodial sentences can only have very limited rehabilitative effect. Rehabilitation is seen as particularly important for young offenders.
- Protection of the public by preventing the offender from re-offending e.g. long prison sentences, electronic tagging or disqualification from driving.
- Reparation – considers the victim when sentencing the offender. Compensation orders used to make the offender make amends to the victim.

Describe the other factors taken into account when sentencing:

- The facts of the case.
- Antecedents of the offender – their background including previous convictions and how they have been dealt with.
- Reports on the defendant – social enquiry, psychiatric, etc.
- Plea in mitigation – any factors that make the crime seem less damaging or factors about the defendant’s life that would make the court more lenient.
- A reduction in sentence is made for an early guilty plea.

Credit any other aggravating or mitigating factors eg. vulnerability of the victim, age of the defendant, committed while on bail, or a race/hate crime.



**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using 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 Describe the civil appeals system from both the County Court and the High Court. [20]**

**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 contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Appeals from the County Court:

- Fast track cases dealt with by a District Judge the appeal is heard by a Circuit Judge.
- Fast track cases dealt with by a Circuit Judge the appeal is heard by a High Court Judge.
- Final decisions in multi track cases heard in the County Court the appeal is to the Court of Appeal.
- Small claims appeals dealt with in a similar fashion with the appeal being heard by the next judge up in the hierarchy from the judge who initially heard the case.
- Second appeals to the Court of Appeal possible for fast track cases only in exceptional cases where the Court of Appeal considers there is an important point of principle or practice or there is some other compelling reason.

Appeals from the High Court:

- From the High Court the appeal usually goes to the Court of Appeal (Civil Division).
- Possible leapfrog appeal directly to the House of Lords if “statutory interpretation or precedent” is involved.

Further appeals:

- From a decision in the Court of Appeal there is further appeal to the House of Lords on a point of law of “statutory interpretation or precedent” with leave.
- A point of European law may be referred to the European Court of Justice for clarification for any court under Article 234 of the Treaty of Rome.

**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using 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 Describe the way it is decided in which court a criminal trial will be held. Include all categories of offence. [20]

**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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Describe the categories of offence:

- Summary offences – less serious offences always tried in the Magistrates' Court e.g. driving offences and common assault.
- Triable either way offences – middle range offences which can vary in the degree of harm caused. Can be tried in either the Magistrates' Court or the Crown Court e.g. theft and assault occasioning actual bodily harm.
- Indictable offences – more serious crimes which must be tried in the Crown Court e.g. murder, manslaughter and rape.

Describe the process of deciding which court a triable either way offence will be heard in.

- Plea before venue – the defendant is asked whether he pleads guilty or not guilty, if guilty the case is automatically heard by the Magistrates' Court but they retain the option of sending the defendant to the Crown Court for sentencing if necessary.
- If the defendant pleads not guilty a mode of trial procedure must take place.
- The magistrates first consider whether they think the case is suitable for trial in the Magistrates' Court. If they feel it is not they will transfer the trial to the Crown Court.
- If the magistrates feel they are prepared to accept jurisdiction the defendant is given the choice of which court he wishes to be tried in.

Credit any reference to youth courts but it is not necessary for full marks.

**Assessment Objective 3**

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

- 5 Discuss whether the criminal justice system has been improved by the creation of the Criminal Cases Review Commission. [20]

**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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 2**

Explain the reasons behind the creation of the Criminal Cases Review Commission:

- The large number of miscarriages of justice which had not been corrected by the normal appeal system.
- Cases such as the Birmingham Six, Judith Ward and the Guildford Four had left people feeling that the Home Secretary who had the power to review cases was not sufficiently independent from government.
- The Runciman Commission had recommended an independent body be set up
- The commission was set up by the Criminal Appeal Act 1995 and started work in 1997.
- Job to investigate possible miscarriages of justice and refer them back to the courts.
- Most of the investigation done by the police which is seen as unsatisfactory as it is not truly independent. However many miscarriages of justice have come to light because of investigation by other police forces.
- Many miscarriages of justice from the past which had not previously had the opportunity to be reheard have now been resolved e.g. Derek Bentley whose conviction for murder was quashed after 46 years and much campaigning by his family.
- Recent cases have also benefited from the work of the CCRC e.g. Ryan James.
- There were problems with backlog in the first two years but this is not such a problem now.

Credit any other comments on the Criminal Cases Review Commission.

**Assessment Objective 3**

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

- 6 Discuss the advantages and disadvantages of using Alternative Dispute Resolution rather than using the courts. Do not include tribunals. [20]

### 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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

### Assessment Objective 2

Explain the problems of court proceedings:

- Cost
- Delay
- Formality
- Adversarial approach
- Complexity
- Inequality
- Public

Explain the advantages of ADR such as:

- The relative cheapness
- Speed
- The control of the parties over the way a dispute is resolved rather than handing over control to the courts
- The avoidance of bad feeling between the parties
- Privacy
- Able to continue business relationships
- Use of experts in arbitration

Some disadvantages such as:

- More likely to settle for less using ADR than might be obtained by going to court
- Lack of legal funding
- Limited right of appeal
- May not reach a decision except in arbitration

Comment that the courts encourage the use of ADR under the Woolf reforms and may even stay court proceedings to allow ADR to be tried.

Comment that the use of *Scott v Avery* clause ensures use of arbitration rather than the courts.

Demonstrate knowledge of research into courts or ADR e.g. Baldwin/Genn. [These may be cited by some candidates but are not required for maximum marks.]

### Assessment Objective 3

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

- 7 Discuss the advantages and disadvantages of both custodial and community sentences. [20]

**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. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 2**

Discuss the advantages and disadvantages of custodial sentences:

- Protects the public from dangerous criminals as they cannot commit crime while in prison – most offenders only in prison for a limited period so this has limited effect.
- It is also claimed that prison offers opportunities to rehabilitate offenders – this does happen in some prisons such as Long Lartin but is limited due to lack of funds and overcrowding.
- Prison should only be used where really necessary as stated in the Criminal Justice Act 2003 – many who are in prison, however should be dealt with elsewhere e.g. mentally ill, children, drug offenders, trivial shoplifters and those who have failed to pay fines.
- Prisons are very expensive £24,000 per year per prisoner and lead to other social expenses e.g. family breakdown and unemployment.
- Prison punishes innocent as well as guilty as prisoners' families suffer stigma and financial difficulties as well as relationship breakdown.
- Prison conditions are very poor in many prisons which lead to an increased risk of suicide.
- Prison population has increased by more than 50% in last ten years and is much higher than any other European country.

Discuss the advantages and disadvantages of community sentences:

- Home office statistics show that 44% of offenders given community sentences re-offend compared to 56% of those given a custodial sentence.
- New single community order with any combination of requirements allows sentence to be tailored to the individual.
- Much cheaper than custodial sentences to administrate and less disruptive to family life.
- Community sentences do require the consent of the defendant and are not suitable for the more dangerous offenders.
- More likely to have an element of rehabilitation and reparation for the victim or society.
- Curfews and tagging seen as a real alternative to custody as the protection of the public is an element of this requirement, however some criminals see it as a 'badge of office' – something to aspire to.

Any other comments on either custodial or community sentences will be credited.

**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using 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 Subsidiary GCE in LAW

## Levels of Assessment

		Assessment Objectives		
Levels	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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> identify the main 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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.	





**Mark Scheme 2569**  
**June 2006**

This mark scheme must be used in conjunction with the Advanced Subsidiary assessment grid.

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

Overall marks should be allocated among the assessment objectives as follows.

Questions from Section A focus entirely on AO1 material; questions from Section B focus entirely on AO2 material; AO3 marks are equally distributed between all three questions.

Assessment Objective 1	36 marks
Assessment Objective 2	18 marks
Assessment Objective 3	6 marks

- 1 Describe the qualifications of the different types of judges that deal with criminal cases. Include the Magistrates' Court, Crown Court, Court of Appeal and House of Lords. [20]**

**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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Demonstrate knowledge of qualifications

- Law Lords [House of Lords]: 15 years Supreme Court qualification or 2 years high judicial office
- LJA [Court of Appeal]: 10 years High Court qualification
- High Court judge [Crown Court]: 10 years High Court qualification or 2 years as Circuit judge
- Circuit judge [Crown Court]: 10 years Crown Court or County Court qualification or 3 years as chair of tribunal or DJ
- Recorder [Crown Court]: 10 years Crown Court or County Court qualification
- District Judge [Magistrates' Court]: 7 years general rights of audience

Credit explanation of qualifications; relate to rights of audience (i.e. right to appear), barristers have rights of audience in all courts and therefore eligible for all appointments, solicitors eligible as Circuit judge, Recorder, DJ and as High Court judge and above with certificate of advocacy (or qualify as Circuit judge).

Credit knowledge that will usually be chosen from deputies/assistants who have shown ability and from part-time, fixed term Recorders

**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using 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 Describe the roles of Magistrates and juries in criminal cases. [20]****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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Demonstrate knowledge of roles of magistrates

- hold early administrative hearings
- commit either way offences to Crown Court for trial or sentence
- transfer indictable offences to Crown Court
- decide bail
- decide verdict where defendant pleads not guilty, summary and either way offences
- sentence where defendant pleads guilty or is found guilty
- issue warrants for arrest/search
- hold youth courts
- hear appeals in Crown Court
- extend detention at police station

Demonstrate knowledge of roles of juries

- sit on indictable and either way offences in Crown Court
- decide verdict, using judge's definition of the law

**Assessment Objective 3**

Present relevant material in a planning and logical sequence, using 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 Describe publicly funded representation and explain how it is decided whether an applicant is eligible for this. (Include both civil and criminal Legal Representation) [20]**

**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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Demonstrate knowledge of civil Legal Representation

- application to Community Legal Service
- covers preparation for hearing and representation by advocate in court
- not available for small claims, most tribunals, undefended divorce, personal injury, defamation
- merits test; chance of success, will make a difference if claimant wins
- priority given to social welfare, children, human rights cases
- limited funds so assessed against other applications
- financial tests; disposable income, disposable capital, contributions if fall within middle range of income/capital

Demonstrate knowledge of criminal Legal Representation

- provided by Criminal Defence Service, application to court
- covers preparation for trial and representation by advocate in court
- financial test; assessed at end of case in Crown court, may be asked to make a contribution, not looked at in Magistrates' court
- interests of justice test; serious case where risk of losing liberty/livelihood/reputation, or where representation needed (complex case, accused unable to represent him/herself, inappropriate for accused to question witnesses)

Credit also knowledge of Duty Solicitor representation at Magistrates' Court for cases where individual's liberty at risk, i.e. hearing about bail and non-payment of fines.

**Assessment Objective 3**

Present relevant material in a planning and logical sequence, using 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 Describe the training and organisation of both barristers and solicitors. [20]**

**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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Demonstrate knowledge of the training of barristers

- academic: law degree (7 core subjects) or non-law degree plus postgraduate diploma in law (common professional examination)
- vocational: Bar Vocational Course (emphasis on drafting and advocacy) at Inns of Court School of Law and other centres
- called to Bar and join an Inn: 12 qualifying sessions/dinners
- practical: 2 x 6 months pupillage (shadowing and later representing clients in court)
- post qualification: continuing professional development

Demonstrate knowledge of the training of solicitors

- academic: law degree (7 core subjects) or non-law degree plus postgraduate diploma in law (common professional examination)
- vocational: Law Practice Course (legal skills and interviewing etc) from range of centres; some centres provide 'City LPC', some specialisation
- practical: 2 years traineeship, covering 4 areas under supervision or senior solicitor
- post qualification: further coursework and compulsory attendance at courses

Credit also knowledge of ILEX route

Demonstrate knowledge of the organisation of barristers

- self-employed, work with others in chambers organised by clerk, share secretarial services, contribute to running of chambers and 10% of fee to clerk
- also work as employed lawyers, giving legal advice etc, work for CPS as advocate
- can become a QC

Demonstrate knowledge of the organisation of solicitors

- work in partnership (as employed solicitor or as partner), range of partnerships
- also work as employed lawyers in eg building societies, work for CPS as advocate

**Assessment Objective 3**

Present relevant material in a planning and logical sequence, using 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.

- 5 Discuss the advantages and disadvantages of using lay people as decision makers in the criminal justice system. [20]**

**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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 2**

Demonstrate brief knowledge of roles of lay people as decision markers

- Lay Magistrates: decide verdict, sentence, bail in Magistrates Court and hear appeals in Crown Court
- Juries: decide verdict in Crown Court

Discuss arguments in favour of using lay people

- not as case hardened as a professional judge
- spend most of their time outside court, have a better understanding of the accused's world
- sit as a group, therefore prejudices should be cancelled out
- decision by several people likely to be correct
- represent society and express society's disapproval
- public confidence
- more representative of society than judiciary
- keep criminal justice system open
- have legal guidance from legal adviser/judge
- cost (Lay Magistrates)
- do not have to explain decision and can come to a moral decision rather than a legal decision (juries)
- local knowledge (Magistrates)

Discuss arguments against using lay people

- do not understand all legal terminology
- reluctant to convict, may not understand burden of proof
- less able to put emotion aside
- take longer because inexperienced; Magistrates take longer to discuss decisions, Crown Court trials slower to accommodate lay jurors
- may be over influenced by clerk/judge
- inappropriate for unqualified people to deprive individuals of their liberty

**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using a clearly defined structure and communicate clearly and accurately with confidence use of appropriate terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.



**6 Discuss whether or not the methods of selecting judges are satisfactory. [20]****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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 2**

Demonstrate some knowledge of selection process

- superior judges: invited by Lord Chancellor based on 'secret soundings'; High Court judges apply
- inferior judges: apply, giving references and are interviewed and selected on basis of practical exercises

Discuss arguments in favour of selection process

- superior judges: chosen from a fairly small group of known people  
have usually demonstrated abilities at lower level first  
have usually had years of experience as advocate  
judges chosen have shown independence in finding against government  
(eg HL held that detaining of terrorist suspects was in breach of human rights)
- inferior judges: open selection procedure  
vacancies advertised and are applied for  
applicant provides references  
mixed interview panel, judge, DCA representative, lay person  
one day assessment includes practical exercises and personality testing  
non discriminatory  
feedback if not successful  
have usually demonstrated ability as a part-time, fixed contract Recorder first  
supervised by Commission for Judicial Appointments

Discuss arguments against selection process

- superior judges: not transparent  
files kept by DCA may be inaccurate but no way of checking or rectifying  
can give appearance of political bias, PM has final choice and LC and PM closely connected
- inferior judges: process still favours barristers who will know current judges from their own chambers
- in lack of diversity
- LC has not always followed DCA's recommendations
- although supervised by Commission, LC does not have to follow its recommendations.

Credit also knowledge of Constitutional Reform Act.

- all judges appointed by Queen
- inferior judges chosen by independent Judicial Appointments Commission (mixture of judges, professional members and lay members. LC has limited powers to ask JAC to reconsider, selected solely on merit and to promote diversity.
- Highest judges chosen by senior judges and JAC

**Assessment Objective 3**

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

- 7 **Discuss whether or not the current division of work between barristers and solicitors on a case gives the best service to the client.** [20]

**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 a number of the following points. These points are neither prescriptive nor exhaustive. Credit will be given for other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 2**

Demonstrate some knowledge of division of work

- solicitor gives general advice and carries out conduct of litigation
- in serious cases, solicitor asks advice of barrister and briefs barrister who then represents client in court

Discuss arguments that this provides the best service

- two different skills, both professional concentrate on what they are good at
- solicitor has access to expert advice from barrister, especially important where unusual/difficult point of law
- solicitor has access to independent, impartial advice
- existing system has flexibility, where client is a professional can go direct to barrister, eg accountants with a tax problem, solicitor can be advocate, including higher courts with certificate

Discuss arguments that this does not best provide the best service

- cost more than employing one person, solicitor contributes little in court but charges for time
- do not always get barrister briefed on day, loses client's confidence
- possibilities of confusion, misunderstanding between two professionals
- two professionals may take different views on case, barrister relies on solicitor to summarise case, may take different views on what is important, key information may not be passed on

Credit discussion of suggested reforms, eg greater client access to Bar.

Credit any comment on the weakening of the division through direct access and relaxation of rights of audience.

**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using 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 Subsidiary GCE in LAW

## Levels of Assessment

Assessment Objectives			
Levels	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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> identify the main 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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.

**Mark Scheme 2570**  
**June 2006**

**1 Exercise on Legislation and Delegated Legislation**

- (a) **Source A** refers to how a Bill becomes an Act of Parliament.  
Briefly describe the process by which Acts of Parliament are passed. [15]

**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 contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Describe the stages involved in the passage of the Bill in either the House of Commons or the House of Lords (depending on where the Bill is first introduced):

- First reading (formal introduction);
- Second reading (main debate and vote on Bill);
- Committee stage (clause by clause consideration by Select Committee);
- Report Stage (suggested amendments back to Parliament);
- Third Reading (full debate and vote).

Explain how the same stages are then repeated in the House of Lords (or Commons depending on where the Bill was introduced) and are then given Royal Assent. Credit reference to Green and White Papers.

**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using 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) **Source A** at lines 3-6 refers to different types of delegated legislation. Identify and explain which type of delegated legislation would be most appropriate to introduce law relating to:
- (i) the use of skateboards in a local park;
  - (ii) the implementation of regulations outlined in an enabling Act relating to the construction of a new motorway;
  - (iii) emergency measures to be taken in time of war. [15]

**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 many of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 2**

In the case of (i) recognise that the use of bylaws would be most suited to this situation. Bylaws can be made by local authorities, public corporations and certain companies for matters within their jurisdiction which involve the public. A local authority can enforce rules relating to public behaviour and use of public amenities in their local area.

In the case of (ii) recognise that the use of a statutory instrument is most appropriate here. Explain that statutory instruments are the means through which government ministers introduce particular regulations under powers delegated to them by Parliament in enabling legislation.

In the case of (iii) recognise the well known function of an Order in Council. Drafted by the relevant government department, approved by the Privy Council and signed by the Queen.

**Assessment Objective 3**

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

(c) Using **Source B** and your knowledge of controls of delegated legislation:

(i) Describe the controls exercised over delegated legislation by **both** Parliament **and** the courts. [15]

**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 many of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 1**

Recognise the main methods of Parliamentary control as:

- The enabling Act itself lays down the nature and scope of the delegated powers;
- Explain that Parliament may be required to vote its approval of the delegated legislation through 'affirmative resolution' procedure where delegated legislation is laid before one or both Houses, and becomes law only if a motion approving it is passed within a specified time (usually 28 or 40 days);
- Describe the 'negative resolution' procedure that allows any MP to put down a motion to annul the delegated legislation within a specific time period (usually 40 days);
- Describe, at a simple level, the role of Scrutiny Committees;
- Candidates *may* recognise that often a parent statute makes consultation with certain parties obligatory.

Recognise the main methods of court control as:

- Explain that delegated legislation can be challenged in the courts by a process known as judicial review;
- Explain how judicial review takes place in the Queens Bench Divisional Court;
- Candidates will be rewarded for any mention of *ultra vires*.

Any appropriate reference to the HRA will be credited, though not necessary for maximum marks.

Candidates can achieve Level 4 without naming judicial review.

Candidates will be credited where they use relevant cases – though again this is not a requirement for Level 4.



(ii) Discuss the effectiveness of these controls.

[15]

**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 many of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

**Assessment Objective 2**

- Recognise that Parliament's powers to intervene are limited otherwise the object of delegating legislative power is defeated;
- Recognise that under 'affirmative resolution' Parliament cannot make changes to the statutory instrument – it can only approve, annul or withdraw. In practice it is rarely possible to prevent such legislation being passed;
- Explain that checks by the Scrutiny Committees are limited to technical points and that it has no power to alter any statutory instrument;
- Explain that judicial review relies on individual challenges being brought before the courts. Those affected may lack the financial resources to go to court;
- Explain that some enabling Acts confer very wide discretionary powers on Ministers – leaving very little room for judges to regard anything as *ultra vires*.

**Assessment Objective 3**

Present relevant material in a planned and logical sequence, using 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 Exercise on Statutory Interpretation

- (a) **The Source at lines 14-17, refers to extrinsic or external aids. Explain the use of three extrinsic or external aids available to the judge to assist in the process of statutory interpretation. [15]**

### 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 many of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

### Assessment Objective 1

Explain that an extrinsic aid is one to be found outside the Act itself. Identify and describe any **three** of the following:

- Identify that a dictionary is an external aid, and explain that it will usually be used to discover the plain meaning of a word. Link to the source;
- Hansard, the report on debate in Parliament during the progress of the Bill eg *Pepper v Hart*;
- Reports of Royal Commissions or law reform bodies such as the Law Commission which led to the passing of the Act;
- Case law appropriate to the area of law.

Candidates may reach Level 4 with a good description of **any 3** of the above aids. Candidates offering breadth rather than depth may include some of the following:

- The Human Rights Act 1998;
- Previous or contemporary Acts of Parliament on similar areas of law;
- The historical setting in which an Act was passed eg *RCN v DHSS*;
- The works of leading academics eg Pollock's definition of consideration in contracts was used in *Dunlop v Selfridge*;
- Reports of International Conventions eg *Fothergill v Monarch Airlines*;
- The Interpretation Act 1978.

### Assessment Objective 3

Present relevant material in a planned and logical sequence, using 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) In the following situations use the Source and your knowledge of statutory interpretation, to explain whether or not the following defendants would be guilty of an offence under Section 1(1) Street Offences Act 1959 where: '*It shall be an offence for a common prostitute to loiter or solicit in a public street or public place for the purposes of prostitution.*'
- (i) Harriet was waving and banging on the window of her flat to attract the attention of a friend walking by on the street below. As she lives above a busy high street, her actions caught the attention of a number of people, including a police officer called out to investigate complaints under Section 1(1) of the Street Offences Act;
- (ii) Stella is charged with soliciting from the balcony of her flat;
- (iii) Susan is charged with soliciting in the local high street. [15]

#### 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. Candidates can be rewarded for either breadth or depth of knowledge.

#### Assessment Objective 2

In the case of (i) recognise that the application of the mischief rule to this scenario would find her not guilty since the aim of the legislation was to enable people to walk along the streets without being solicited. As it was her clear intention to attract the attention of her friend, rather than any intention to solicit, it would be quite wrong to apply the legislation in this way. The Act is not aimed at this type of activity. Recognise that under the literal rule she would still be innocent of the offence as she is not on a street or public place and presumably not a prostitute. Candidates may argue lack of *mens rea*.

In the case of (ii) recognise that the facts are analogous to those of *Smith v Hughes* and describe the facts of that case. Explain that application of the literal rule to s1(1) would result in Stella being acquitted since it is arguable that she is not in a public street or place. Recognise that strict application of precedent would mean that the decision in *Smith v Hughes* should be followed. Explain that the mischief rule should be applied since the aim of the Act was to enable people to walk along the streets without being solicited by common prostitutes – it is of little importance that Stella was standing on a private balcony rather than the street.

In the case of (iii) recognise that Susan would be guilty under the literal rule as she is soliciting in a street for the purposes of prostitution. There would be no need to consider any other rule as no absurdity arises from the application of the literal rule as this type of activity is exactly what the legislation seeks to prevent.

#### Assessment Objective 3

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

- (c) With reference to the Source and other cases, explain the mischief rule and discuss the advantages and disadvantages of using it. [30]

### 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 many of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

### Assessment Objective 1

- Identify that the definition of the mischief rule comes from *Heydon's case (1584)* and outline the four points the court should consider;
- Explain that the court should look to see what the gap or 'mischief' was that the Act was intended to cover and interpret the Act so as to fill the gap;
- Use any relevant cases to illustrate the mischief rule eg *Smith v Hughes* from the Source, *Royal College of Nursing v DHSS*, *Corkery v Carpenter (1950)*.

### Assessment Objective 2

Advantages:

- Explain that this rule gives a judge more discretion than the other two rules. This can be regarded as sensible and appropriate (*Smith v Hughes*).
- It allows judges to put into effect the remedy Parliament chose to cure a problem in the common law;
- The rule was used at a time when statutes were a minor source of law; drafting was not as precise as today and before Parliamentary supremacy was established.
- Avoids absurdity and injustices
- Promotes certainty
- Promotes flexibility

Disadvantages:

- The rule can be seen as a way of enabling judges to interfere in public policy decisions in an unconstitutional way (*RCN v DHSS*);
- It is not always possible to discover the mischief that Parliament had intended to remedy;
- Recognise that the rule relies on the use of external aids which can be useful for providing context, but it can be argued that the use of such aids is not the appropriate way to discover the intention of Parliament;
- Credit should be given to candidates who recognise that the mischief rule may not be so relevant today as statutes are better drafted and explain the nature of the purposive approach;
- Conflicts with separation of powers
- Inconsistency and unpredictability
- Credit any relevant links to the Source.

### Assessment Objective 3

Present relevant material in a planned and logical sequence, using 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 Subsidiary GCE in LAW

## Levels of Assessment

	Assessment Objectives		
Levels	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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 of law in issue. Ability to question <b>or</b> identify the main 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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.



**Mark Scheme 2571  
June 2006**

This mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in this Mark Scheme are those which a well-prepared candidate may be likely to make. The cases cited are not prescriptive and credit must be given for any relevant material. Similarly, candidates who make unforeseen points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**

### Marking Levels

		<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	
<b>Level 5</b>	<b>41 - 50 marks</b>	Level 5	21 - 25 marks	17 - 20 marks	5 marks
<b>Level 4</b>	<b>31 - 40 marks</b>	Level 4	16 - 20 marks	13 - 16 marks	4 marks
<b>Level 3</b>	<b>21 - 30 marks</b>	Level 3	11 - 15 marks	9 - 12 marks	3 marks
<b>Level 2</b>	<b>11 - 20 marks</b>	Level 2	6 - 10 marks	5 - 8 marks	2 marks
<b>Level 1</b>	<b>0 - 10 marks</b>	Level 1	0 - 5 marks	0 - 4 marks	1 mark



- 1 'Murder is widely recognised as the most serious offence that a person can commit. However, the law governing the offence of murder is often difficult for an ordinary juror to understand'.

Discuss, in the light of the above statement, whether the common law governing the offence of murder is satisfactory or is in need of reform by Parliament. [50]

Potential answers **MAY**:

**Assessment Objective 1 (25 marks)**

Define the offence of murder and explain the elements of the *actus reus*. This could include an explanation of the following points:

- the killing must be unlawful and not in self-defence or an enemy alien during war
- V must be a 'reasonable creature in being' – *A-G's Ref No. 3 of 1994; Bland; Malcherek + Steel*

Explain the phrase 'malice aforethought' as intention to kill or do serious harm

Refer to crimes requiring proof of intention as crimes of specific intent

Realise the developments that have occurred through the offence of murder and cite relevant cases

e.g. *Moloney; Hancock & Shankland; Nedrick; Walker & Hayles; Woollin; Matthews + Alleyne*

Distinguish motive, *Steane*

Define 'express malice' and 'implied malice'

Refer to different aspects of intention - direct/oblique, but being clear it remains a subjective concept

Appreciate the fact that foresight of intention is not the same as intention but may be used in conjunction with S.8 Criminal Justice Act 1967 - evidence from which intention may be inferred or 'found' by the jury – *Nedrick; Woollin*

Refer to the Law Reform (Year and a Day Rule) Act 1996

**N.B.**

Knowledge of the Law Commission Consultation Paper on 'A New Homicide Act for England & Wales (published in December 2005) is within the 12 month rule and it is unfair to discriminate against students who do not mention this by positively rewarding those who mention it.

Candidates who fail to mention any aspect of the *mens rea* of murder cannot attain higher than Level 4.

**Assessment Objective 2 (20 marks)**

Discuss the difficulty in practice for the prosecution in proving the defendant's subjective state of mind

Discuss the omission of probability from the *Moloney Guidelines* and the significance of the refinements produced in *Nedrick and Woollin*

Discuss the difficulties for jurors inherent in distinguishing between degrees of probability

Discuss the need to distinguish between murder and manslaughter by reference to the gravity of the offence in terms of blameworthy states of mind and the sentence that attaches i.e. the mandatory life sentence for murder and the problems this causes which are reflected in the Criminal Justice Act 2003

Discuss the potential unfairness of a murder conviction arising from an intention to cause harm where the accused genuinely believed that death would not occur

Comment that judges are often happy to allow juries to decide whether a consequence was intended by relying upon their 'common sense' judgement on the evidence

Discuss whether juries should be able to make such moral judgements on morally reprehensible facts in murder trials as in *Moloney, Hancock, Woollin etc.*

Discuss the Law Commission's proposals for reform and perhaps 'first degree' and 'second degree' murder alternatives

Credit reference to the euthanasia debate and the decision in *Pretty*

**Assessment Objective 3 (5 marks)**

Present relevant material in a well-planned and logical sequence, with 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 'Judicial decisions during the last fifteen years about provocation as a special and partial defence to murder suggest that provocation has become too wide in its application and is in need of reform'.

Critically consider whether there is any justification for this statement. [50]

Potential answers MAY:

**Assessment Objective 1 (25 marks)**

Define Provocation – S.3 Homicide Act 1957

- evidence of provocation
- sudden and temporary loss of self-control; *Duffy; Ibrams & Gregory; Thornton etc.*
- reasonable man test and characteristics; *Camplin; Smith (Morgan James); Weller; Rowland etc.*

Explain one or more of the relevant cases: *Ahluwalia; Dryden; Humphreys; Morhall; Thornton No.2; Parker; Luc Thiet Thuan, Smith (Morgan James); Weller; Rowland; etc.*

Explain the significance of the Privy Council decision in *Holley*

Refer to the overlap that has developed between provocation and diminished responsibility in some of the above cases

Refer to the Law Commission's consultation paper on Partial Defences to Murder 2003

Explain the Law Commission's recommendations in *Partial Defences To Murder 2004*

**N.B.**

The Privy Council decision in *Holley* is now just more than 12 months old (judgment published 15/6/05)

The Court of Appeal's subsequent decisions in *Mohammed 2005* and *Karimi & James 2006* fall **within** the 12 month rule and it is unfair to discriminate against students who do not mention these by positively rewarding those who mention them.

**Assessment Objective 2 (20 marks)**

Consider the fact that provocation as a defence now has a very wide meaning *Doughty; Ahluwalia; Morhall; Smith; Weller; Rowland*

Consider the fact that the Paper said (*Doughty*), where a baby's crying was said to be something which the jury ought to have been allowed to consider as possibly provocative was an example of the proposition that entirely innocent behaviour can support the defence. This, the Commission said, 'is contrary to one of the fundamental principles of the defence, which is that the dead victim contributed to D's lethal loss of temper'.

Consider the criticism that the availability of provocation has reflected loss of self-control due to anger but overlooked other emotions such as fear or despair

Consider whether the requirement that there should be a 'sudden and temporary loss of self-control' still favours male defendants since a woman is more likely to kill with pre-meditation based on fear

Consider whether, in their attempt to extend the 'slow-burn' principle, the courts have stretched the defence to killings that are more to do with revenge than loss of self-control

Consider whether the inclusion of psychiatric conditions or mental abnormality within the 'characteristics' that may be taken into account blurred or even removed the distinction between provocation and diminished responsibility – *Smith; Weller Rowland*

Consider the argument that the abolition of the death penalty removed the need for the defence at all

Consider why the defence is not available to other offences such as non-fatal assaults

Consider whether the defence should be tightened up so as to only be available if it is in response to a wrongful act or wrongful insult as opposed to (potentially) a baby's crying

Consider whether killing 'under extreme emotional disturbance' is a better criterion than sudden and temporary loss of self-control

Consider whether self-induced provocation should be allowable – *Edwards*  
Consider whether the objective 'reasonable man' test should be abolished  
Consider any of the Law Commission's proposals

**Assessment Objective 3 (5 marks)**

Present relevant material in a well-planned and logical sequence, with 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 Barry invites his aunt, Mary, aged 82, to stay with him. Barry cooks for Mary for the first two weeks and they eat together in the evenings.

Mary then starts to behave in a strange way. She locks herself in her bedroom and refuses to come out. Barry leaves meals outside her door but Mary refuses to eat them. He tries to talk to her through her door for a day or two but Mary only shouts rude remarks so he gives up trying to communicate with her and merely leaves the food. Each time he takes the untouched food away after an hour or two.

A week after he has last seen her, Barry breaks down the door and finds Mary lying unconscious on the floor. He telephones for an ambulance which takes Mary to hospital. Mary is placed on a life support machine but she fails to regain consciousness. After three weeks Doctor Jones wrongly diagnoses Mary as being in a persistent vegetative state with no hope of recovery. Doctor Jones disconnects the life support machine.

Discuss the liability of Barry and Doctor Jones for the manslaughter of Mary. [50]

Potential answers MAY:

### Assessment Objective 1 (25 marks)

Define gross negligent manslaughter; *Adamako*

- duty of care
- breach of duty
- risk of death
- conduct so far below that which is regarded as reasonable as to amount to a crime

Address the existence of a duty of care; *Donoghue v Stevenson*; *Bateman*; *Andrews*

Explain the concept of liability for omissions

Explain the concept of voluntary assumption of a duty of care; *Stone & Dobinson*

Refer to 'duty' situations

- contractual - *Pittwood*; *Holloway*
- professional - *Adamako*; *Holloway*

Outline the relevant principles of causation; *White*; *Pagett*; *Malcherek & Steel*; *Bland*; *Jordan*; *Smith*; *Cheshire*

### Assessment Objective 2 (20 marks)

Identify that there is normally no common law or statutory duty of care imposed between nephews and aunts

Identify that a duty of care may be voluntarily assumed in a case such as this *Stone & Dobinson*

Consider whether there was a voluntary assumption of a duty of care to Mary by Barry

Consider whether their conduct or failure to act amounted to a breach of duty in the circumstances and, if so, whether it was so bad in all the circumstances as to amount to a crime - a question for the jury

Consider whether there was a risk of death

Consider whether Doctor Jones acted lawfully in turning off the life support machine or whether his actions broke the chain of causation

Consider whether Doctor Jones has acted 'in the best interests of the patient' when continued treatment may have become futile

### Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with 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 Simon is unemployed and has very little money. He goes into the kiosk of a petrol station and points an imitation gun at the 70 year old attendant, George. Simon hands George a note which reads 'This is a robbery, hand over all the money in the cash register'. George appears to be very frightened and says 'Please don't hurt me I've got a weak heart'. Simon says 'Do as I say or I will shoot you'. George hands him all the cash and Simon runs off with the money.

George telephones the police. They arrive 5 minutes later to discover George has collapsed on the floor. Immediately the police radio for an ambulance. Within 10 minutes George arrives at hospital and is taken to the casualty department. All the hospital staff are busy and George is not seen by a doctor for an hour. The duty doctor, Amy, then sees George and realises he has stopped breathing and is in a critical condition. Despite the best efforts of Amy to resuscitate him, George dies of a heart attack.

Consider the liability of Simon for the death of George.

[50]

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Define the elements of unlawful act manslaughter; *Franklin; Church; Newbury & Jones*

- must be an unlawful criminal act
- must be dangerous
- must cause the death

Define the objectively 'dangerous' test in *Church*

Credit reference to reckless manslaughter - *Lidar*

Refer to decisions in *Dawson; Watson; Ball* concerning taking your victim as you find them with any emotional; psychological or physical characteristics of V or surrounding circumstances which D knows about or ought reasonably to be aware of

In the alternative, define gross negligence manslaughter - *Adamako*

- existence of a duty of care - *Donoghue v Stevenson*
- breach of duty
- risk of death
- conduct so far below what is considered by the jury to be reasonable as to amount to a crime

State the principles of factual and legal causation *White; Pagett; Smith; Cheshire; Blame etc.*

#### Assessment Objective 2 (20 marks)

Recognise assault at common law and robbery S.8 Theft Act 1968 as unlawful criminal offences (it is not necessary to define these since these substantive offences are part of the 2572 specification and discrete knowledge is not required)

Consider whether or not what Simon has done is 'dangerous', the gun is imitation but George does not know this

Consider the fact that Simon does not realise his actions are likely to cause death - *Dawson*

Consider whether Simon was aware of George's weak heart - *Watson*

Consider that the actus reus of an assault may be a continuing act *Fagan v MPC* (as may a robbery) and Simon was at least aware of George's weak heart during the hold-up

Consider whether the unfortunate delay in treating George is likely to amount to a *novus actus interveniens*

Identify, in the alternative, the possibility of gross negligence manslaughter which could presumably apply to almost any situation where a duty of care arises

Credit discussion of reckless manslaughter after Simon becomes aware of the risk of death or serious harm to George

Credit all reasoned argument on aspects of involuntary manslaughter

**Assessment Objective 3 (5 marks)**

Present relevant material in a well-planned and logical sequence, with 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

Levels	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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to give a 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.



**Mark Scheme 2572**  
**June 2006**

This mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in this Mark Scheme are those which a well-prepared candidate may be likely to make. The cases cited are not prescriptive and credit must be given for any relevant material. Similarly, candidates who make unforeseen points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**

		<b>A01</b>	<b>A02</b>	<b>A03</b>	
<b>Level 5</b>	<b>41 - 50 marks</b>	Level 5	21 - 25 marks	17 - 20 marks	5 marks
<b>Level 4</b>	<b>31 - 40 marks</b>	Level 4	16 - 20 marks	13 - 16 marks	4 marks
<b>Level 3</b>	<b>21 - 30 marks</b>	Level 3	11 - 15 marks	9 - 12 marks	3 marks
<b>Level 2</b>	<b>11 - 20 marks</b>	Level 2	6 - 10 marks	5 - 8 marks	2 marks
<b>Level 1</b>	<b>0 - 10 marks</b>	Level 1	0 - 5 marks	0 - 4 marks	1 mark

- 1 Discuss the extent to which a person who commits an offence because they have been forced to do so against their will, may have a defence of either duress or necessity.

[50]

Potential answers **MAY**:

### 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 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 imminence; *Hudson & Taylor, Abdul - Hussein*

State the limited availability of the defences - 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

Refer to the impact of *Shayler; Re: A*

Appreciate duress denied if criminal associations voluntarily joined *Fitzpatrick; Sharp; Shepherd; Hasan*.

### Assessment objective 2 (20 marks)

Discuss the type of threat; ought to be confined to self and immediate family. Why?

Discuss whether threats other than death or serious harm be allowable

Discuss 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;

Discuss the moral arguments that can be applied to duress, necessity and duress of circumstances concerning the degree of resistance to be expected from an individual under threat

Discuss whether there is hypocrisy in claiming this higher moral ground

Discuss 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?

Discuss the development by the Court of Appeal of the defence of duress of circumstance

Discuss 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.

### Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with 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 'The law on consent as a defence has been decided according to considerations of public policy rather than being developed in a reasoned and logical way'.

Critically evaluate the truth of this statement.

[50]

Potential answers **MAY**:

**Assessment Objective 1 (25 marks)**

Refer to the defence of consent when applied to offences against the person;  
 Recognise the limitations imposed upon the availability of consent eg not available to a charge of homicide - euthanasia is not recognised in the UK, aiding and abetting a suicide is an offence;  
 Mention that consent to minor assaults in the course of everyday life is generally implied;  
 Refer to policy decisions restricting the availability of consent as a defence eg not to prize-fighting with bare fists - *Coney*, nor to agreeing to settle differences by means of a fight or duel - *A-G's Reference No 6 of 1980*; nor to sado-masochistic activities deemed to be against the public interest - *Brown*

Indicate with appropriate citation that a true consent may excuse what would otherwise be an assault eg

- surgery, injections, tattooing, body piercing for cosmetic purposes etc *Corbett v Corbett*; *Wilson*
- physical contact sports - *Billinghurst*
- sexual relations *Donovan*; *Brown*; *Slingsby*
- rough horseplay *Jones*
- lawful parental chastisement

Fraud only negatives consent to an assault if V was deceived as to the identity of the person concerned or the nature of the act performed - *Clarence*; *Richardson*; *Linekar*

Honest mistaken belief in consent is a defence *Morgan*.

**Assessment Objective 2 (20 marks)**

Evaluate policy that allows consent as an effective defence to a charge of injury sustained in the course of properly conducted sport or games but recognises that an assault may be prosecuted should a participant exceed what is allowable within the rules of that sport or game;

Distinguish between deliberate and accidental harm inflicted in physical contact sports, deliberate harm is the essence of boxing but unacceptable in a variety of ball sports such as football, rugby or hockey - *Billinghurst*

Comment upon the social utility of surgical treatment as a justification for the defence whether or not the patient is conscious and capable of giving consent;

Evaluate the reasons for the decisions given in *Brown* and *Wilson*;

Evaluate when and why it is appropriate for the law to interfere with individual freedom of choice on the grounds of public interest;

Evaluate whether the judges are in the better position to proceed on a case by case basis rather than Parliament attempting to lay down general principles in this regard

Discuss whether euthanasia should be made lawful?

Credit reference to consent to appropriation in theft

**Assessment Objective 3 (5 marks)**

Present relevant material in a well-planned and logical sequence, with 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 Asif has been pestering Samra for months. He telephones her every day saying he loves her. Samra tells him she does not like him and wants him to stop. He continues to call her every day and remains silent until she puts down the phone. Samra is now afraid to go out and has to seek psychiatric help for anxiety and headaches.

She tells her boyfriend Zaheer what is happening. Zaheer sees Asif in the street and approaches him waving his fist and shouting "Leave Samra alone or I will kick your head in". Asif mistakenly thinks Zaheer is about to hit him so he punches Zaheer in the face cutting Zaheer's eyebrow and causing Zaheer to fall backwards and bang his head on the pavement. Zaheer is taken to hospital where he has to spend four days in hospital recovering from severe concussion.

Discuss Asif's liability for the above incidents.

*Ignore any offences that may have been committed under the Protection From Harassment Act 1997.*

[50]

Potential answers **MAY**:

**Assessment Objective 1 (25 marks)**

Define assault and battery at common law

Define actual bodily harm - S.47 Offences Against the Person Act 1861; *Miller, Chan Fook*  
Refer to cases dealing with telephone calls and harassment as forms of 'assault' *Ireland; Burstow; Constanza*

Define wounding and grievous bodily harm - S.20 & S.18 Offences Against the Person Act 1861

State the rules governing the mistaken use of force in self-defence; *Gladstone Williams*

**Assessment Objective 2 (20 marks)**

Identify the fact that words alone may constitute an assault even if unaccompanied by a threatening gesture; *Wilson; Constanza*

Recognise that the threat need not be imminent but 'at some time not excluding the immediate future'; *Constanza*

Identify the potential assaults occasioning actual bodily harm on Samra by applying the decision in *Chan Fook*; which recognised that an assault caused by words alone could occasion actual bodily harm provided that it causes clinical psychiatric harm more than purely emotional distress

Identify the relevance of *Ireland*, where silence was held to be capable of amounting to an assault so when Asif merely remains silent on the phone he is still committing an assault which occasions actual bodily harm to Samra

Identify that the relevant *mens rea* for assault occasioning actual bodily harm is the same as for assault and the prosecution does not have to prove foresight of a risk of actual bodily harm, merely some bodily contact/touching *Savage Parmenter & Mowatt*

Identify that Samra's initial response to him is evidence enough to make Asif at least aware of a risk of causing Samra some harm

It is likely to amount to S.20 as in *Ireland; Burstow* since Asif's actions were certainly reckless as to the risk of some physical harm *Mowatt; Savage & Parmenter*

Consider that S.18 may be more difficult to establish as an intention to cause gbh is essential

Identify that the cut to Zaheer's eyebrow amounts to a 'wound' *Eisenhower*

Identify that Asif may face charges under S.20 or S.18 for the attack on Zaheer for the concussion

Recognise that Asif may be able to plead that he had an honest mistaken belief that the use of force was necessary *Gladstone Williams*  
Question whether the force used by Asif is 'reasonable' - *Palmer / S.3 Criminal Law Act 1967*

**Assessment Objective 3 (5 marks)**

Present relevant material in a well-planned and logical sequence, with 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 Dave is looking after his friend Mark's flat while Mark is away on holiday. Mark has told Dave that he is not to go into Mark's bedroom under any circumstances. Dave decides to make himself at home in Mark's flat one evening. He helps himself to a ready-made meal from the fridge and washes it down with a can of lager. Dave then decides to investigate Mark's bedroom where he is attracted to an envelope addressed to Mark which has written on it 'Privileged Customer Offer - To be opened by the addressee only'. Dave nevertheless opens it and inside is a personalised free guest admission ticket to the 'Devil's Cauldron' night club.

The next evening Dave goes to the 'Devil's Cauldron' night club using Mark's ticket to gain admission. After consuming several strong drinks in the club he sees a £20 note on the floor near the bar. He picks it up and keeps it. He leaves the club and gets into a taxi. When he arrives at the corner of his street, Dave suddenly jumps out of the taxi and runs away without paying the driver.

Discuss Dave's criminal liability for the above incidents.

[50]

Potential answers **MAY**:

**Assessment Objective 1 (25 marks)**

Define theft S.1 Theft Act 1968

Define and illustrate dishonesty S.2 Theft Act 1968 and the 'partial and dishonesty' and *Ghosh* tests

Define burglary S.9 (1) (a) & Theft Act 1968

Explain the principles of the defence of intoxication, *Majewski*

Define Making Off Without Payment S.3 Theft Act 1978

**Assessment Objective 2 (20 marks)**

Identify potential theft of the meal and lager

Discuss a possible S.2 (1)(b) defence that there is an honest belief that Mark may have consented to this

Consider that an honest mistaken belief may be a defence under S.2(1)(b)

Discuss theft and possible 9 (1) (a) or (b) burglary when Dave opens the envelope addressed to Mark. He is exceeding the permission for which he was originally permitted to enter by going into a part of the building (the bedroom) in which he is now a trespasser *Jones & Smith*

Consider theft when Dave picks up the £20 note or is he an 'honest finder' - S.2(1)(c)?

Consider the incident with the £20 note may amount to a S.9(1)(b) burglary as Dave has entered as a trespasser if he was not entitled to the ticket

Identify the offence of making off without payment when he runs away from the taxi

Discuss whether the defence of intoxication is possible for this and the making off without payment by applying *Majewski* - potentially a defence to crimes of specific intent - has it prevented Dave forming the *mens rea*?

Discuss whether the journey has to be completed – A212

**Assessment Objective 3 (5 marks)**

Present relevant material in a well-planned and logical sequence, with 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

		Assessment Objectives		
Levels	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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to give a 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 of law central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.	



**Mark Scheme 2573  
June 2006**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**

- 1 “In *Magor & St Mellons v Newport Corporation* Lord Simonds condemned the approach of Lord Denning of “filling in the gaps and making sense of the enactment” as “a naked usurpation of the legislative function”. [Source 1 page 3 lines 60-62 Special Study Materials].

Discuss the use of a purposive approach to statutory interpretation in the light of the above statement. [25]

Mark Levels		AO1 & AO3	AO2
Level 5	21-25	9-10	13-15
Level 4	16-20	7-8	10-12
Level 3	11-15	5-6	7-9
Level 2	6-10	3-4	4-6
Level 1	1-5	1-2	1-3

Potential answers **MAY**:

### Assessment Objective 1

Define the purposive approach – judges analyse and give effect to the purpose for which the Act was passed;

Explain that the approach originates from EU law and continental law based on codes where rules are stated in broader terms and the judge’s role is to apply the broad rules to specific circumstances;

Explain also that there is less focus on the actual words of the Act in finding the purpose of the provision *Royal College of Nursing v DHSS*; and *GLC v Bromley LBC*

Credit reference to the mischief rule and the rule in *Heydon’s case*:

- Look to the common law prior to the Act
- Identify the ‘mischief’ (or defect) in the previous common law
- Identify the means by which Parliament intended to remedy the defect
- Give effect to that remedy

Credit any reference to the broad approach to the golden rule - policy reasons mean giving a different meaning to the plain meaning *Re Sigsworth*;

Use any relevant cases in illustration.

### Assessment Objective 2

Discuss the basic argument that purposive approaches offend the separation of powers with judges going beyond their proper function;

Consider whether Lord Denning’s approach would have given a fairer and more logical result in *Magor* and one more in keeping with Parliament’s intention;

Discuss the ways in which the judges have used a purposive approach *Pickstone v Freemans*;  
Discuss the ways in which judges have applied the mischief rule *Kruhlak v Kruhlak*; *Corkery v Carpenter*;

Discuss the problems caused by leaving Parliament to amend the law *Fisher v Bell*

Credit any comment on the effect of using extrinsic aids in finding Parliament’s intention *DPP v Bull* and Wolfenden Report (Royal Commission) and Hansard on Sexual Offences Bill.

### 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 the extent to which the decision in *Dawson* [Source 3 page 4 Special Study Materials] can be said to be a fair development of the law.

[15]

Mark Levels		AO1 & AO3	AO2
Level 5	13-15	5	9-10
Level 4	10-12	4	7-8
Level 3	7-9	3	5-6
Level 2	4-6	2	3-4
Level 1	1-3	1	1-2

Potential answers **MAY**:

### Assessment Objective 1

Briefly describe the facts of the case (partly in Source 3): one defendant jostled the victim so that the victim lost his balance enabling the other defendant to take the victim's wallet;  
The court held that this did amount to sufficient 'force' for a conviction;  
Link with any other relevant case *Clouden*.

### Assessment Objective 2

Discuss the basis of the offence under s8 that the defendant uses force 'immediately before or at the time of stealing' in order to steal;  
Discuss the fact that a difference from the previous law is the choice of the word force instead of the word violence;  
Consider that the court in the case felt that the word force was an ordinary word that could be understood by everybody and so it should be left to the jury to decide whether in fact there was force based only on their common sense judgement;  
Discuss the fact that in using the word 'force' in passing s8 Parliament was following the recommendations of the Criminal Law Revision Committee;  
Consider that the jostling was part of a well planned exercise aimed at making it easier for the defendants to steal from the victim and therefore this application of the word 'force' is a fair development of the law.

### 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 In Source 8 [page 7 lines 6 - 8 Special Study Materials] the author suggests that “Under s9 of the Theft Act 1968 ... the entry of the accused into the building must first be proved. Secondly, it must be proved that he entered as a trespasser”.

Discuss the ways in which the courts have defined ‘ENTERING a BUILDING as a TRESPASSER’ in the light of the above statement. [30]

Mark Levels		AO1 & AO3	AO2
Level 5	21-25	13-15	13-15
Level 4	16-20	10-12	10-12
Level 3	11-15	7-9	7-9
Level 2	6-10	4-6	4-6
Level 1	1-5	1-3	1-3

Potential answers **MAY**:

### Assessment Objective 1

Define the burglary offences under s9(1)(a) and s9(1)(b) – enters as a trespasser with intent to commit theft, GBH or criminal damage; or having entered as a trespasser goes on to commit theft or GBH;

Explain Lord Edmund Davies’ definition of trespass in *Collins* – an entry into a building or part of a building in possession of another knowing that the other will not consent to the entry or reckless as to whether that person consents or not;

Explain Lord Edmund Davies’ definition of entry in *Collins* – trespass must involve ‘substantial and effective’ entry into the building – no substantial and effective entry here because of permission of defendant when permission was given;

Explain the developments of the meaning of entry in *Brown* and in *Ryan*;

Explain the references to building added in s9(4) Theft Act 1968;

Explain the meaning of building established by the courts in *Stevens v Gourley*; *B & S v Leathley*; *Norfolk Constabulary v Seekings & Gould*;

Identify the meaning given to ‘part of a building’ in *Walkington*.

### Assessment Objective 2

Discuss the difficulties of inserting the civil concept of the word ‘trespass’ into the criminal law; Discuss the difficulties associated with the point at which permission to enter is given in relation to the entry *Collins*;

Discuss the fact that there is no definition in the 1968 Act for entry and so the only definitions are to be found in the case law;

Discuss the difficulties associated with entering in excess of permission or exceeding permission (the concept of trespass *ab initio* in the civil law) and the way that the court resolved this in *Smith and Jones*;

Discuss the way in which the courts have developed the definition of entry – ‘substantial and effective’ in *Collins* so part of body possible, ‘effective’ only in *Brown*, but even ‘effective’ removed in *Ryan*;

Discuss the difficulties the courts have encountered in defining ‘building’ for burglary’ and how they have overcome them:

- ‘intended to be permanent or at least to endure for a considerable time’ *Stevens v Gourley*;
- caravan used for storage but connected to electricity supply was *B & S v Leathley*;
- trailer used for storage was not because still had wheels *Norfolk Constabulary v Seekings & Gould*

Discuss how the courts have defined ‘part of a building’ - till area in store was part of a building in *Walkington* – credit any reference to Professor Griew’s arguments.

**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 Consider whether an offence of robbery or burglary has been committed in each of the following situations:
- (a) Mike knows that Jacquie has just received a large royalty cheque for her latest book. Because he is jealous Mike rushes at Jacquie in the street. He pushes Jacquie over and grabs the cheque and rips the cheque up. [10]
- (b) Wesley drops a valuable first edition book while he is walking down the street. Steve, who knows the value of the book, picks it up and starts to run away. Wesley chases after Steve shouting for Steve to give the book back. Steve, who is much larger than Wesley, then turns and threatens that he will beat Wesley up if Wesley does not give up the chase. [10]
- (c) Paul, a lecturer, intends to break into Mumtaz's room in the law school to steal her collection of law text books. When Paul enters the room Mumtaz has taken all of the books home. Paul is so angry that when Mumtaz happens to return to her room and surprises Paul, he smashes Mumtaz's head against the wall, fracturing her skull. [10]
- [30]

Mark Levels		AO1 & AO3	AO2	a) b) or c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.

Potential answers **MAY**:

#### Assessment Objective 1

Define burglary under ss9(1)(a), 9(1)(b) in respect of the two offences, 9(2) in respect of the ulterior offences for 9(1)(a);

Define robbery under s8 – immediately before or at the time of stealing uses force or causes the other to fear force in order to steal;

Use any relevant cases in illustration.

#### Assessment Objective 2

In the case of (a):

- Identify the offence of robbery under S8 Theft Act 1968 – steals and immediately before or at the time of stealing uses force or puts the other in fear of force in order to steal
- Recognise that the timing of the force is satisfied – so there is no problem as in *Hale*
- Recognise that the force was not applied 'in order to steal' the cheque but to destroy it
- Consider whether the assumption of rights mean that the offence is still possible *Lockley*

In the case of (b):

- Identify the offence of robbery – using force or the fear of force in order to steal
- Identify also that Steve intends to steal the book and that there is a threat of force
- Identify that the problem here is the time when the force was threatened – after the book fell to the ground – and compare with *Corcoran v Anderton*
- Consider whether the argument in *Hale* and *Lockley* applies – the stealing was a continuous state of affairs and the force was threatened so that the theft could succeed

In the case of (c):

- Recognise that Paul satisfies the s9(1)(a) offence – he enters part of a building as a trespasser *Walkington*
- Recognise also that he intends to commit one of the offences outlined in s9(2), theft, so it does not matter if he does not go on to steal *Collins*
- Recognise the possibility of conditional intent *A-G's Reference (No 1 & 2 of 1979)*
- Recognise also that, having entered, he goes on to commit an offence accepted in s9(1)(b), GBH

### 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

		Assessment Objectives		
Levels	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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to give a 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.	



**Mark Scheme 2574  
June 2006**

This marking scheme is to be used in conjunction with the matrix indicating levels of assessment.

When using this mark scheme the points made in the scheme are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples used. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**

### Marking Levels

Levels	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

## 1 'The different approaches taken to classifying terms lead to uncertainty.'

Discuss the accuracy of this statement.

[50]

Potential answers **MAY**:**Assessment Objective 1****[25 marks]**

Explain the difference in status of terms within a contract.

Distinguish between conditions and warranties: *Poussard v Spiers and Pond*, *Bettini v Gye*, *Photo Production v Securicor*.Explain the use of the innominate term: *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha*, *The Mihalis Angelos*, *Bunge Corp v Tradax*; *The Hansa Nord*.

Show a general understanding of the consequences of classifying a term as a condition or as a warranty.

Breach of a condition gives rise to a right to repudiate and/or damage because a condition 'goes to the root of the contract'. Breach of a warranty gives a right only to damages because a warranty is only a general term.

The outcome of an innominate term depends on the seriousness of the breach.

Explain other ways in which a term may be 'labelled', e.g. by statute, or by the parties:

*Sale of Goods Act 1979*, *Schuler v Wickman Tools*; *Lombard North Central v Butterworth*.

Explain the approach taken by the courts to establishing the nature of a particular term.

**Assessment Objective 2****[20 marks]**

Discuss:

- The need to distinguish between different types of terms.
- Whether the courts take a consistent approach to distinguishing between conditions and warranties, and the use of the innominate term (*Hong Kong Fir*, etc).
- The need for certainty in specific types of contracts, and where time is of the essence.
- The various alternative approaches that may be taken to deciding the effect of a breach, i.e. intentions of the parties, effect of statute, the negotiations of the parties, appraisal by the courts, the status of the parties, and consider whether they result in justice.
- The consequences for parties of a finding of a term being a condition or a warranty in decided cases.
- The reasoning for the decisions in decided cases.

**Assessment Objective 3****[5 marks]**

Present relevant material in a well structured and logical sequence, with 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 'The presumptions relating to an intention to create legal relations serve an important purpose in the formation of a contract.'

Discuss the law relating to legal intent, in the light of the above statement. [50]

Potential answers **MAY**:

**Assessment Objective 1**

**[25 marks]**

Explain the general requirement of legal intent as a formation requirement.

Explain the presumption of no legal intent in social and domestic situations: *Balfour v Balfour*, *Jones v Padvatton*.

Explain that legal intent may be found in some cases where the presumption is rebutted: *Merritt v Merritt*, *Park v Clarke*, *Simpkin v Pays*.

Show how the presumption may in some cases be rebutted through an honourable pledge clause between companies: *Rose and Frank Co v Crompton Bros*, *Edwards v Skyways*, *Kleinwort Benson v Malaysia Mining Corporation* and in consumer contracts: *Jones v Vernons Pools*, *Appleson v Littlewoods Pools*.

Explain the special position of agreements made in the context of collective bargaining: *Ford Motor Co Ltd v Amalgamated Unison of Engineering and Foundry Workers*.

**Assessment Objective 2**

**[20 marks]**

Discuss the issues raised in the question. These may include (but are not confined to) the following matters:

- The requirement of legal intent is so important and integral to a commercial contract it is presumed rather than proved.
- The benefit in terms of safeguard that is derived from this where both parties are in business – the need for certainty and commercial expectation.
- The protection that legal intent provides for a consumer in terms of expectation of the parties and safeguard from unfair exploitation.
- The need to prove legal intent where the presumption is rebutted in social or domestic situations, in the interests of the parties.
- The inconsistencies in rebutting the presumption.
- Why the presumption extends beyond the strict confines of the family (*Buckpitt v Oates*) and who may derive protection in such cases.
- The position of the consumer in the 'pools' cases (and similar agreements), the effect of the Unfair Terms in Consumer Contract Regulations 1994 on honourable pledge clauses, and why such protection may be needed.

**Assessment Objective 3**

**[5 marks]**

Present relevant material in a well structured and logical sequence, with 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 In April Damian agrees with Great Gardens that they will landscape his garden. The work is to be finished by the end of June as he wants to hold his daughter's wedding reception there in July. Great Gardens inform Damian at the beginning of June that they are short of workers and money and will not be able to complete the work by the agreed deadline. Damian agrees to pay an extra £1000 to Great Gardens to complete the work on time.

Damian also agrees with Careful Caterers that they will provide food and a waitress service for the reception for an agreed fee. On the day of the wedding Careful Caterers arrive to carry out these tasks. While Damian and his family are at the wedding service, Careful Caterers decide to decorate the house and marquee with bouquets of flowers and balloons. After several glasses of champagne Damian, delighted with the work, promises to pay £200 to Careful Caterers for this service on top of the original fee.

Advise Damian whether he is obliged to pay the extra £1000 to Great Gardens and the extra £200 to Careful Caterers. [50]

Potential answers MAY:

**Assessment Objective 1 [25 marks]**

Demonstrate general knowledge and understanding of the doctrine of consideration. Explain the specific issue of consideration not generally being valid when it amounts to performance of an existing contractual duty: *Stilk v Myrick*  
 Explain the effect of anything 'extra' being given: *Hartley v Ponsonby*, *Ward v Byham*, etc  
 Explain the principles of *Williams v Roffey* and *Re Selectmove*.  
 Explain the principles relating to past consideration: *Roscorla v Thomas*, *Re McArdle*.  
 Explain the circumstances where apparent past consideration may be valid: *Lampleigh v Braithwait*, *Re Casey's Patents*.  
 Explain that under the principles of capacity a person who is drunk may not generally be liable for contracts formed if the drunkenness is apparent and the other party is aware of it.

**Assessment Objective 2 [20 marks]**

Identify the general issue of consideration (or lack of it).  
 Apply the issue of consideration in performing an existing duty to the facts of the problem, i.e. the payment to Great Gardens.  
 Apply the case of *Williams v Roffey* to the facts of the problem, and consider the particular problems that this may raise, e.g. the need to finish on time for the wedding.  
 Apply the law on past consideration to the facts of the problem, i.e. the payment to Careful Caterers.  
 Consider whether anything takes this situation beyond the general rule to provide valid consideration.  
 Apply the principles of capacity to the payment of the extra £200.  
 [Credit candidates who discuss, and dismiss, promissory estoppel re the £1000].

**Assessment Objective 3 [5 marks]**

Present relevant material in a well structured and logical sequence, with 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 Freya meets Georgia at a party and asks her if she would be prepared to sell her car for £5000. Georgia tells Freya that she believes that it is worth £7000. Freya then e-mails Georgia saying, 'I'm prepared to pay £6000 for the car. If I hear no more from you I will assume that it is mine at this price and will pick it up next week.' Freya hears no more, so calls at Georgia's house the following week to collect the car. Georgia does not wish to sell it.

Freya sees an advertisement in the window of Travel Far, a local travel agent. This states that the first ten people booking a holiday to Iceland through Travel Far will receive a travel-pack of meal vouchers, maps and guidebook. Freya is pleased to be told that she is the third person to book a holiday to Iceland through Travel Far, but she does not receive the travel-pack.

Freya also contacts, via the internet, a company called Just Bags and places an order for a rucksack for her holiday. Freya pays on-line and receives an acknowledgement from Just Bags by e-mail. Freya immediately regrets her shopping on impulse and no longer wishes to go ahead with the purchase. She therefore sends an e-mail to Just Bags saying that she has changed her mind about ordering the rucksack, but Just Bags reply saying that they have already posted it.

Advise Freya concerning her dealings with Georgia, Travel Far and Just Bags.

[50]

Potential answers **MAY**:

**Assessment Objective 1**

[25 marks]

Explain the need for a clear offer and an acceptance.

Explain the operation of counter offer: *Hyde v Wrench*.

Explain the need for communication of acceptance – whether the method is prescribed or not: *Yates v Pulleyn*, *Entores*.

Explain the concept of silence not amounting to acceptance: *Felthouse v Bindley*

Explain the general operation of offer and acceptance to shopping: *Fisher v Bell*, etc, and the exceptions with some advertisements and situations like *Lefkovitz* or *Esso*.

Explain the need to communicate revocation before acceptance, and the binding nature of acceptance: *Burne v Van Tienhoven*.

Explain the provisions of the *Distance Selling Regulations*.

**Assessment Objective 2**

[20 marks]

Identify the issues of offer and acceptance relevant to the scenario:

Georgia:            Need for offer and acceptance  
                           Need to communicate acceptance  
                           Counter offer does not amount to acceptance  
                           Silence does not amount to acceptance

Travel Far:        Offer generally made by customer  
                           Exceptions exist, e.g. advertisements and incentive situations

Just Bags:         Need to communicate revocation before acceptance  
                           Does acknowledgement amount to acceptance?  
                           Provisions of the *Distance Selling Regulations* – cooling off period.

Apply the relevant law to the three scenarios.



**Assessment Objective 3****[5 marks]**

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

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



**Mark Scheme 2575  
June 2006**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant exemplars given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**

- 1 'The definition of misrepresentation is clear but its application to real cases is less clear.'

In the light of the definition of misrepresentation, evaluate the accuracy of the above statement.

[50]

Marking Level	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

Potential answers **MAY**:

### Assessment Objective 1

[25 marks]

State a definition of misrepresentation:- untrue statement of fact which induces a contract.

Explain the definition:

- 1 untrue statement of fact, *Kleinwort v. Lincoln City Council*, *Pankhania v. Hackney Borough Council*, *Bissett v. Wilkinson*, *Smith v. Land and House Property Corp*, and *Spice Girls v. Aprilia*;
- 2 statement of intention, *Edgington v. Fitzmorris*;
- 3 effect of silence, no duty to disclose unless special case, *With v. O'Flanagan and Land and House Property Corp*;
- 4 must induce the contract, *Attwood v. Small*, *Edgington v. Fitzmorris*, *Redgrave v. Hurd*, *Newsprime Property v Adhill Properties*, *Pan Atlantic Co. v. Pine Top Insurance* and *County Natwest Bank v. Barton*.

Explain the equitable nature of the remedies.

Explain the provisions of the Misrepresentations Act 1967.

Explain the types of misrepresentations and the consequences of the distinction.

Explain some of the difficulties that can arise whether there is a misrepresentation or a breach.

### Assessment Objective 2

[20 marks]

Evaluate the difficulties in deciding whether a particular statement is a trade puff, misrepresentation or contractual term.

Evaluate the application of the factors used by the courts to decide whether a particular statement is a misrepresentation or contractual term.

The factors that might be considered include:

- 1 timing of the statement, *Routledge v. McKay*;
- 2 importance of the statement *Bannerman v. White*, *Couchman v. Hill* and *Whittington v. Seale-Hayne*;
- 3 whether the statement appears in any subsequent written contract *Routledge v. McKay* and *Birch v. Paramount Estates*.

Evaluate the difficulty of applying these tests in practice.

Evaluate the distinction between types of misrepresentation and whether this has been alleviated by the Misrepresentation Act 1967.

Evaluate whether the ability of the courts to award damages in all cases of misrepresentation alleviates the difficulties.

Reference may be made to cases such as *Doyle v. Olby*, *Smith Newport Securities v. Scrimgeour Vickers* and *Royscot Trust v. Rogerson*.

Evaluate whether the remedies adequately compensate for the losses.

Evaluate the nature of equitable remedies.

**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 Discuss the extent to which the current law on frustration achieves fairness between the contracting parties. [50]

Marking Level	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

Potential answers **MAY**:

**Assessment Objective 1** [25 marks]

State and explain the meaning of frustration.

Intervening cause which makes the contract impossible to perform, *Taylor v. Caldwell*, *Davis v. Fareham UDC* and *National Carriers v. Panalpina*.

Examples of frustrating events:

- 1 destruction of subject matter, *Taylor v. Caldwell*;
- 2 unavailability of subject matter, *Condor v. The Barron Knights*;
- 3 impossibility of stipulated method of performance, *Tsakiroglou v. Noblee Thorl (Suez Canal cases and Finelevt v. Vinaja Shipping)*;
- 4 failure of specific events, *Krell v. Henry*, *Herne Bay Steam Boat Co. v. Hutton*, *Amalgamated Investment Property v. John Walker*;
- 5 supervening illegality, *Denny, Mott & Dickson v. James Fraser*;
- 6 leases, *Cricklewood Property v. Leighton Investment Trust* and *National Carriers v. Panalpina*;
- 7 delay, *Jackson v. Union Marine Insurance and Pioneer Shipping v. BTP Tioxide*.

**Assessment Objective 2** [20 marks]

Discuss the distinction between absolute obligation and frustration. *Paradime v. Jane*.

Discuss whether this case created an absolute obligation or whether it was limited to leases, *National Carriers v. Panalpina*.

Discuss the limitations of the doctrine of frustration:

- 1 express provisions, *Jackson v. Union Marine Insurance* and Force Majeure Clauses;
- 2 self-induced frustration, *National Maritime Fish v. Ocean Trawlers* and *The Super Servant Two*;
- 3 loss of profit or increase in expenses, *Davis v. Fareham UDC* and *Tsakiroglou v. Noblee Thorl*.

Discuss the common law position for assessing losses, *Fibrosa Case* and *Chandler v. Webster*. Application of the Law Reform (Frustrated Contracts) Act 1943, *BP v. Hunt*.

Discuss the relationship between mistake and frustration and whether this is a valid distinction.

**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.

- 3 Assim signs up new bands before they become famous and produces their records. He has just signed two new bands, 'Hardhead' and 'The Club' who have not yet released any records. In the contract with both bands is a clause that states that they cannot change producer for five years and that he has the exclusive rights to release all records for the same period. 'Hardhead' has suddenly become very popular following a tour and the release of a record.

'Hardhead' has received an offer from a major record company to promote and manage the band for two years. This would include major tours both in this country and abroad. The band is delighted and wishes to sign for the company as it will give them extensive media coverage.

'The Club's' lead singer, who writes most of their material, wishes to leave and concentrate on a solo career recording his own songs. This will mean the break up of the band. He intends to produce all his material on his own label.

Advise Assim whether the application to court to restrain both bands leaving is likely to be successful.

[50]

Marking Level	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

Potential answers **MAY**:

#### Assessment Objective 1

[25 marks]

Identify the clauses in contracts as clauses in restraint of trade.

Consider the factors that the court applies to decide if clauses are valid, *Nordenfelt v. Maxim Nordenfelt*.

Explain the balance of reasonableness i.e. reasonable between the parties and in the public interest, *Nordenfelt v. Maxim Nordenfelt*, *Kores Manufacturing v. Kolok Manufacturing*.

Discuss the criteria used to consider whether a clause is reasonable.

Public policy test.

Nature of proprietary interests *BRC v. Schelff*.

Time and geographical area, cases such as *Attwood v. Lamont*.

Consideration of the House of Lords decision in *Esso v. Harpers Garage*.

Explain the open-ended nature of restraint of trade to new situations, *A Schroeder Music v. Macaulay* and *Panayiotou v. Sony Music (George Michael Case)*.



**Assessment Objective 2****[20 marks]**

Apply the principles of restraint of trade to the problem.

Identify that the two contracts require separate consideration of the restraint of trade clauses.

Apply the different criteria to each contract.

Apply the blue pencil test.

Discuss in relation to the facts of the problem the test in *Esso v. Harpers Garage*.

Apply and evaluate the proprietary interest criteria to the contract and consider the public interest criteria.

Apply cases such as *A Schroeder Music v. Macaulay* and *Panayiotou v. Sony Music*.

Apply the tests of time and geographical area to the problem supported by appropriate cases such as *Fitch v. Dewes* and *Nordfelt v. Maxim Nordenfelt*.

Conclude whether the restraint is reasonable and would be enforceable.

**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 Roger has a small furniture-making business in a remote rural location. He has a contract with a transport company, Move-It, to deliver all the finished furniture to its buyer. This has been at a fixed rate per mile and has a further six months to run. Move-it has found itself in financial difficulties because of the increase in fuel costs. It has decided to increase the charges substantially. This is not allowed in the contract but the company has stated that it will no longer deliver the furniture unless the price increase is accepted. Roger very reluctantly agrees.

At the same time the company that supplies Roger with specially prepared wood, Wood Craft, decides to reduce its credit period from three months to one month. Wood Craft states that unless the change is accepted they will no longer supply wood. The contract between Roger and Wood Craft states that the supplier may reduce the credit period at any time. Roger is unable to find any alternative supply so feels pressurised into agreeing.

Explain to Roger whether he can avoid either of these agreements and operate on the original ones.

[50]

Marking Level	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

Potential answers **MAY**:

#### Assessment Objective 1

[25 marks]

Explain the principles of economic duress, *The Sibeon* and *The Sibotre*, *North Ocean Shipping v. Hyundai Shipping* and *Universal Tankships of Morovia v. International Transport Workers Federation*.

Explain the criteria considered by the courts in *Atlas Express v. Kafco*, *Williams v. Roffrey and CTN Cash and Carry v. Gallagher*.

Explain the criteria necessary for economic duress to be applied:

- 1 the practical effect of the pressure is compulsive or there is lack of practical choice;
- 2 the pressure is illegitimate;
- 3 the pressure was a real or significant cause of entering the contract.

Explain that all factors must be present, *Carillion Construction v. Felix*.

#### Assessment Objective 2

[20 marks]

Apply the criteria discussed by the court in *Carillion Construction v. Felix*.

Evaluate whether or not the pressure used is legitimate and within the provisions of the contract, *CTN Cash and Carry v. Gallagher*.

Apply the test of whether there was an alternative to agreeing to the change.

Explain whether or not breach of contract would have been an alternative and a claim for damages in either or both situations.

Apply the principles considered in *Atlas Express v. Kafco* to the two agreements.

Reach a reasoned conclusion as to whether both agreements are valid or if not what remedies are available to Roger.

Explain that the agreements in the problem arise from an existing contractual obligation.

For an answer purely based on undue influence, credit given to Level 2.

**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.

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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-formed 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.

**Mark Scheme 2576**  
**June 2006**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**

- 1 “In *Magor & St Mellons v Newport Corporation* Lord Simonds condemned the approach of Lord Denning of “filling in the gaps and making sense of the enactment” as “a naked usurpation of the legislative function”. [Source 1 page 3 lines 60-62 Special Study Materials].

Discuss the use of a purposive approach to statutory interpretation in the light of the above statement. [25]

Mark Levels		AO1 & AO3	AO2
Level 5	21-25	9-10	13-15
Level 4	16-20	7-8	10-12
Level 3	11-15	5-6	7-9
Level 2	6-10	3-4	4-6
Level 1	1-5	1-2	1-3

Potential answers **MAY**:

### Assessment Objective 1

Define the purposive approach – judges analyse and give effect to the purpose for which the Act was passed;

Explain that the approach originates from EU law and continental law based on codes where rules are stated in more broad terms and the judge’s role is to apply the broad rules to specific circumstances;

Explain also that there is less focus on the actual words of the Act in finding the purpose of the provision *Royal College of Nursing v DHSS*; and *GLC v Bromley LBC*

Credit reference to the mischief rule and the rule in *Heydon’s case*:

- Look to the common law prior to the Act
- Identify the ‘mischief’ (or defect) in the previous common law
- Identify the means by which Parliament intended to remedy the defect
- Give effect to that remedy

Credit any reference to the broad approach to the golden rule - policy reasons mean giving a different meaning to the plain meaning *Re Sigsworth*;

Use any relevant cases in illustration.

### Assessment Objective 2

Discuss the basic argument that purposive approaches offend the separation of powers with judges going beyond their proper function;

Discuss whether Lord Denning’s approach would have given a fairer and more logical result in *Magor* and one more in keeping with Parliament’s intention;

Discuss the ways in which the judges have used a purposive approach *Pickstone v Freemans*;

Discuss the ways in which judges have applied the mischief rule *Kruhlak v Kruhlak*; *Corkery v Carpenter*;

Discuss the problems caused by leaving Parliament to amend the law *Fisher v Bell*

Credit any comment on the effect of using extrinsic aids in finding Parliament’s intention *DPP v Bull* and Wolfenden Report (Royal Commission) and Hansard on Sexual Offences Bill.

### 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 the extent to which the decision in *Herne Bay Steamboat Co. v Hutton* [Source 5 page 5 Special Study Materials] can be said to be a fair development of the law. [15]

Mark Levels		AO1 & AO3	AO2
Level 5	13-15	5	9-10
Level 4	10-12	4	7-8
Level 3	7-9	3	5-6
Level 2	4-6	2	3-4
Level 1	1-3	1	1-2

Potential answers **MAY**:

### Assessment Objective 1

Briefly describe the facts of the case: Defendant hired a boat from which to watch the King reviewing the fleet after his coronation, the coronation was postponed because the King was ill, the court declared that the contract was not frustrated because could still see the fleet;

Link with any leading case *Krell v Henry*.

### Assessment Objective 2

Discuss the basic doctrine of frustration that the contract terminates at the point of the frustrating event and the parties are relieved of further performance;

Discuss the fact that frustration was traditionally allowed because the frustrating event made performance impossible;

Discuss the later development – contract could be frustrated because of commercial sterilisation (frustration of the common venture);

Could still be performed but the actual purpose of the contract could not be achieved;

Discuss the justification for refusing to apply frustration in the case – even though one purpose had gone there was still a major purpose that could be carried out;

Discuss the fairness of this to either party.

### 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 In Source 10 [page 7 lines 10 - 13 Special Study Materials] the author suggests that *“The decision in the Chandler case that the ‘loss lies where it falls’ clearly could produce extremely harsh consequences for the parties. The position was no less satisfactory for the reason that the effects on the parties were completely unpredictable”*.

Discuss the ways in which the COURTS and STATUTE have dealt with the potential unfairness within the doctrine of frustration in the light of the above statement. [30]

Mark Levels		AO1 & AO3	AO2
Level 5	25-30	13-15	13-15
Level 4	19-24	10-12	10-12
Level 3	13-18	7-9	7-9
Level 2	7-12	4-6	4-6
Level 1	1-6	1-3	1-3

Potential answers **MAY**:

### Assessment Objective 1

Define the basic doctrine of frustration – a frustrating event not the fault of either party means that the parties are excused further performance and obligations end at the point of frustration *Taylor v Caldwell*;

Explain traditional way of dealing with loss – obligations ceased at point of frustration so if yet to perform (hand over money) then excused *Krell v Henry*, but if had already performed (handed over money) then not able to recover *Chandler v Webster*;

Explain how common law resolved the problem in *Fibrosa* – party that had handed money over in advance could recover if there was a total failure of consideration;

Explain how Law Reform (Frustrated Contracts) Act 1943 addressed the problem:

- Money due under the contract ceases to be payable but money paid in advance can be recovered where there is a failure of consideration – s1(2);
- A party can recover a ‘fair amount’ for work already undertaken under the contract – s1(2) *Gamerco v ICM/Fair Warning Agency*;
- A party can recover a ‘just sum’ for partial performance that has conferred a valuable benefit on the other party - s1(3) *BP Exploration Co (Libya) v Hunt*.

### Assessment Objective 2

Discuss the basic justification for the doctrine and how it attempted to address the unfairness of the rule in *Paradine v Jane* – why should a party be bound by obligations which become impossible to perform through no fault of his own;

Discuss the fact that the simplicity of the early rule meant that one party could still suffer unfairly depending when the frustrating event occurs e.g. *Krell v Henry* and *Chandler v Webster* - so that the rule made fairness the victim of chance and the same frustrating event can lead to totally different outcomes;

Discuss the potential fairness and/or unfairness of the rule in the *Fibrosa* case:

- Possible to recover for money paid over so no loss if nothing received because of frustrating event;
- But this still means that the other party could lose out where he has done work prior to the contract and can get no payment for it;

Discuss whether or not the provisions within the 1943 Act are an improvement:

- S1(2) money ceases to be payable only reaffirms the common law principle;
- S1(2) money paid in advance can be recovered again only repeats common law;
- S1(2) possible recovery for work already done improves the harshness of the common law but has two major limitations:
  - Depends on discretion of court to decide what is a fair sum;
  - There must have been an obligation to pay money in advance of contract;
- S1(3) recovery for part performance which confers a valuable benefit is an improvement but again is based on discretion of court and is not straightforward.

### **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 Consider whether a claim of frustration would be barred in each of the following situations and the consequences:
- a) Chris, a lecturer, has contracted to write a book for Bona Fide Publishers for a fixed fee of £1,000. After the contract was formed Chris realised that the project would take much longer to research than he anticipated. Chris' employers have now asked him to speak at a series of conferences that would help him gain promotion. He intends to do these as the book will be so difficult to write and he cannot do both. Bona Fide Publishers paid Chris £100 in advance. [10]
- b) Nijar has contracted to run a liquor off-licence in a store owned by Speedy Shop. He already has three off-licences of his own. He is then only granted three licences and he uses all three on his own shops. Speedy Shop has spent £5,000 fitting out the shop for the off-licence. [10]
- c) Uri, a professional singer, has contracted with Popcelebs to sing at a concert. When he signed the contract he knew that he might be recalled to his own country to join the army as war with another country was possible. Now Uri has been enlisted in his country's army and cannot complete the contract. He was paid £50,000 in advance of the contract. [10]
- [30]

Mark Levels		AO1 & AO3	AO2	a) b) or c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.

Potential answers **MAY**:

#### Assessment Objective 1

Give definitions of frustration and the circumstances in which it operates: impossibility, subsequent illegality and commercial sterility;  
Use any relevant cases in illustration.

#### Assessment Objective 2

In the case of a):

- Identify that Chris's only possible argument is unavailability *Morgan v Manser*
- But recognise that this is a self-induced frustration Chris merely wants to back out of the contract because it is more onerous for him to perform *Davis Ltd Contractors v Fareham UDC*
- Consider that Bona Fide Publishers will be able to recover the £100, and would do also under s1(2) of the 1943 Act if the contract was frustrated.

In the case of b):

- Identify that Nijar is likely to claim that the contract is frustrated because of commercial sterility *Krell v Henry*
- But recognise that it is in fact self-induced since Nijar could have used the licence for the off licence in Speedy Shop's store *Maritime National Fish Ltd v Ocean Trawlers Ltd*
- Consider that Nijar might have to compensate Speedy Shop and the applicability of s1(2) and s1(3) of the 1943 Act if the contract is frustrated

In the case of c):

- Identify that Uri might argue unavailability as the frustrating event *Morgan v Manser*
- But recognise that Uri's unavailability was a foreseeable risk *Amalgamated Investment & Property Co v John Walker & Sons*
- Consider that Uri will have to return the £50,000 and would do under s1(2) of the 1943 Act if the contract was frustrated.

### **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

		Assessment Objectives		
Levels	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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to give a 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.	



**Mark Scheme 2577**  
**June 2006**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**



## 1 'The Occupiers' Liability Act 1957 is a statutory form of negligence.'

Discuss the provisions of the Occupiers' Liability Act 1957 in the light of the above statement. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

**Assessment Objective 1 (25 marks)**

Explain the basic duty in s2(1) – the common duty of care owed to all lawful visitors;  
 Explain that s2(1) also allows the occupier to extend, restrict modify or exclude his duty;  
 Explain the scope of the duty under s2(2) – to take reasonable care to keep the visitor safe for the purposes for which the visitor is permitted entry onto the premises;

Define occupier – not in Act but in common law is a person in control of the premises  
*Wheat v Lacon*;

Explain that premises is broadly defined in s1(3) 1957 Act as any 'fixed or movable structure' and at common law has even included a ladder leaning against a wall *Wheeler v Copas*;

Explain the special duty and higher standard of care owed to children under s2(3)(a) – and the basic acceptance that a child is more at risk *Moloney v Lambeth BC* – and the basic allurements principle in common law *Taylor v Glasgow Corporation* – and the broad view of foreseeable harm *Jolley v Sutton LBC*;

Explain also that case law identifies that the occupier may expect parents to supervise young children *Phipps v Rochester Corporation*;

Explain that under s2(3)(b) the occupier is entitled to expect a person entering to carry out a trade to guard against risks associated with the trade *Roles v Nathan*;

Explain that under s2(4)(b) the occupier can avoid liability where the damage is caused by work negligently done by an independent contractor if:

- it was reasonable to hire a contractor for the work;
- a competent contractor was chosen;
- the work was inspected if appropriate *Hazeldine v Daw*;

Explain that a lawful visitor may become a trespasser by exceeding the proper limits of his visit *The Calgarth*;

Explain the available ways of avoiding liability under the Act:

- sufficient warnings under s2(4)(a) but must be enough to protect *Rae v Mars*;
- use of exclusion clauses in certain circumstances – but subject to UCTA;
- *volenti non fit injuria* under s2(5) – but not if the visitor had no choice but enter the premises *Burnett v British Waterways Board*.

**Assessment Objective 2 (20 marks)**

Discuss the fact that the major purpose in passing the Act was to create a common duty – before the Act different duties were owed to different types of lawful visitor;  
Consider that there is no definition of occupier in the Act so common law applies;  
Consider that premises is broadly defined so common law can still apply;  
Discuss the fact that many definitions derive from common law and that the standard of care and issues of causation will be as for negligence;  
Discuss the special duty owed to children under s2(3)(a) of the Act;  
Discuss also the rules on those carrying out a trade under s2(3)(b);  
Discuss the special rules on work of independent contractors under s2(4)(b) – claimant may still have an action against the contractor in negligence;  
Consider the means available to the occupier for avoiding liability – possibly more extensive than under common law;  
Discuss the fact that the Act only applies to the state of the premises – for negligent acts or omissions carried out on the premises the claimant must still use negligence *Ogwo v Taylor* and *Salmon v Seafarers Restaurant*;  
Consider that the Act has been the subject of little statutory interpretation;  
Credit any relevant reference to visitors that are not covered by the Act;  
Reach any sensible conclusion.

**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 'It is plainly unfair to impose liability on a person who has not actually committed the wrong.'

Discuss the way that the courts apply the rules of vicarious liability in the light of the above statement. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

### Assessment Objective 1 (25 marks)

Explain the basic principle of vicarious liability – one party (usually an employer) is fixed with liability for the torts (and sometimes the crimes) of another party (usually an employee);

Explain the main rules for imposing liability:

- tortfeasor must be an employee;
- tort must occur in the course of employment;

Explain the basic tests for establishing that the tortfeasor is an employee:

- control test *Mersey Docks & Harbour Board v Coggins & Griffiths*;
- integration test *Stevenson, Jordan & Harrison v Macdonald & Evans*;
- economic reality (multiple) test *Ready Mixed Concrete case*;

Explain the circumstances where the tort falls within the course of employment:

- authorised acts *Poland v Parr*;
- acting in an unauthorised manner *Limpus v London General Omnibus*;
- or in a purely careless manner *Century Insurance v Northern Ireland Transport Board*;
- where the employer benefits from the tort *Rose v Plenty*;
- paid travelling time *Smith v Stages*;

Explain circumstances that are not within the course of employment:

- activities not within the scope of employment *Beard v London General Omnibus*;
- a 'frolic on his own' *Hilton v Thomas Burton*;
- giving unauthorised lifts *Twine v Beans Express*;

Credit any reference to liability for the crimes of employees where these are:

- within the authorised scope of employment *Lloyd v Grace Smith*;
- have a close enough connection with the employment *Lister v Hesley Hall*;

Credit also any reference to the 'loaned car' cases *Morgans v Launchbury*

Use any other relevant cases.

**Assessment Objective 2 (20 marks)**

Discuss the basic justifications for imposing vicarious liability.

- employer benefits from work so should be responsible;
- if employer responsible for work then should ensure that it is carried out safely;
- employer can more easily bear any loss than the employee;
- the rule thus ensures that the claimant can be compensated;
- employer in any case is subject to compulsory insurance – so pays only the premiums not the actual damages;
- increased premiums may act as a deterrent to poor employment practices;
- the employer is able to discipline employees for unsafe practices;
- the employee may in any case be a ‘man of straw’;

Discuss the ways in which imposing vicarious liability may be considered unfair:

- it is a contradiction of the basic fault principle;
- the employer may still be fixed with liability even though he has expressly prohibited the unsafe practice;
- the rule may operate inconsistently or arbitrarily e.g. compare *Rose v Plenty* with *Twine v Beans Express*;
- the tort will often have occurred before the employer realises that the employee behaves badly and should be disciplined;
- the employer may be liable even for mere carelessness on the employee’s part *Century Insurance*;

Credit any reference to the potential unfairness of the rule in *Lister v Hesley Hall*;

Credit any discussion of the tenuous justification for applying the rule in the ‘loaned car’ cases.

**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.

- 3 Marquis attends Rottengrove Comprehensive School. Marquis is small and is frequently bullied by larger boys. His parents have often complained to the headmaster but the school has done nothing to prevent the bullying. Recently Marquis was thrown off the wall-bars by other boys during the gym class. He broke his elbow in the fall and also banged his head.

Marquis was taken to the Rottengrove Hospital where a junior doctor ordered X-rays of his elbow, which was then put in plaster. The doctor failed to examine Marquis' head. Marquis suffered severe headaches for the next week and eventually lost consciousness. Doctors then carried out a brain scan which revealed that Marquis now had massive brain damage. Tests have shown that if his condition had been diagnosed at once he could have been treated and would have made a complete recovery.

Consider any possible claims that may be made against Rottengrove Comprehensive School or Rottengrove Hospital for Marquis' injuries. [Do not discuss trespass to the person]

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Explain the basic elements of a negligence claim:

- existence of a duty of care owed by defendant to claimant *Donoghue v Stevenson*;
- breach of the duty (by falling below the appropriate standard of care – reasonable man test *Blyth v Birmingham Waterworks*);
- damage caused by the defendant (the 'but for' test *Cork v Kirby*);
- which is not too remote a consequence of the breach (i.e. damage that is reasonably foreseeable *The Wagon Mound*);

Explain the duty owed by schools to their pupils; and of doctors to their patients;

Explain that a duty can be owed for an omission to act where there is a duty to act:

- where there is a contractual duty *Stansbie v Troman*;
- where a special relationship exists *Airedale NHS Trust v Bland*;

Explain the different standard of care owed by professionals, particularly doctors – that measured against the standards of a reasonably competent body of medical opinion *Bolam v Friern Hospital Management Committee*;

Explain that there is no reduction in the standard for lack of experience *Wilsher v Essex AHA*;

Explain that a failure to examine will amount to a breach of the duty owed by a doctor *Barnett v Chelsea & Kensington HA*;

Explain the factors relevant to breach of duty:

- foreseeability of harm *Roe v Minister of Health*;
- likelihood or risk *Bolton v Stone*;
- practicability of precautions *Latimer v AEC*;

Explain that failure to prevent bullying may be a cause of injury leading to liability *Bradford-Smart v West Sussex CC*;

Explain that it is the general type of damage not the specific damage that must be foreseen *Bradford v Robinson Rentals*;

Explain also that it is the general circumstances in which the damage occurs rather than the specific circumstances that must be foreseen *Jolley v Sutton LBC*;

Credit any relevant reference to 'loss of a chance' *Hotson v East Berks HA*.

### **Assessment Objective 2 (20 marks)**

In the case of a claim against Rottengrove Comprehensive School:

Consider that any negligence results from an omission: the failure to protect against the bullying of Marquis despite the complaints from his parents;

Consider the fact that liability is possible because the school has a special relationship and duty to act;

Consider the standard of care owed by the school – higher where a child is concerned;

Consider the breach and consider that harm to Marquis was foreseeable and the likelihood of injury was high and that reasonably practical precautions could have been taken to prevent the bullying;

Consider whether this caused the injuries which were in any case foreseeable;

In the case of any claim against Rottengrove Hospital:

Consider that the brain damage results from an omission: the failure to examine the head injury;

Consider the fact that liability is possible because of the special relationship and assumption of responsibility for Marquis' care;

Consider whether a competent doctor would have failed to examine;

Consider that there is no reduction for the omission being by a junior doctor – the same standard of care is expected;

Consider that the facts show that the brain damage would not have occurred but for the failure to examine;

Credit any relevant discussion of 'loss of a chance' *Hotson v East Berks HA*;

Consider that some form of injury was foreseeable in the circumstances;

Reach any sensible conclusion in both cases.

### **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 At a recent sports event a company, Fire-Crackers, was hired to conduct a fireworks display before the game. Through Fire-Crackers' negligence one firework shot directly into the crowd. It hit Raj in the face. He suffered severe burns. The firework narrowly missed Raj's girlfriend Jasbir, who was sitting beside Raj. Jasbir now suffers from post traumatic stress disorder following the incident.

Les, a first aider, attended to Raj before an ambulance arrived. Les was so shocked by the state of Raj's injuries that he also suffers from post traumatic stress disorder and can no longer work.

Raj's mother Manjit was telephoned immediately by Jasbir and saw Raj being carried into hospital from the ambulance within one hour of the incident. Manjit was upset at Raj's injuries and now has lost her appetite.

Advise Jasbir, Les and Manjit whether each may succeed in any claims against Fire-Crackers for their injuries. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Define nervous shock (psychiatric injury) – requires a recognised psychiatric injury caused by the defendant's negligence (PTSD is sufficient *Alcock*, but emotional reactions such as insomnia are not *Reilly v Merseyside HA*);

Distinguish between primary victims and secondary victims:

- Primary victim is one present at the scene and at risk of injury *Dulieu v White*;
- Secondary victim is one who witnessed the single shocking event causing risk of injury or injury to a related primary victim *Hambrook v Stokes*;

Define the basic rules on secondary victims from *Alcock*:

- Close tie of love and affection to the primary victim *Hambrook v Stokes* (presumed in parent/child all other relationships must prove close tie);
- Sufficient proximity in time and space to the event or its immediate aftermath *McLoughlin v O'Brien* (restricted to two hours in *Alcock*);
- Witnessed the accident or immediate aftermath with own unaided senses *Alcock*;
- Injury was sustained as a result of a single shocking event *Sion v Hampstead*;

Limitation on claims by 'bystanders' even though they may suffer psychiatric harm *McFarlane v E E Caledonia, Rough & Robertson v Forth Road Bridge*;

Explain that a rescuer can only claim if a genuine primary victim *White v Chief Constable of South Yorkshire*;

Use any other relevant cases.

**Assessment Objective 2 (20 marks)**

Consider that there is a single traumatic event caused by Fire-Crackers' negligence;  
In the case of Jasbir:

- Identify that Jasbir suffers a recognised psychiatric injury caused by a single traumatic event;
- Consider whether Jasbir can claim as a primary victim (the firework narrowly missed her) – if she was at risk of harm then she may claim *Page v Smith*;
- Identify that Jasbir has an alternative claim as a secondary victim according to the criteria in *McLoughlin and Alcock*;
- Consider that Jasbir satisfies the final two criteria i.e. proximity in time and space and witnessing or hearing the event with her own unaided senses;
- But Jasbir will have to prove a close tie of love and affection to Raj and as a girlfriend may fail under *Alcock - Duncan v British Coal*, *Robertson and Rough v Forth Road Bridge Joint Board*;

In the case of Les:

- Identify that Les suffers a recognised psychiatric injury caused by a single traumatic event *Vernon v Boseley*;
- Identify Les as a professional rescuer;
- Explain that, following *White* rescuers would now generally be classed as secondary victims but may still succeed if able to show that they are genuine primary victims i.e. at risk themselves – this appears not to be the case here;
- Identify that Les will only be classed as a bystander with no tie to the victim so cannot claim as a secondary victim *McFarlane v EE Caledonia*;

In the case of Manjit:

- Identify Manjit as a secondary victim;
- Consider that Manjit passes the first *Alcock* test as a close tie is presumed in the case of parents and children;
- Comment on the similarity with *McLoughlin v O'Brien* Manjit comes within the immediate aftermath test – arrives within one hour and sees Raj in same state;
- Consider, however, that her injury (loss of appetite) is probably insufficient to be classed as psychiatric injury *Reilly v Merseyside HA*.

**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

Levels	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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to give a 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 of law central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.



**Mark Scheme 2578**  
**June 2006**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**

## 1 Discuss the factors that limit the effectiveness of the tort of private nuisance. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

### Assessment Objective 1 (25 marks)

Define the tort of private nuisance – an unlawful, indirect interference with another person's use or enjoyment of land in which they have an interest;

Discuss the need for the claimant to have an interest in the land affected by the nuisance

*Malone v Laskey, Hunter v Canary Wharf*;

Discuss that on the other hand potential defendants are not restricted to the occupier of the land *Tetley v Chitty*, but can also include the creator of the nuisance *Southport Corporation v Esso Petroleum*, independent contractors, and landlords

Discuss that only indirect interference gives rise to liability e.g. noise *Sturges v Bridgman*, smoke and fumes *St Helens Smelting v Tipping*;

Discuss that there is a difference between nuisance causing damage and one causing interference with comfort or the enjoyment of land *Halsey v Esso Petroleum, St Helens Smelting v Tipping*;

Discuss that the interference must involve an unlawful (unreasonable) use of land - assessing unreasonable means taking into account:

- Locality *Sturges v Bridgman, Kennaway v Thompson, Laws v Florinplace*
- Duration *Spicer v Smee, De Keyser's Royal Hotel v Spicer Bros*
- Abnormal sensitivity of the claimant *Robinson v Kilvert*
- The presence of malice *Christie v Davey, Hollywood Silver Fox Farm v Emmett*

Explain the potential defences:

- 20 years prescription *Sturges v Bridgman*,
- statutory authority *Allen v Gulf Oil*,
- local authority planning permission *Gillingham BC v Medway Dock & Wheeler v Saunders*,
- consent (as when parties share premises) *Kiddle v City Business Properties*
- act of a stranger *Sedleigh Denfield v O'Callaghan*,
- and sometimes public policy *Adams v Ursell, Miller v Jackson*

Credit any reference to the basic remedies - damages *Halsey*, injunctions *Kennaway v Thompson*, abatement

**Assessment Objective 2 (20 marks)**

Discuss the fact that the tort in essence is about balancing the competing interests of neighbours so that either compromise can be reached (limiting the effectiveness of claiming) or in any case one person's interests are protected at the expense of the other party

Discuss the fact that there are difficulties in any case in establishing use of land as unreasonable

Comment on the limitations imposed by the definition given to potential claimants eg *Hunter v Canary Wharf*; *Malone v Laskey*

Discuss the relative ease of proving nuisance where there is damage in comparison with interference with enjoyment of land;

Discuss the limitation created by reasonableness being linked to locality and duration;

Comment on the effects of malice by either the claimant or defendant;

Discuss the limitations inherent in the defences;

- act of a stranger prevents a claim unless the defendant adopted it
- prescription can become a blanket licence to create nuisance
- problem of establishing when public policy applies
- statutory authority and to a lesser extent local authority planning permission make claiming very difficult

Comment that in any case statutory nuisance is probably a more effective control of most modern nuisances

**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 'The difficulties of bringing a successful claim in the tort of *Rylands v Fletcher* remain unaltered by the judgement in *Transco plc v Stockport MBC*'.

Discuss the accuracy of the above statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

### Assessment Objective 1 (25 marks)

Define the tort:

- A bringing onto and accumulation on the defendant's land *The Charing Cross Case* - (no 'accumulation' if the thing is already naturally there *Giles v Walker*)
- Of a thing likely to cause 'mischief' if it escapes *Rylands v Fletcher* - (although the thing need not be inherently dangerous *Shiffman v Order of the Hospital of St John of Jerusalem*)
- An actual escape causing damage - although there is contrary law on whether this should be from land over which the defendant has control *Read v Lyons* or from circumstances over which the defendant has control *Hale v Jennings* and *British Celanese v A H Hunt*

Explain that the above were the elements identified by Blackburn J in the case but:

- In HL in case Lord Cairns added non-natural use of land (things stored in large quantities are commonly non-natural *Mason v Levy Autoparts* - while truly domestic use is not *Rickards v Lothian* and some things are always classed as non-natural *Cambridge Water v Eastern Counties Leather*)
- Lord Goff in *Cambridge Water* added foreseeability of harm
- Lord MacMillan narrowed the concept of escape in *Read v Lyons*

Outline the available defences:

- *Volenti non fit injura* - *Peters v Prince of Wales Theatre*
- Common benefit *Dunne v North West Gas Board*
- Act of God *Nicholls v Marsland*
- Act of a stranger *Perry v Kendrick's Transport*
- Statutory authority *Green v Chelsea Waterworks*
- Damage caused through the fault of the claimant himself *Eastern & South African Telegraph v Cape Town Tramways*
- Contributory negligence under the Law Reform (contributory Negligence) Act 1945 which reduces damages

Explain that HL in *Transco plc v Stockport MBC* approved all the above elements

**Assessment Objective 2 (20 marks)**

Discuss the restrictions that existed before *Transco* making successful claims unlikely:

- Blackburn J in the original case envisaged a general head of liability for accumulations of hazardous things that then did damage
- But the scope of the tort was limited immediately by Lord Cairns in HL with the additional requirement of non-natural use of land (difficult to show in a technological age despite Lord Goff's comments in *Cambridge Water*)
- Tort traditionally described as 'strict liability' - but requirement of foreseeability of harm in *Cambridge Water* seems more like 'fault' liability
- The meaning given to accumulation seems not unlike fault liability
- The limitation on the meaning of escape in *Read v Lyons* (but contrary tests in both *Hale v Jennings* and *British Celanese v A H Hunt*)
- The unusually wide range of defences available further limits the scope of the tort
- The tort has been described as a more specific type of nuisance but any action is harder to bring

Discuss the effects of the HL judgement in *Transco*:

- Approved basic elements
- Preferred use of 'ordinary' use to 'natural' use - but is there a difference
- Failed to resolve the contradictions in *Read v Lyons* and *British Celanese v Hunt* on either the meaning of escape or who can claim
- Approved the requirement of foreseeability from *Cambridge Water* so makes the tort more like fault liability and negligence

Reach any sensible conclusion

**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.



- 3 Pierre and Luigi are the favourites to win an important cycle race. Luigi knows that Pierre is more likely to win and so decides to run into Pierre's bicycle early in the race to take him out of it. When Luigi does so, Pierre is forced into a wall. He breaks several ribs in the collision and is taken to hospital.

A few days later Luigi, feeling guilty, comes to visit Pierre in hospital to apologise. Pierre is so angry when he sees Luigi that he threatens to leap out of bed and kill Luigi, despite the fact that, unknown to Luigi, Pierre is too weak to move easily. Nurse Ratchett, fearing a real confrontation, pushes Luigi roughly out of the room and locks Pierre in his hospital room. She returns twenty minutes later and unlocks the door.

Consider any potential claims in trespass to the person in the above situation. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Recognise that there are three types of trespass to the person: assault, battery, false imprisonment and all are actionable *per se* (without proof of damage)

Define assault - intentionally and directly causing another to apprehend imminent battery

Explain the essential elements of assault:

- Intention concerns effect produced in claimant *Blake v Barnard*
- Traditionally required an active threat *Read v Coker*
- Explain that the threat must be real even though it need not be possible *Stephens v Myers*
- Explain that the claimant must believe in the threat *R v St George*
- Words alone were insufficient *Tuberville v Savage* (but now see *R v Ireland*, *R v Burstow*)

Define battery - intentionally and directly inflicting unlawful force *Cole v Turner* and any non-consensual touching is actionable *per se*;

Explain the essential elements of battery:

- Must involve intention not carelessness *Letang v Cooper*
- And requires direct contact but direct broadly defined *Scott v Shepherd*
- Requirement of hostility - compare *Wilson v Pringle* with *F v West Berks HA*

Possible defences - volenti *Simms v Leigh RFC* and *Condon v Basi* in a sporting context, *F v West Berks HA* in medical treatment, necessity in the case of emergency treatment *Leigh v Gladstone*, self defence if reasonable force used *Lane v Holloway*

Define false imprisonment - unlawful, intentional bodily restraint

Explain the elements of false imprisonment:

- Requires total restraint *Bird v Jones*
- Can be for short period *White v W P Brown*
- And need not be aware of the restraint *Meering v Graham White Aviation*, *Murray v MOD*

Possible defences - lawful arrest/detention *Tims v John Lewis*, *White v W P Brown*

Use any other relevant cases

**Assessment Objective 2 (20 marks)**

In the case of Luigi running into Pierre's bicycle and causing injury:

- Identify that it is intentional
- Consider whether the definition of 'direct' force is broad enough to apply
- Identify the possibility of battery (and the presence of hostility)
- Consider that a defence is unlikely (falls outside of the rules of the sport)

In the case of Pierre's threat to Luigi:

- Consider whether an assault has occurred (it is direct and intentional)
- Consider whether words alone are sufficient (refer also to *Ireland* and *Burstow*)
- Consider the fact that there is no need for the threat to be possible as long as Luigi believes it is and apprehends imminent battery

In the case of Nurse Ratchett pushing Luigi:

- Consider whether under *Cole v Turner* there is sufficient for battery
- It is direct and intentional - but lacks hostility
- Consider whether there is a defence available (self-defence or necessity)

In the case of Nurse Ratchett locking Pierre in the room:

- Consider whether this is false imprisonment
- It is probably a total restraint in the circumstances even if the room is on the ground floor  
Pierre could not get through a window in his condition
- It also does not matter whether Pierre is aware of the restraint
- Consider whether there is any available defence

**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 Katie, aged fifteen, owns a poisonous Mexican scorpion which she keeps in a glass case. Katie's friends, Michelle and Sophie, are staying with her. Despite being warned against going too near, Michelle wants to see the scorpion close up and holds the case to her face. The scorpion moves quickly and in fear Michelle drops the case. The case shatters and the scorpion runs into the kitchen where it stings Sophie's leg causing her severe injury.

Katie also has a pet cat, Tibs, that has just had a litter of kittens. Michelle runs into the kitchen when she hears Sophie crying out from the scorpion sting. The scorpion runs past Tibs and the kittens and under the cooker. Tibs hisses at the scorpion and then leaps at Michelle scratching and biting her quite severely. Tibs has never behaved violently before.

Consider any possible claims that can be made under the Animals Act 1971 in the above situation. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Explain that a keeper of an animal may be liable under s6(3) - either the owner of the animal or the head of a household in which a person under 16 is the owner

Define dangerous species under the Act:

- By s6(2) - an animal not commonly domesticated in UK and with characteristics that, unless restricted, are likely to cause severe damage or any damage caused is likely to be severe
- Dangerous is a question of fact in each case *Behrens v Bertram Mills Circus*
- By s2(1) the keeper is strictly liable for any animal defined as dangerous
- By s5 the only defences are *volenti* or damage caused by claimant's own fault

Define liability for non-dangerous species under s2(2) of the Act:

- The keeper is liable if:
  - (a) The damage is of a kind the animal is likely to cause unless restrained or if caused by the animal is likely to be severe; and
  - (b) The likelihood or severity of damage is due to abnormal characteristics of the individual animal or species or of species at specific times; and
  - (c) The keeper knows of the characteristics

Explain that all three parts of s2(2) must be shown for liability

- By s2(2)(a) 'likely' means possible rather than probable *Smith v Ainger* and 'severe' is a question of fact *Curtis v Betts*
- By s2(2)(b) characteristic is abnormal if not common in other animals *Cummings v Grainger* and circumstances can include eg bitch looking after litter of pups - but can include even unforeseeable circumstances where the keeper is not at fault *Mirhavedy v Henley*

Explain that available defences include:

- S5(1) - Damage due entirely to fault of victim *Sylvester v Chapman*
- S5(2) - *Volenti* - *Cummings v Grainger*
- S10 - Contributory negligence *Cummings v Grainger*

Use any other relevant cases

**Assessment Objective 2 (20 marks)**

Identify that Katie is under sixteen so her father or mother would be liable in the case of the injury caused to Sophie by the scorpion:

- Consider that the scorpion is a dangerous species under s6(2) - not commonly domesticated in UK and damage caused likely to be severe since it is poisonous
- Consider the fact that liability is strict under s2(2)
- Consider that no defence is available under s5 because it is Michelle not Sophie that has caused the scorpion to escape

(Credit any comment on the potential unfairness to Katie's parents)

In the case of the cat attacking and injuring Michelle:

- Consider that Tibs would be classed as a non-dangerous species so s2(2) applies
- Consider whether each of s2(2)(a) and (b) and (c) apply - cat bites and scratches are likely to be severe, cats are likely to protect their litters so damage may be likely in the circumstances, but it is arguable whether Phoebe's parents would foresee the actual circumstances so can they be said to know of the characteristics
- Consider the effect of *Gloster* and of *Mirhavedy* on this last point
- Consider whether there are any available defences - arguable whether Michelle is entirely at fault for s5(1), and may not appreciate the risk for *violenti* under s5(2), but contributory negligence under s10 is definitely possible

**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

Assessment Objectives			
Levels	A01	A02	A03
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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to give a 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 of law central to the question <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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.



**Mark Scheme 2579**  
**June 2006**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. **Candidates can score in the top bands without citing all the points suggested in the Scheme.**



- 1 ***“In Magor & St Mellons v Newport Corporation Lord Simonds condemned the approach of Lord Denning of “filling in the gaps and making sense of the enactment” as “a naked usurpation of the legislative function”. [Source 1 page 3 lines 60-62 Special Study Materials].***

**Discuss the use of a purposive approach to statutory interpretation in the light of the above statement. [25]**

Mark Levels		AO1 & AO3	AO2
Level 5	21-25	9-10	13-15
Level 4	16-20	7-8	10-12
Level 3	11-15	5-6	7-9
Level 2	6-10	3-4	4-6
Level 1	1-5	1-2	1-3

Potential answers **MAY**:

### Assessment Objective 1

Define the purposive approach – judges analyse and give effect to the purpose for which the Act was passed;

Explain that the approach originates from EU law and continental law based on codes where rules are stated in broader terms and the judge’s role is to apply the broad rules to specific circumstances;

Explain also that there is less focus on the actual words of the Act in finding the purpose of the provision *Royal College of Nursing v DHSS*; and *GLC v Bromley LBC*

Credit reference to the mischief rule and the rule in *Heydon’s case*:

- Look to the common law prior to the Act
- Identify the ‘mischief’ (or defect) in the previous common law
- Identify the means by which Parliament intended to remedy the defect
- Give effect to that remedy

Credit any reference to the broad approach to the golden rule - policy reasons mean giving a different meaning to the plain meaning *Re Sigsworth*;

Use any relevant cases in illustration.

### Assessment Objective 2

Discuss the basic argument that purposive approaches offend the separation of powers with judges going beyond their proper function;

Discuss whether Lord Denning’s approach would have given a fairer and more logical result in *Magor* and one more in keeping with Parliament’s intention;

Discuss the ways in which the judges have used a purposive approach *Pickstone v Freemans*;

Discuss the ways in which judges have applied the mischief rule *Kruhlak v Kruhlak*; *Corkery v Carpenter*;

Discuss the problems caused by leaving Parliament to amend the law *Fisher v Bell*

Credit any comment on the effect of using extrinsic aids in finding Parliament’s intention *DPP v Bull* and Wolfenden Report (Royal Commission) and Hansard on Sexual Offences Bill.

### 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 the extent to which the decision in *The Oropesa* [Source 8 page 7 lines 1-5 Special Study Materials] can be said to be a fair development of the law. [15]

Mark Levels		AO1 & AO3	AO2
Level 5	13-15	5	9-10
Level 4	10-12	4	7-8
Level 3	7-9	3	5-6
Level 2	4-6	2	3-4
Level 1	1-3	1	1-2

Potential answers **MAY**:

### Assessment Objective 1

Briefly describe the facts of the case: ship sinking after collision with other ship caused by defendant's negligence, sailors were then killed in a small boat sent out to find out what help could be given to the crew of the sinking ship – claim of *novus actus interveniens* was unsuccessful ;

Link with any relevant case on *novus actus* by the claimant himself *Wieland v Cyril Lord Carpets*, *McKew v Holland & Hannons & Cubitts*.

### Assessment Objective 2

Discuss the effect a successful plea of *novus actus interveniens* on a claim for negligence – breaks the chain of causation and defendant not liable;

Discuss that where the intervening act is by the claimant he is responsible for the damage that he suffers;

Discuss the fact that where the claimant's actions are reasonable then there need not be a break in the chain of causation and defendant is still liable;

Discuss the fact that the chain of causation is broken because the claimant's actions are unreasonable;

Discuss the justification for not allowing *novus actus* here – the claimant's actions were foreseeable to the defendant and the injuries were also a foreseeable consequence of his negligence – it is a fair development of the law on *novus actus*.

### 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 In Source 5 [page 4 lines 1 - 5 Special Study Materials] the author suggests that *“Causation is a question of fact which it is necessary for the claimant to prove ... This is sometimes extremely difficult, especially where it is possible for the defendant to argue that there are a number of other causative factors besides the one relied upon by the claimant.”*

Discuss the difficulties in establishing causation in fact where there are **MULTIPLE CAUSES** in the light of the above statement. [30]

Mark Levels		AO1 & AO3	AO2
Level 5	25-30	13-15	13-15
Level 4	19-24	10-12	10-12
Level 3	13-18	7-9	7-9
Level 2	7-12	4-6	4-6
Level 1	1-6	1-3	1-3

Potential answers **MAY**:

### Assessment Objective 1

Explain that causation is based on the ‘but for test’ – defendant liable if damage would not have occurred but for his negligent act or omission (Lord Denning in *Cork v Kirby MacLean*);  
Explain that different rules apply where there are multiple consecutive causes *Performance Cars v Abraham*;

And also where there are multiple concurrent causes *McGhee v National Coal Board*, *Wilsher v Essex AHA*, *Fairchild v Glenhaven Funeral Services and Others*;

Credit also explanation that an intervening act (novus actus interveniens) may break the chain of causation so that the defendant is no longer liable:

- Where the intervening act is by the claimant himself *McKew v Holland & Hannon & Cubitts*;  
or
- Is an act of nature *Carslogie Steamship Co v Royal Norwegian Navy*; or
- Is by a third party *Knightley v Johns*.

### Assessment Objective 2

Discuss the fact that the ‘but for test’ is easily applied where there is only a single cause of the harm *Barnett v Chelsea & Kensington Hospital Management Committee*;

Discuss the difficulties of fixing liability where the claimant has a pre-existing condition that worsens the damage and how the judges have overcome it *Cutler v Vauxhall Motors* (difficult to reconcile with ‘thin skull rule’);

Discuss the difficulties where there are multiple consecutive causes – problem of undercompensating or overcompensating the victim *Baker v Willoughby* and *Jobling v Associated Dairies*;

Discuss the difficulties of establishing fault where there are multiple consecutive causes and how courts have overcome them:

- liability on defendant where his negligence materially increases the risk of harm *McGhee v National Coal Board*;
- no liability on defendant where there are six distinct potential causes of the harm *Wilsher v Essex AHA*;
- liability on any of the potential defendants where each has materially contributed to the same harm with the same cause *Fairchild v Glenhaven Funeral Services*;

Discuss whether these approaches are in fact distinguishable;  
Discuss the novel approach taken by CA in *Hotson* where there is a 'chance' that the defendant's negligence caused the harm and why it was rejected by HL;  
Credit any discussion of the problems associated with *novus actus interveniens* – that the claimant will probably not be compensated in most cases.

**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 Consider how each of the following potential claims may be affected by issues of causation in fact or contributory negligence:
- (a) Sukhy needs to get to the station quickly to catch his last train. Chris offers Sukhy a lift in his two seater sports car, explaining to Sukhy that the passenger seat belt is broken. Chris drives negligently and causes a car crash. Sukhy is thrown through the windscreen and sustains much worse injuries than if he had been wearing a seat belt. [10]
- (b) Tariq, a footballer, injures his pelvis during a game. Tariq is taken to hospital where Ali, the doctor, negligently fails to take X-rays, and sends Tariq away. Tariq returns to hospital a week later, still in great pain. An X-ray then reveals a complex fracture which has now led to a permanent disability. Expert opinion reveals that there would have been a 50% chance of Tariq recovering if the injury had been diagnosed at once. [10]
- (c) Geraint drives a van for Fast Couriers. The van skids off the road when the brakes fail due to Fast Couriers' negligent maintenance. Geraint is only bruised. Before he can get out of the van a freak, extreme gust of wind causes the van to topple into a river next to the road and Geraint is drowned. [10]

[30]

Mark Levels		AO1 & AO3	AO2	a) b) or c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.

Potential answers **MAY**:

### Assessment Objective 1

Define causation in fact – in a negligence claim the claimant has to prove that the defendant caused the damage suffered;

Explain the but for test *Cork v Kirby MacLean*

Explain the basic principles of contributory negligence – damages reduce under the Law Reform (Contributory Negligence) Act 1945 by extent to which claimant responsible

Explain the effects of a *novus actus interveniens* – breaks the chain of causation

Use any relevant cases in illustration.

### Assessment Objective 2

In the case of (a):

- Identify that the crash is through Chris's negligent driving so he will be liable for Sukhy's injuries on the 'but for test' *Cork v Kirby MacLean*
- Identify that Sukhy has been contributorily negligent – satisfies both tests: failed to take care of his own safety and that partly caused the damage *Sayers v Harlow UDC*
- Identify the nature of not taking care – failing to wear seat belt *Froom v Butcher* and subjecting himself to greater risk *Davies v Swan Motor Co* and *Jones v Livox Quarries*
- Sukhy's damages will be reduced.

In the case of (b):

- Identify that there is no actual mention of negligence in relation to the injury itself;
- Discuss whether there may be negligence on Ali's part – failure to examine is obvious negligence *Barnett v Chelsea & Kensington*.
- Consider whether Ali has actually caused the eventual disability – there is only a 50% chance – so there are at least two possible causes – on *Wilsher* it is unlikely that Ali is liable – and the facts are similar to *Hotson* – note reasons for HL overruling CA in case – no actual cause only a chance
- Candidates may be credited for arguing *McGhee*.

In the case of (c):

- Identify that *Fast Courier* is negligent and liable for the initial injuries to Geraint under the 'but for test' *Cork v Kirby MacLean*
- Identify that the problem is whether *Fast Courier* is responsible for Geraint's death
- Consider the effect of a *novus actus interveniens* caused by an act of nature
- Compare with *Carslogie Steamship Co v Royal Norwegian Navy* – the weather here is extreme and probably the only cause of the death so there may not be liability on *Fast Courier*.

### 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

Assessment Objectives			
Levels	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 <b>or</b> identify all of the relevant points of law in issue. A high level of ability to develop arguments <b>or</b> apply points of law accurately and pertinently to give a 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 <b>or</b> identify most of the relevant points of law in issue. Ability to develop clear arguments <b>or</b> apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	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 <b>or</b> identify the main points of law in issue. Ability to develop arguments <b>or</b> apply points of law mechanically to a given factual situation, and reach a conclusion.	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 <b>or</b> identify some of the points of law in issue. A limited ability to produce arguments based on their material <b>or</b> limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	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 <b>or</b> 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 (3839/7839)**  
**June 2006 Assessment Series**

Unit Threshold Marks

Unit		Maximum Mark	a	b	c	d	e	u
2568	Raw	60	40	35	30	26	22	0
	UMS	90	72	63	54	45	36	0
2569	Raw	60	45	39	33	28	23	0
	UMS	90	72	63	54	45	36	0
2570	Raw	60	48	42	37	32	27	0
	UMS	120	96	84	72	60	48	0
2571	Raw	100	71	62	53	45	37	0
	UMS	90	72	63	54	45	36	0
2572	Raw	100	77	68	59	51	43	0
	UMS	90	72	63	54	45	36	0
2573	Raw	100	75	67	60	53	46	0
	UMS	120	96	84	72	60	48	0
2574	Raw	100	71	61	52	43	34	0
	UMS	90	72	63	54	45	36	0
2575	Raw	100	69	62	55	48	42	0
	UMS	90	72	63	54	45	36	0
2576	Raw	100	75	67	60	53	46	0
	UMS	120	96	84	72	60	48	0
2577	Raw	100	74	65	56	48	40	0
	UMS	90	72	63	54	45	36	0
2578	Raw	100	77	68	59	50	42	0
	UMS	90	72	63	54	45	36	0
2579	Raw	100	75	67	60	53	46	0
	UMS	120	96	84	72	60	48	0

## Specification Aggregation Results

Overall threshold marks in UMS (i.e. after conversion of raw marks to uniform marks)

	<b>Maximum Mark</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>U</b>
<b>3839</b>	300	240	210	180	150	120	0
<b>7839</b>	600	480	420	360	300	240	0

The cumulative percentage of candidates awarded each grade was as follows:

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>U</b>	<b>Total Number of Candidates</b>
<b>3839</b>	15.2	32.4	52.9	71.7	86.3	100	10135
<b>7839</b>	17.5	39.5	64.5	84.3	95.8	100	6605

For a description of how UMS marks are calculated see;  
[www.ocr.org.uk/OCR/WebSite/docroot/understand/ums.jsp](http://www.ocr.org.uk/OCR/WebSite/docroot/understand/ums.jsp)

Statistics are correct at the time of publication.





**OCR (Oxford Cambridge and RSA Examinations)**  
**1 Hills Road**  
**Cambridge**  
**CB1 2EU**

**OCR Information Bureau**

**(General Qualifications)**

Telephone: 01223 553998

Facsimile: 01223 552627

Email: [helpdesk@ocr.org.uk](mailto:helpdesk@ocr.org.uk)

**[www.ocr.org.uk](http://www.ocr.org.uk)**

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations  
is a Company Limited by Guarantee  
Registered in England  
Registered Office; 1 Hills Road, Cambridge, CB1 2EU  
Registered Company Number: 3484466  
OCR is an exempt Charity



OCR (Oxford Cambridge and RSA Examinations)  
Head office  
Telephone: 01223 552552  
Facsimile: 01223 552553

© OCR 2006