

Mark Schemes for the Units

January 2007

3839/7839/MS/R/07J

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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.

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Advanced GCE Law (7839)

Advanced Subsidiary GCE Law (3839)

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**Mark Scheme 2568
January 2007**

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 stop and search a person on the street. [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, the codes of practice and the Criminal Justice Act 2003.

Stop and Search

- S1 of PACE – police have the power to stop and search a person in a public place if they have reasonable suspicion that prohibited articles, stolen goods or articles made, adapted or intended for use in burglary or criminal damage are in their possession. (Prohibited fireworks were added in the Serious Organised Crime and Police Act 2005).
- Police officer must give his name, station and reason for the search.
- Only a request to remove outer coat, jacket and gloves is permitted.
- Code of Practice A sets out guidance for police on stop and search.
- Meaning of reasonable suspicion.
- Abolition of “voluntary search” there must be a statutory power for any search.
- Written report required for every stop and search.
- Identify other statutes that give power to the police to stop and search eg Misuse of Drugs Act 1971 and Terrorism Act 2000.
- S60 Criminal Justice and Public Order Act 1994 and the different rules that apply when that is in force.

Assessment Objective 3

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

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

2 Describe the sentences available for young offenders.**[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

Demonstrate knowledge of the sentences available to the courts under the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003.

- Custodial sentences
 - Detention for serious crimes up to the maximum adult sentence for the offence if maximum sentence is 14 years or over or offence is specified in statute.
 - Detention at Her Majesty's pleasure – for murder 10–17 years.
 - Young offender's institutions -18-21 years, 21 days – maximum for the offence.
 - Detention and training orders – 12-21 years usually (younger offenders if not other sentence will protect the public). Specified period 4 months – 24 months.
- Community sentences
 - New generic "community order" under Criminal Justice Act 2003 which can include a range of requirements for offenders over the age of 16.
 - Unpaid work requirement – unpaid work in the community (40 – 300 hours).
 - Supervision requirement – the offender is put under the supervision of a probation officer.
 - Drug treatment and testing requirement.
 - Curfew requirement – for a certain number of hours a day the offender has to be in a specific place (May include electronic tagging).
- Special community orders for young offenders include:
 - Attendance centre orders – 10-24 year olds.
 - Action Plan orders – 10-17 year olds.
 - Supervision order 10-17 years (supervision of local social services, a probation officer or a member of the youth offending team).
- Fines – will depend upon the defendant's age 10-13 max £250, 14-17 max £1000 over 18 same as adult.
- Reparation order up to age 18 years – max hours work in reparation to victim or the community.
- Discharges.
- Reprimands **and warnings**.

Mention of parental responsibility and youth offending teams will also be credited.

Credit will also be given for details of sentences.

Assessment Objective 3

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

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

- 3 Describe the rights of **both** the prosecution and the defence to appeal from the **Magistrates' Court**, including further appeals to the 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 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

Demonstrate knowledge of the appeal routes from the Magistrates' Court.

Appeals to the Crown Court

- Appeals only by the defence.
- Defendant may appeal against conviction, sentence or both to the Crown Court if original plea was not guilty.
- Defendant may only appeal against sentence if original plea was guilty.
- No need for leave – automatic right of appeal.
- Case completely reheard by judge and two magistrates.
- May confirm conviction, reverse the decision and acquit the defendant or may vary the conviction and find the defendant guilty of a lesser offence.
- Sentence may be confirmed, increased (only to magistrates' maximum) or decreased.

Appeals by way of case stated to the Queen's Bench Divisional Court

- On a point of law either by the prosecution or the defence.
- May be either directly from the Magistrates' Court or from an appeal to the Crown Court.
- Only available for an appeal against conviction (defence) or acquittal (prosecution) not for sentence.
- Court may confirm, vary or reverse the decision or send the case back to the Magistrates' Court for them to apply the interpretation of the law.

Appeals to the House of Lords

- Both the prosecution and the defence have the right to appeal from the Divisional Court to the House of Lords, the Divisional Court has to certify that it involves a point of law of public importance and either the Divisional Court or the House of Lords must give permission to appeal.
- Very few cases are appealed to the House of Lords.

Credit will be given for examples but they are not necessary for full marks.

Assessment Objective 3

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

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

- 4 Describe the jurisdiction of the High Court and County Court in civil cases, including the track 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 any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

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

Show good knowledge of the main types of case that can be heard in each court.

- County Court – contract, tort, recovery of land, partnerships, trusts, and inheritance up to £30,000, personal injury up to £50,000.
Small Claims – Actions up to £5,000.
- High Court
 - Queen’s Bench Division – contract and tort over £50,000 and some from £15,000. Includes Commercial Court, Admiralty Court and Technology and Construction Court.
 - Chancery Division – insolvency, mortgages, trust property disputes, copyright and patents, intellectual property and probate disputes.
 - Family Division – Children Act 1989 cases, and other family matters.

Show clear understanding of the allocation of cases to different tracks:

- Allocation questionnaire.
- Small claims for cases up to £5,000 (£1,000 for personal injury cases).
- Fast track for cases from £5,000 to £15,000.
- Multi track cases over £15,000 or in cases involving complex points.
- All tracks usually heard in County court only claims over £25,000 or very complex claims heard in the High court.
- Explain time limits for each track.
- Limit on number of witnesses.

Credit will be given for any other details.

Assessment Objective 3

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

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

5 Discuss whether rights of the individual are adequately protected during interview and search 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 2

Demonstrate knowledge of powers of the police and suspect's rights set out under the Police and Criminal Evidence Act 1984, the Codes of Practice and the Criminal Justice Act 2003 and how these protect individuals during their detention.

- The police have the right to interview suspects but the interview must be recorded with a copy available for the defendant and a caution given. This protects the individual from undue pressure but allows the police to gather information.
- The individual has the right to have an appropriate adult present during the interview if he is suffering from any mental illness or retardation or is under 17 to ensure his full understanding of the procedure(s).
- The individual has the right to consult a solicitor (and that is free) to ensure everyone has access to legal advice. Comment on quality of advice.
- The role of the custody officer is to ensure the suspect's rights are protected. Comment on the independence of the custody officer.
- Comment on the limitations to right to silence.
- Interview room must be adequately lit and ventilated and adequate breaks must be given to ensure no undue pressure on the suspect.
- Show knowledge that searches can only be done in certain situations – no automatic right to search. This protects the individual's right to privacy.
- Strip search only in private with same sex officer and only half clothing removed at any one time to retain as much dignity as possible in the situation.
- 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.
- Intimate samples may only be taken with consent but non intimate samples can be taken without consent so the police do have access to DNA evidence.
- Point out that breach of Codes of Practice may lead to evidence being excluded from court.

Comment on whether these rights are adequate to protect an individual during detention or whether any changes to the Codes of Practice should be made.

Credit will be given for the use of appropriate cases.

Assessment Objective 3

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

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 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
- Complexity
- Inequality

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
- It takes time and may not resolve the dispute so court action may still be necessary
- In mediation the weaker party may give in easily for a quiet life
- There may be problems with enforcement

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.

Demonstrate knowledge of research into courts or ADR eg 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 appropriate terminology accurately.

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

- 7 Jade is convicted in the Crown Court of the serious offence of robbery. She has several previous convictions for theft.

Carlos has pleaded guilty in the Magistrates' Court to a charge of minor assault. He has no previous convictions.

Consider the aims of sentencing and other factors that would be taken into account when deciding the sentences for these offenders and suggest likely sentences in each case. [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 main aims 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. This is likely to be a greater factor in the sentencing of Jade than Carlos as hers is the more serious offence.
- 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 a very severe sentence eg custodial sentences or a fine, or by the threat of imprisonment eg a suspended sentence or conditional discharge.
 General – put society off committing crimes by exemplary sentences or 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 eg very severe sentences for the theft of mobile phones on the street.
 As Jade is a repeat offender deterrence and rehabilitation will not be regarded as likely to work.
 For Carlos as this is his first offence deterrence and rehabilitation are likely to be primary aims.
 - Rehabilitation – aims to reform the offender to stop them re-offending. It is focussed on the longer term looking at the potential of the offender to reform. It is now accepted that custodial sentences only have very limited rehabilitative effect.
- Protection of the public by preventing the offender from re-offending. This will be more important as an aim for Jade as her crime is seen as more serious although as both crimes are violent it will be an aim to be considered in both cases.
- Reparation – considers the victim when sentencing the offender.
 Compensation orders used to make offender make amends to the victim. This could be considered as an aim particularly in Carlos' case.

Other factors that would be taken into account include:

- The seriousness of the crime.
- Antecedents of the offender including any reports on them – Jade's previous convictions and how she was sentenced will be considered. Carlos' previous good character will go in his favour.
- Motive.
- Early guilty plea (this reduces the sentence by up to a third) this would reduce Carlos' sentence.
- Sentencing guidelines/tariff (guidelines on robbery are to be finalised shortly but would not be needed for maximum marks).

It is likely that Jade would receive a custodial sentence and Carlos would receive a community order, fine or even a conditional discharge.

Assessment Objective 3

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

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

**Mark Scheme 2569
January 2007**

- 1 Describe the role and organisation of barristers and solicitors, including details of complaints procedures. [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 the role, organisation and complaints procedures of barristers

- Role: mainly advocacy
give opinions, draft statements of case
offer direct access to some clients
offer other services, eg mediation, arbitration
- Organisation: mainly self-employed, work in chambers with other barristers and organised by clerk. Join an Inn.
employed barristers work for companies, CPS etc
- Complaints procedures: dealt with by chambers or Complaints Commissioner, can require barrister to apologise, repay fees, compensate client up to £5,000; may also lead to disciplinary action; further appeal to Legal Services Ombudsman

Demonstrate knowledge of the role, organisation and complaints procedures of solicitors

- Role: give advice
conveyancing/wills and probate/draft contracts
litigation
commercial
some advocacy
- Organisation: many work in partnerships; also employed in house by companies, local authorities, CPS etc
- Complaints procedures: dealt with by firm or Consumer Complaints Service, can order the solicitor to reduce the bill, compensate the client up to £5,000, correct mistakes and pay the cost; further appeal to Legal Services Ombudsman

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 and explain the various types of publicly funded advice and representation available 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 any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

Demonstrate knowledge of the Duty Solicitor scheme at the police station

- run by local, contracted solicitors with relevant qualification (Police Station qualification)
- available to anyone questioned at police station
- covers advice and attending interviews
- free to all, no testing

Demonstrate knowledge of the Duty Solicitor scheme at the Magistrates Court

- contracted solicitor with relevant qualification (Magistrates Court qualification)
- covers advice to people attending court
- under Advocacy Assistance
- free
- covers representation in some cases; bail, fine defaulters where at risk of going to prison

Demonstrate knowledge of Advice and Assistance

- franchised solicitor
- covers advice and some preparatory work to someone charged with offence and help with application for Legal Representation
- means tested; assessed by solicitor, abrupt cut off point

Demonstrate knowledge of Legal Representation

- franchised solicitor or independent barrister
- covers representation and all steps in preparation of case
- means and merits tested (interests of justice) by legal advisor at Magistrates Court

NB. One year rule applies re Legal Representation, credit costs order may be made at end of Crown Court trial if convicted.

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 qualifications, selection and training of judges.**[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 the qualifications of judges

- set out in Courts and Legal Services Act
- Law Lords: 2 years high judicial office or 15 years supreme court qualification
- LJA - Recorders: 10 years relevant qualification
- District judges: 7 years general qualification
- also, High Court judges, 2 years as Circuit judge
- Circuit judges, 3 years as District judge or tribunal chair

Demonstrate knowledge of the selection of judges

- organised by Judicial Appointments Commission
- selection by mixed panel of judges, lay people and lawyers
- mainly by application with references
- interviews assess attitude and aptitude
- Lord Chancellor has limited power to object to selection
- applicants expected to show competence at a lower level

Demonstrate knowledge of the training of judges

- superior judges (HL & CA): no training
- superior judges (High Court): voluntary training
- inferior judges (esp Recorders): 5 day residential course emphasising court room management, rules of evidence and sentencing theory and practice, followed by a week shadowing another judge, on going updating through courses

NB One year rules applies re selection, credit answer based on Lord Chancellor and DCA.

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 selection procedure for jurors.**[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 the selection procedure:

- letter sent to potential jurors detailing who cannot sit
- chosen fortnightly at random from electoral rolls for court area by central office
- only 18-70, on electoral roll and resident for 5 years since 13 can sit
- must sit unless disqualified etc

Demonstrate knowledge of those who cannot/need not sit

- cannot sit if disqualified: for life if convicted of serious criminal offence, for 10/5 years for some lesser offences; also if on bail
- cannot sit if ineligible: mental disorder
- can be excused if serving in armed forces and commanding officer certifies needed
- can be excused or service deferred for 'good reason', application to Jury Central Summoning Bureau
- cannot sit if know parties involved

Demonstrate knowledge of selection, once at Crown court

- 15 chosen at random from jury pool to go to court room
- 12 chosen at random at court room by clerk

Demonstrate knowledge of challenges

- challenge to array, by prosecution or defence, on way jury selected
- challenge for cause, by prosecution or defence, because of connection with case or incapacity
- right of stand by, by prosecution, usually following vetting

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 or not judges are independent.**[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

Demonstrate knowledge of what is meant by judicial independence

- being able to make decisions without outside pressures
- being independent of other arms of the state

Discuss some of the ways in which judges are independent

- cannot be sued for what said or done in court. Gives judge freedom to come to an unpopular decision
- by convention keep free of politics; cannot become MPs (except for Recorders), avoid making political comments, Law Lords only take part in relevant debates, MPs don't comment on individual judges
- judges careful not to change the law where it is a question of public policy (eg C v DPP), in statutory interpretation try to achieve what Parliament wanted
- independently appointed on merit; appointed on past record, tests and references
- secure tenure; need a motion of Parliament for superior judges and good reason for inferior judges. Recorders' contracts must be renewed unless there is a good reason.
- financially secure, salary set independently, pension provision
- judges must not have a personal interest in the case they are hearing, grounds for appeal if they do

Discuss some of the ways in which judges are not independent

- can't be sued but can be criticised by appeal court
- not always possible to avoid making a policy decision (DHSS v RCN), have to decide case in front of them, some interpretations have apparently amended statute
- in reality senior judges have political element,
 - LCJ and MR have felt the need to voice concerns publicly about issues (eg sentencing)
 - judges sometimes have to take decisions that have a political element (eg in judicial review cases, breach of Human Rights cases)
 - Law Lords actually take part in a large number of cases
 - retired Law Lords have felt free to use the media to criticise the government
- can't be dismissed but can be 'eased' out
- although financially secure, pay set at comparatively low level, have to work 20 years for pension, Parliament can change terms

NB One year rule applies, credit answers based on LC and DCA.

Credit any reasonable conclusion, eg judiciary does not appear totally independent but has made some independent decisions, new Judicial Appointments Commission should lead to more independence.

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 the current system of training 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 any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Demonstrate brief knowledge of training

- academic: law degree (or degree plus CPE/PgDL)
- vocational: course (BVC/LPC)
- practical: shadowing and practising under supervision

Discuss advantages of current system

- if take law degree, have a good knowledge of core topics
- good combination of academic and practical before start work
- pupillage/traineeships provide opportunity to observe good practice and supervision when first start work
- best candidates can obtain funding for courses (from scholarships, chambers, firms) or can take course part time
- support during practical stage for trainees and more funding for pupils
- compulsory continuing training after qualification

Discuss disadvantages of current system

- CPE not sufficient grounding in law for non law graduates
- variable quality of pupillage and traineeships
- early choice has to be made whether to become barrister or solicitor
- difficult to find pupillage and tenancies and trainee places to complete training
- LPC tries to cover too much in one year
- cost puts off many able candidates
- many newly qualified lawyers have accumulated large debts
- difficulties lead to only those with financial backing being able to qualify, not necessarily the best people

Credit any suggestions for reform eg more joint training so that decision made later, better funding, more opportunities to do qualifying work in a legal environment while studying

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 lay magistrates are adequately trained for their role. [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

Demonstrate brief knowledge of role

- decide verdict and sentence in 97% of criminal cases, bail and extensions of time in custody, family and children cases

Demonstrate brief knowledge of training

- mainly practical, eg sentencing exercises and observation, some theory and procedure, assessed on competencies

Discuss whether adequate

- role is mainly, sentencing and training reflects this, magistrates have clear guidance with statutory levels of sentencing and bench book
- learn on the job from other magistrates, new magistrates sit with more experienced
- when deciding verdict do not need training, role similar to jury's
- many cases very straight forward and do not require in depth knowledge
- do not need legal training because have legal advisor
- if do get law wrong, prosecution can appeal
- low percentage of appeals (even though as of right) show that mainly getting things right
- on going training and assessment
- extra training for chairs and youth and family courts

Discuss ways in which it is not adequate

- limited number of hours, but can still send someone to prison for six months or remand someone who may be innocent
- family and children cases are complex and training not sufficient for such far reaching cases
- over 40% of cases that are appealed are successful in some way

Credit any reasonable conclusion, eg may not be adequate but works in most cases and magistrates have public confidence

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

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

**Mark Scheme 2570
January 2007**

Exercise on Statutory Interpretation

- 1 (a) **Source A** at line 10 refers to the literal rule.

Explain the literal rule using **Source A** and cases to illustrate your answer.

[15]

Mark Levels AO1 & AO3

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

- Explain that the literal rule involves giving the words their plain, ordinary literal meaning
- Identify that the literal rule involves the judge applying literal rule even if it results in absurdity — Lord Esher in *R v Judge of the City of London (1892)*
- Describe the historical dominance of the literal rule
- Describe how this rule respects parliamentary supremacy
- Use cases to illustrate its use – *Fisher v Bell*, *Whitely v Chappel*, *LNER v Berriman*
- Use of Source
- Make use of absurdity/injustice/lack of flexibility

Assessment Objective 3

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

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

- 1 (b) Using **Source B**, identify and explain the most suitable extrinsic aid that could be used in the following situations.
- (i) The House of Lords is considering an ambiguous word. The meaning of this word was discussed by Parliament during the passage of the Bill.
 - (ii) The House of Lords is trying to cover a gap in the law left by an Act. This Act was based on the Law Commission's recommendations.
 - (iii) The House of Lords is trying to find the plain, literal, ordinary meaning of a word. The word is not defined in the Act.

[15]

Mark Levels	AO2
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 2

- (i) Recognise that the appropriate extrinsic aid is Hansard. Explain it is a record of Parliamentary debates. Explain that it can only be used if it satisfies the conditions laid down in *Pepper v Hart (1993)*. Explain that if it does not satisfy these conditions it cannot be used.
- (ii) Recognise that the most appropriate extrinsic aid would be law reform reports as the Law Commission is a law reform agency. Refer to the *Black Clawson* case that relaxed the rules regarding the use of law reform reports.
- (iii) Recognise that the most appropriate extrinsic aid would be a dictionary of the time. Explain that it allows a judge to find appropriate meanings for words. Explain that dictionaries of specific time periods can be used. Refer to *DPP v Bull (1994)* or *R v Allen (1887)*, *Cheeseman*.

1 (c) (i) Source A refers to the mischief rule.

Using Source A and other cases, explain how this rule is applied. [15]

Mark Levels	AO1
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

- Identify that the mischief rule was developed in *Heydons* case (1584). Outline the four conditions discussed in that case
- Explain that the judge should look at the gap or the mischief rule that the Act was intended to cover and interpret the Act to cover that gap
- Explain that mischief rule is similar to the purposive approach
- Use cases to illustrate the use of the mischief rule eg *Smith v Hughes* (1960) and *Corkery v Carpenter* (1950)

- 1 (c) (ii) Discuss the strengths and weaknesses of the mischief rule. [15]

Mark Levels	AO1 & AO3
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 2

- Discuss the fact that the judge has greater flexibility with this rule
- Discuss the fact that this rule helps achieve Parliamentary intent
- Discuss the reliance on extrinsic aids and their associated problems
- Discuss that the use of this rule is limited due to the purposive approach
- Discuss the fact that this rule can be seen as unconstitutional

Assessment Objective 3

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

Exercise on EC Law

- 2 (a) The Source at line 13 refers to the EC Treaty. Briefly explain how the EC Treaty is part of UK law. [15]

Mark Levels AO1 & AO3

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

- Identify that treaties are primary legislation
- Identify relevant treaties - Treaty of Rome, Treaty of Amsterdam, Treaty of Nice etc
- Describe 2 (1) European Communities Act 1972 that provides that a treaty has effect in the UK without enactment
- Discuss the concept of direct applicability
- Use cases to illustrate its use – *Van Duyn v Home Office (1974)*, *Macarthys Ltd v Smith (1980)*

Assessment Objective 3

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

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

- 2 (b) In the following situations, consider whether there is a need to make an Article 234 referral to the ECJ.
- (i) Jacques, a French worker, has been denied entry to the UK. The House of Lords is considering his case. The case concerns free movement of workers under the EC Treaty.
 - (ii) Pam is paid less than male employees for doing the same work. She has brought an equal treatment claim against her employer. An Employment Appeals Tribunal is deciding the case. A reference to the ECJ in *Macarthy Ltd v Smith (1980)* concerned a similar issue.
 - (iii) Carla has brought a claim in an Employment Tribunal against her employer because they refuse to give her any holiday entitlement, as required under EC Law. [15]

Mark Levels	AO2
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 2

- (i) Recognise that under Article 234 that the referral should be mandatory as it is the highest appeal court in our system. Use any relevant case. Credit candidates who discuss discretionary due to criteria eg. *Acte clair*.
- (ii) Consider that since there is already a European Court of Justice ruling on a similar matter that the matter will not need to be referred. Recognise the similarity with *Macarthy Ltd v Smith (1980)* and *Hallam v Connaughton (1994)*.
- (iii) Recognise that this is discretionary referral under Article 234. Apply the conditions laid down in *Bulmer v Bollinger (1974)* as outlined in the source. Discuss the issue of *Acte clair* as a relevant condition.

- 2 (c) (i) Lord Denning in the Source discusses the effect of membership of the European Union on English Law.

Describe the effect of European membership on the English law using cases to illustrate your answer.

[15]

Mark Levels	AO1
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 new sources of law, treaties, regulations and directives
- Describe the supremacy of EU law - *Van Gend en Loos (1963)*
- Describe that Acts of Parliament will be declared void by the courts if they conflict with EU law *R v Secretary of State for Transport ex parte Factortame*
- Describe the change in the role of the courts. Interpretation is purposive, they can seek guidance from the ECJ under Article 234
- Describe the effect on the court structure - new courts and new court procedures (Article 234)
- Describe the approach on the ECJ to Member States who fail to implement European obligations eg *Brasserie du Pecheur v Federation of Republic of Germany (1996)*, *Francovich v Italian Republic (1991)*

- 2 (c) (ii) Discuss the benefits of European membership to English law. [15]

Mark Levels	AO2 & AO3
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 2

- Discuss the increase in power of the judiciary - they now have greater freedom regarding the interpretation of statutes
- Discuss the benefits European legislation for certain groups - females, part-time workers and employees
- Discuss Lord Denning's view that the supremacy of Europe will only be accepted by the courts until Parliament pass an Act to repudiate the treaties – *R v Secretary of State for Transport ex parte Factortame*
- Discuss the benefits of Article 234. There is clear guidance from the ECJ to all courts and tribunals
- Discuss that the UK still does not operate on an EU legal framework – the judge as an activist/inquisitor and a greater reliance on statute.

Assessment Objective 3

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

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

Advanced Subsidiary GCE in LAW

Levels of Assessment

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

**Mark Scheme 2571
January 2007**

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.**

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

- 1 'Those who aid, abet, counsel or in any way help others to commit criminal offences should be open to the same punishment as those who actually carry out the crime.'

Consider whether the law relating to participation adequately reflects this view. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain that accessories who 'aid, abet, counsel or procure' the commission of an offence are to be 'tried, indicted and punished as a principal offender' - S8 Accessories and Abettors Act 1861.

Explain the words as descriptive of the necessary conduct to be established in relation to accessory liability and as such form the *actus reus* of participation.

Explain each of the words and give case examples to illustrate the courts' interpretation

- *aiding* - help or assistance to P before or at time of offence *Bainbridge*
- *abetting* - inciting, instigating, encouraging, probably at the scene *Wilcox v Jeffery, Coney, Allan, Tuck v Robson, Clarkson; Craig and Bentley*
- *counselling* advising, persuading, instructing, pressuring - *Calhaem*
- *procuring* the most obscure, probably means causing or producing a consequence by endeavour.

A-G's Ref No.1 of 1975.

Describe the basic requirement that there must be a positive act of assistance/encouragement in some form in order to found liability *Coney; Clarkson; Giannetto.*

Explain that liability may be imposed on an accessory/secondary offender even where P lacks mens rea or has a defence *Cogan and Leak; Bourne.*

Explain the elements of *mens rea*:

- intention & knowledge of the circumstances - *NCB v Gamble; Gillick; Johnson v Youden*
- the contemplation principle *Bainbridge; Maxwell.*

Describe the 'withdrawal principle' *Becerra and Cooper.*

Credit reference to 'joint enterprise' *English; Anderson and Morris; Powell and Daniels.*

Assessment Objective 2 (20 marks)

Consider the potential meaning of the four words in the Act by reference to the relevant cases. Consider whether there is a genuine distinction of meaning or whether it is ever important to identify separate meanings.

Consider the ambiguities surrounding the meaning of 'abetting', for example in *Clarkson* where mere passive presence could be described as morally wrong even though it is not regarded as sufficient for criminal liability.

Consider the Law Commission's proposals to attach liability to assistance irrespective of whether P is convicted.

Consider the role of policy concerning the conviction of the organisers of crime and the aim of controlling gangs.

Credit reference to the Law Commission proposals *Assisting and Encouraging Crime.*

Consider the argument that accessories are morally as culpable as principals.

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 relating to involuntary manslaughter continues to be muddled and unjust. Reform of this type of homicide is overdue.'

Assess the accuracy of this statement.

[50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define involuntary manslaughter as a form of unlawful homicide which has not been caused with intent.

Explain to the different types of manslaughter as unlawful act/constructive; gross negligence and, probably, reckless manslaughter.

Describe corporate manslaughter.

Define unlawful act manslaughter by reference to the relevant cases *Lowe; Dalby; Cato; Church; Newbury & Jones; Lamb; Ariobeke; Goodfellow; Mitchell; Watson; Slingsby etc.*

Define gross negligence manslaughter by reference to *Adamako; Donoghue v Stevenson; Bateman; Andrews; Stone & Dobinson; Litchfield; Singh; Khan; Wacker; Misra.*

Explain the existence of reckless manslaughter by reference to *Cunningham; Pike; Goodfellow; Lidar etc.*

State the current law relating to corporate manslaughter.

Credit reference to the Law Commission's 1996 proposals for reform and the Government's draft Bill.

Credit reference to the Law Commission's Consultation Paper 2005; New Homicide Act for England and Wales.

Assessment Objective 2 (20 marks)

Assess the advantages and disadvantages of the offence having been developed entirely through common law decisions.

Assess the breadth of conduct potentially covered by the offence from blameworthy killing bordering on murder to the boundary with accidental death.

Assess the criticism that the present law has been described as a 'rag bag' of offences.

Assess the existing law of unlawful act manslaughter, in particular the objective test for 'dangerousness' of the unlawful act which may result in a conviction for manslaughter where D has not foreseen even the risk of harm *Newbury & Jones*.

Assess the existing law of gross negligence manslaughter, in particular the circularity of the *Adamako* test and the introduction civil law concept of duty of care – *Donoghue v Stephenson*.

Assess whether Prof. Smith, amongst others, is correct to assert that subjective reckless manslaughter must surely still exist.

Assess the unsatisfactory state of corporate manslaughter and the very few successful decisions as a result of having to identify senior company officials as the 'mind' of the organisation - *Tesco v Nattrass*.

Assess the Law Commission's proposals for offences of 'reckless killing', 'killing by gross carelessness' and 'corporate killing' and the Government's response.

Assess the Government's draft bill for reforming corporate manslaughter.

Credit assessment of Law Commission's 2005 Consultation Paper on homicide.

N.B. Candidates may attain Level 5 by either the breadth or depth of their answer.

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 Andy has been diagnosed as an alcoholic and is receiving treatment for his condition. He lives with his girlfriend, Barbara. They frequently drink together and then have arguments over trivial matters during which Barbara often tells Andy he is useless and pathetic.

One day, Barbara returns home late and finds Andy in the garage repairing his car. Andy is drunk. When he asks her where she has been she tells him she has been in bed all day with another man. Andy becomes enraged and shouts "I'll kill you" at Barbara. She replies "Don't be stupid, you haven't got the guts". Andy immediately hits her over the head with a heavy spanner he is holding, killing her instantly.

Discuss Andy's potential liability including any defences that he may have available to him under the Homicide Act 1957. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define murder, *Coke's* amended definition.

Explain the concept of direct intention *Mohan*.

Define Diminished Responsibility S2 Homicide Act 1957 and interpretation *Byrne; Tandy; Gittens; Atkinson; Dietschmann*.

Define Provocation S.3 Homicide Act 1957 and the relevant interpretation in cases such as *Duffy; Thornton; Camplin; Luc Thiet Thuan; Smith (Morgan James); Weller; Rowland; Holley; Humphreys* including a statement of the subjective and objective features of the defence.

Explain the dichotomy over the 'objective' reasonable man test as applied to the gravity of the provocation to the defendant and the defendant's powers of self-control.

Credit definition of involuntary manslaughter.

Assessment Objective 2 (20 marks)

Identify that this would be a murder charge and recognise this as an example of direct intention – *Mohan*.

Discuss the potential relevance of alcoholism as a factor capable of establishing the defence of Diminished Responsibility S2 Homicide Act 1957 *Tandy; Dietschmann*.

Apply the evidence that Andy has been receiving treatment from his doctor but consider the decisions in *Tandy & Dietschmann*.

Discuss the potential relevance of Provocation S3 Homicide Act 1957.

Discuss the fact that words may be evidence of provocative conduct.

Discuss cumulative provocation *Humphreys*

Apply the evidence of Andy's loss of self control as 'sudden and temporary' *Duffy*.

Discuss the relevance of alcoholism as a potential characteristic to be attributed to the 'reasonable' man in these circumstances *Camplin; Smith (Morgan James); Weller; Holley* etc.

Credit any reference to *James* and *Karimi*.

Consider an analogy with 'Battered Woman Syndrome'.

Conclude that the jury may well decide that neither defence is available to Andy in these circumstances.

Credit discussion of liability for 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.

- 4 Tariq discovers that Omar is having an affair with Tariq's girlfriend, Rana. Tariq has threatened to scare Omar away if he sees him. One day Omar sees Tariq in the street and is terrified when he sees Tariq produce a gun. Omar runs away and Tariq fires a shot at Omar but misses. Tariq continues to chase Omar towards a high bridge over a railway. Omar jumps from the bridge and is critically injured in the fall.

Omar is taken to hospital where he is not attended to for half an hour because other casualties are being treated for severe injuries sustained in an explosion at a local factory. When Omar is finally seen, an overworked doctor fails to recognise that Omar is in a critical condition and, after administering a pain killer, sends Omar to another nurse in an ordinary casualty bed. Omar dies from his injuries an hour after being admitted to hospital.

Discuss Tariq's criminal liability for both the murder and attempted murder of Omar. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define murder, Coke's definition as amended and reference to *Woollin*.

Explain attempt *Criminal Attempts Act 1981*.

Define involuntary manslaughter

- unlawful act *Church; Newbury & Jones; Ariobeké*;
- gross negligence *Adamako*
- reckless *Lidar*.

Describe the principles of causation

- factual causation, 'but for' test *White; Pagett; de minimis rule*
- legal causation and *novus actus interveniens*
 - the actions of V in order to escape *Roberts; Williams & Davis; Corbett; Marjoram*
 - medical negligence *Smith; Cheshire*.

Assessment Objective 2 (20 marks)

Discuss whether there is evidence that Tariq directly intended to kill or to cause serious harm – *Mohan*.

Credit reference to a discussion of direct/oblique.

Discuss whether Tariq possessed sufficient oblique intention to sustain a murder charge – *Woollin*.

Identify that when Tariq fired at Omar he may well have satisfied the *actus reus* of an attempt but can only be charged with attempted murder if he possessed an intention to kill – *Whybrow*.

Discuss the rules of causation to establish that Tariq has made a more than minimal factual contribution to Omar's death.

Discuss whether Omar's own actions could be said to have broken the chain of causation – very unlikely, they were reasonably foreseeable in the circumstances and not 'daft' – *Pagett; Roberts; Corbett etc.*

Discuss whether the medical negligence could break the chain of causation, very unlikely – *Smith; Cheshire*.

Argue to a reasoned conclusion that Tariq may be guilty of murder or attempted murder.

Argue in the alternative that a potential defence of provocation would fail as the loss of self-control is not sudden nor temporary.

Argue in the alternative that Tariq would certainly be liable for one of the types of involuntary manslaughter, subject to the application of the rules of causation above.

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

**Mark Scheme 2572
January 2007**

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.**

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

1 Discuss whether the law relating to intoxication is satisfactory.**[50]**Potential answers **MAY**:**Assessment Objective 1 (25 marks)**

Explain that intoxication is only ever relevant as a defence if it actually prevents the formation of the *mens rea*;

Explain the distinction between voluntary and involuntary intoxication and illustrate the relevant principles involved in involuntary intoxication by citation of appropriate case law eg *Hardie*, *A-G's Ref (No 1) of 1975*, *Bailey*; *Allen*; *Kingston*;

Explain the way the courts have distinguished between crimes of specific and basic intent in voluntary intoxication and illustrate this distinction by reference to *Beard*, *Majewski* and selected appropriate offences

Refer to the relationship of intoxication and other defences such as mistake, insanity and diminished responsibility by reference to relevant case law – *O'Grady*, *Fotheringham*; *Jaggard v Dickinson*, *Gannon*, *O'Connor*, *Tandy*, *Egan*; *Hatton*

Describe the 'Dutch Courage' principle by reference to *Gallagher*

Assessment Objective 2 (20 marks)

Discuss the public policy reasons for adopting a pragmatic rather than a principled approach

Discuss the fact that liability for voluntary intoxication is based upon the foresight of a general risk rather than foreseeing the specific risk of committing the particular offence in question

Discuss the fact that the presumption of recklessness implicit in the *Majewski Rules* for crimes of basic intent seems to conflict with *S8 Criminal Justice Act 1967*

Discuss the justification for separating the *actus reus* from the *mens rea* since the recklessness in becoming intoxicated precedes the commission of the offence

Discuss the inconsistencies that occur when there is no lesser offence of basic intent upon which to 'fall back' eg theft or the inchoate offences

Discuss the harsh effect of the decision in *Kingston*, which does not allow a defence of involuntary intoxication if the effect is merely to disinhibit the accused

Credit discussion about the social concern surrounding 'binge' drinking and the correlation between violent crime, criminal damage and intoxication

Credit reference to the Law Commission proposals and the need, or otherwise, for reform.

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 'It is incredible that, in 2007, the important rules governing most non-fatal offences against the person are contained in the Offences Against the Person Act 1861 which is completely out of date.'

Critically consider whether reform of the existing law governing non-fatal offences against the person is now essential in the light of the above statement.

[50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define common law assault and battery and give case examples of their application *Ireland; Collins & Willcock etc.*

Define S.47 Offences Against The Person Act 1861 & its application *Donovan; Miller; Chan Fook; Roberts etc.*

Define S.20 Offences Against The Person Act 1861 & its application *Eisenhower; Savage & Parmenter*

Define S.18 Offences Against The Person Act 1861 & its application *DPP v Smith; Saunders;*
Refer to recent developments eg *Burstow; Constanza; Dica etc.*

Assessment Objective 2 (20 marks)

Consider the major criticisms of the offences made in the 1993 & 1998 Law Commission Reports:

- complicated, obscure and old fashioned language difficult for juries to understand eg occasioning, inflict, actual bodily harm, grievous, malicious etc.
- complicated and technical structure (a huge Act with many sections & offences)
- complete unintelligibility to the layman

Consider that the boundaries between the offences in terms of the level of injury are very vague even when applying CPS charging standards and this may lead to inconsistent charging
Consider that 'wounding' is a superfluous offence; it is either actual bodily harm or serious harm
Consider the criticism that the mens rea may not adequately justify conviction through the actus reus eg a person who foresees slight injury may still be convicted of S.20 – inflicting serious harm

Consider the potential sentencing conflict where S.47 and the more serious S.20 both attract a maximum 5 year sentence

Consider the Draft Offences Against the Person Bill 1998 and the new offences proposed:

- assault; intentional or reckless injury; reckless serious injury; intentional serious injury

Consider the way in which the courts have creatively developed and adapted the old existing law:

- recognising psychiatric injury *Chan Fook; Ireland; Burstow; Constanza*
- recognising sexually transmissible diseases *Dica; Feston Konsanzi*

Conclude perhaps that reform is necessary but the courts have been making the best of a bad job

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 Kurt, a dentist married to Jane, is a drug addict. He owes a great deal of money to a drug dealer, Marco, but now has no way of paying off the debt. Marco tells him that he will ruin Jane's beautiful face unless Kurt makes regular payments to lower the debt. Kurt decides to take advantage of opportunities arising in his dental practice in order to repay the debt.

Kurt places a patient, Selena, under a general anaesthetic. Whilst she is still unconscious, Kurt opens her leather handbag and removes a valuable diamond bracelet which he intends to sell later to partly pay off his debt to Marco. When replacing her handbag he knocks over a jug of sterilising fluid which soaks the outside of the bag. Kurt wipes it dry leaving a scarcely visible stain on the bag. Unfortunately, the fluid has seeped through to the inside of Selena's handbag and has ruined Selena's passport.

Discuss Kurt's criminal liability including any defences available to him. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Define theft S.1 Theft Act 1968

Define criminal damage Criminal Damage Act 1971

Explain the defence of duress by threats and its limitations

- The objective/subjective nature of the threat *Graham; Bowen; Flatt*
- Threat has to be of death or serious harm *Valderrama-Vega*
- To close family friends of someone to whom a responsibility is owed *Ortiz; Wright*
- Nomination of the offence? *Cole; Ali; Heath; Hasan; Bowen; Flatt; Abdul-Hussein*
- Threat must be 'imminent' *Hudson & Taylor; Abdul-Hussain* or 'almost immediate' *Hasan*
- Voluntary association with criminals *Sharp; Fitzpatrick; Hasan*

Define theft S.1 Theft Act 1968

Define criminal damage Criminal Damage Act 1971

Assessment Objective 2 (20 marks)

Discuss whether Kurt has committed a theft of Selena's bracelet and conclude that he has by applying the elements of *S1. Theft Act 1968*

Discuss whether Kurt may have also committed criminal damage to the bag and/or to the passport *Criminal Damage Act 1971*

Discuss whether the criminal damage has occurred by Kurt intending or being subjectively reckless to the damage caused *R v G&R*

Discuss whether the *actus reus* is satisfied or is the damage merely superficial *A v R; Samuels v Stubbs; Morphis v Salmon; Fiak etc.*

Argue that a defence of duress by Kurt is likely to fail applying:

- *Graham* – theoretically available but self-induced intoxication is unacceptable as a 'characteristic' in the objective test '*Flatt*'
- *Valderrama-Vega* – still theoretically available – threat of serious harm to his wife
- *Cole* – unlikely to succeed on this basis
- *Abdul-Hussein* – unlikely to succeed on this basis
- *Hasan* - voluntarily association with criminal – unlikely to succeed on this basis

N.B. – Credit relevant and reasoned discussion of a potential robbery /assault/consent with regard to the administration of the anaesthetic. Candidates may attain maximum marks without discussing these issues.

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 Fred is often forgetful. He draws his weekly pension from the post office and is overpaid £10 by the cashier. Fred thinks his pension must have been increased but meets his friend Jim who tells him there has, in fact, been no increase. Fred goes to his local supermarket and spends the extra £10 buying lottery tickets. Whilst shopping he absent-mindedly places a small bottle of whisky in his coat pocket. At the checkout he only pays for the items in his shopping trolley.

On his way home, Fred sees some apples growing in a residential garden. He leans into the garden, picks three apples and puts them in his basket. Feeling tired, he sits down on a bench in the park where he falls asleep. David, a passer-by, sees the apples in Fred's basket, takes one and eats it.

When he gets home Fred discovers the whisky in his pocket but decides to keep it.

Discuss the liability of Fred and David for theft.

[50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define theft S.1 Theft Act 1968

Define the relevant elements of theft in more detail:

- Dishonesty S.2
- Appropriation S.3
- Property S.4
- Belonging to another S.5
- Intention to permanently deprive S.6

Define insanity – *McNaghten Rules*

Assessment Objective 2 (20 marks)

Discuss whether Fred has committed theft of the £10 paid to him by mistake – he has clearly appropriated it but was arguably not dishonest at the time of the original appropriation, however, S3(1) says that a person who comes by property innocently may nevertheless later appropriate it. When Fred discovers he has been overpaid and dishonestly decides to keep it by spending it he arguably commits theft applying the *Ghosh* test

Identify that appropriation may be a continuing act in these circumstances *Atakpu & Abrahams* so problems of coincidence of dishonesty can be resolved

Discuss that, in any event, S.5 (4) covers property acquired by mistake by stating that it still belongs to another where D is under an obligation to restore it to the rightful owner *R v Gilks*

Discuss whether Fred commits theft of the whisky he clearly appropriates property when he places the whisky in his pocket instead of the shopping trolley *Morris; McPherson*, however his forgetfulness may arguably mean he is not dishonest

Discuss that, in any event S.5 (4) will still apply when he realises he has the whisky and decides to keep it

Discuss whether picking the apples constitutes theft, applying S.4. The apples are clearly capable of being property belonging to another S.4 (2) and are not growing wild S.4 (3) if in a cultivated residential garden

Credit dismissal of a potential burglary since Fred does not enter a building or part of a building in order to steal the apples

Identify that David is also guilty of theft as Fred has sufficient control and possession of the apples to satisfy the definition of belonging to another S.5. A thief can steal from a thief.

Credit reference to insanity under the *McNaghten Rules* regarding Fred's forgetfulness, probably not according to *Clarke*

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

**Mark Scheme 2573
January 2007**

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 Source 1 [page 2 lines 34-36 Special Study Materials] the author suggests that “*It is fair to say that certain judges deem it to be within their function to create new principles of law while others believe that any far-reaching change should be left to Parliament....*”

Compare the literal and purposive approaches to statutory interpretation in the light of the above statement. [30 marks]

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

Potential answers **MAY**:

Assessment Objective 1

Define the two approaches to statutory interpretation: the literal approach and the purposive approach:

- The literal approach takes meaning from the words themselves – so the literal rule operates by the judge giving the words their plain, ordinary meaning *Fisher v Bell*
- The purposive approach concentrates on the apparent purpose of introducing the legislation and therefore the judge can go beyond the words themselves to find the purpose *Royal College of Nursing v DHSS*.

Credit any reference to the literal rule and golden rule narrow approach (literal rule) and the mischief rule and golden rule broad approach (purposive approach)

Credit any reference to intrinsic aids and language rules (literal approach), or to extrinsic aids (purposive approach);

Use any relevant cases.

Assessment Objective 2

Discuss the fact that whatever rule is used judges claim to be seeking Parliament’s intention so in effect there is no room to create new law

Discuss the fact that the literal rule respects parliamentary sovereignty by focusing on the words alone eg Lord Simonds’ criticism of Lord Denning in *Magor & St Mellons v Newport Corporation* as a ‘naked usurpation of the legislative function’

Discuss on the other hand that use of the literal rule can obviously frustrate Parliament’s clear purpose eg *Fisher v Bell* where Parliament was forced to introduce new legislation

Discuss also how use of the literal rule can lead to absurdity *Whiteley v Chappell* or injustice *Berriman* which is not likely to be Parliament’s intention

Discuss the fact that the purposive approach is criticised for allowing judges to be too creative eg Lord Denning and ‘filling in the gaps’ in *Magor & St Mellons v Newport Corporation*

Discuss the fact that the purposive approach can be used to develop the law to match developments in society *Royal College of Nursing v DHSS*

Credit any reference to the fact that the mischief rule can be used in the same way eg *Corkery v Carpenter* and can be used to make assumptions about Parliament’s intentions eg *Smith v Hughes*

Credit any comment on the broad approach of the golden rule which does actually create new law for policy reasons eg *Re Sigsworth*

Credit any reference to the golden rule narrow approach being used to avoid defeating Parliament's intention eg *R v Allen*
Make any other relevant comment
Reach any sensible conclusion

Assessment Objective 3

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

- 2 Discuss the extent to which the decision in *Corcoran v Anderton* [Source 5 page 5 Special Study Materials] amounts to a development of the law on robbery.

[15 marks]

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

Potential answers **MAY**:

Assessment Objective 1

Briefly describe the facts of the case (partly in Source 5): defendants decided to steal a woman's handbag, one defendant hit her in the back and tugged at her handbag in order to make her release it, as a result the bag fell to the floor and the woman also fell down, the defendants then ran off empty handed when she screamed

Identify the important aspect of the offence, uses force in order to steal, so required that the defendant appropriates property

Link to any other relevant case on the meaning of robbery eg *Hale*, *Lockley*.

Assessment Objective 2

Discuss the difficulty in the case, whether or not the defendant's could be said to have appropriated the handbag although they never gained sole control of it

Discuss the fact that even though the defendants ran off empty handed they had in effect taken the bag out of the victim's control by tugging at it so that it fell to the floor

Discuss the judge's reasoning, that the forcible tugging of the handbag in itself was sufficient to amount to appropriation

Discuss the fact that the earlier case of *Hale* and the later case of *Lockley* are also inconsistent with the *Gomez* view of appropriation when applied to the offence of robbery

Discuss the potential development in the case that the defendant does not need to take sole control of property for the offence to be made out

Credit any discussion of whether 'tugging at a handbag' amounts to force

Credit any discussion of the apparent conflict with the meaning of appropriation in the theft cases *Gomez* or *Atakpu*.

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 8 lines 1-2 Special Study Materials] the authors suggest that “Despite [the] limited guidance [on the word ‘building’ in s9(4)], there is no all embracing definition in the Theft Act 1968.”

Discuss the ways in which the definition of the word ‘building’ has developed in the light of the above statement. [25 marks]

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

Potential answers **MAY**:

Assessment Objective 1

Define the burglary offences under s9(1)(a) and s9(1)(b) – enters a building or a part of a building as a trespasser with intent to commit theft, GBH or criminal damage; or having entered a building or part of a building as a trespasser goes on to commit theft or GBH;
 Explain the definition given in s9(4) Theft Act 1968: “references in subsections (1) and (2) above to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.”

Identify that part of a building can refer to a part of a building that the defendant has no right to enter even though he has a legitimate right to enter other parts of the building *Walkington*
 Use any relevant cases eg *Stevens v Gourley*, *Norfolk Constabulary v Seekings and Gould*, *B and S v Leathley*.

Assessment Objective 2

Discuss whether in fact the definition in s9(4) is limited, it does not define a building itself but it broadens any definition by including inhabited vehicles and vessels even when the inhabitant is not in them;

Discuss the fact that the authors appear to be right in saying that this is not an ‘all embracing definition’;

Discuss the traditional view expressed by Byles J in *Stevens v Gourley* that a building is ‘a structure of considerable size and intended to be permanent or at least to endure for a considerable time’ and whether that fits the wording in the Theft Act 1968 or the more recent cases;

Discuss the fact that the term building must extend in any case beyond main buildings such as houses offices etc and must logically include outbuildings such as garages and sheds;

Discuss how the definition has also been extended by the case law so that a freezer container was classed as a building in *B and S v Leathley* because its use had been changed, it no longer had wheels or could be used as a vehicle;

Discuss the fact that the courts will nevertheless limit the application of this principle so that in *Norfolk Constabulary v Seekings and Gould* articulated lorry trailers that were being used as temporary storerooms with electricity connected could not come within the definition because they still had wheels;

Discuss the fact that within the definition it is sufficient that the defendant only enters part of a building and this could be a room such as the store room in *Laing* but that it may in fact be a very small part of the building itself;

Discuss the development of this point in *Walkington* where going behind a till area was considered to be part of a building.

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 for robbery or burglary is possible in each of the following situations.
- a) Stanley sees that Megan, an elderly lady, is taking a large amount of money out of a cash point machine. Stanley creeps up behind Megan and whispers in her ear 'That's mine'. Megan drops the money in fright and Stanley picks it up and runs off with it. (10)
- b) Paula is unemployed and needs money to pay off a large debt. She decides to go to the house of her brother, Brian, to take his laptop computer to sell to pay off the debt. Paula has a key to Brian's house because she often stays there. When she enters Brian's house Paula discovers that Brian has taken the laptop with him and she goes away empty handed. (10)
- c) Butch is angry because his wife, Angie, has left him for another man. Butch breaks into Angie's new flat intending to set fire to it. When he gets in he realises that he has left his matches at home and there are none in the flat. In frustration he takes all of Angie's clothes and throws them in the dustbin when he gets home. (10)

[30 marks]

Mark Levels		AO1 & AO3	AO2	a) b) or c)
5	25-30	9-10	17-20	9-10
4	19-24	7-8	13-16	7-8
3	13-18	5-6	9-12	5-6
2	7-12	3-4	5-8	3-4
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 before or at the time of stealing uses 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*
- Discuss whether the threat of force was sufficient for the offence to be made out – there was some indication in Stanley's words that he intended to steal and Megan is put in fear.

In the case of b):

- Recognise that Paula enters as a trespasser because she exceeds the normal permission *Jones and Smith*
- Recognise also that she intends to commit one of the offences outlined in s9(2), theft, so it does not matter if she does not go on to steal *Collins*
- Recognise that Paula satisfies the s9(1)(a) offence

In the case of c):

- Recognise that Butch satisfies the s9(1)(a) offence – he enters as a trespasser intending to commit one of the ulterior offences in s9(2) *Collins*
- Identify that for a conviction under s9(1)(a) it does not matter if he does not go on to commit criminal damage *Collins*
- Recognise also that, having entered, he goes on to commit an offence accepted in s9(1)(b), theft
- Identify that Butch can be convicted of both offences.

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.

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

**Mark Scheme 2574
January 2007**

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.**

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 law quite rightly protects certain groups of people in society by limiting their capacity to make contracts.'

Consider the extent to which you agree with this statement.

[50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the general principles of capacity to contract.

Explain the position regarding:

- Corporations
 - Drunkards and those of unsound mind
 - Minors
- (Credit may be given to those who also explain the position of diplomats).

Show more detailed knowledge of the three categories of minors' contracts, with case authorities for each: necessaries (*Nash v Inman*, *Chappell v Cooper*), beneficial contracts of services (*Clements v L & NW Railway*, *Doyle v White City Stadium*, *De Francesco v Barnum*, *Roberts v Gray*, *Chaplin v Frewin*), and voidable contracts (*Steinberg v Scala*, *Edwards v Carter*).

Explain the provisions of the Minors' Contracts Act 1987.

Explain in detail the provisions of S 3(1), remedy of restitution, and S 2, enforcement of a guarantee.

Assessment Objective 2 (20 marks)

Consider whether it is right or necessary that certain groups of people within society have protection in forming contracts. Points might include:

- Corporations and shareholders (in order to allow corporations to trade, to protect shareholders and to prevent improper trading)
- Drunkards and those of unsound mind (in order to protect these people in vulnerable positions) - needs to be apparent to the other party, and only applies when in that particular state (is this practicable?) - *Hart v O'Connor*
- Minors - to protect them from their inexperience or youth (*De Francesco v Barnum*), and at the same time to bear in mind the situation of the adults with whom minors may deal (*Roberts v Gray*).

Consider how this has been achieved by case law and how this has been modified by statute (and perhaps consider the treatment of cases before and after the statute).

Consider whether any other groups of people need protection.

Consider whether such protection is right and fair and continues to be needed or adapted.

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 current law on offer and acceptance establishes exactly when, where and how a contract is made, whilst at the same time supporting the principles of freedom to contract.'

Discuss the ways in which this law is put into practice through the 'rules' of offer and acceptance. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Explain the general need for offer and acceptance as part of agreement.
 Explain the legal framework in which shopping usually takes place, differentiating between an offer and an invitation to treat: *Fisher v Bell*, *Pharmaceutical Society v Boots*.
 Explain the difference between a general and a specific offer: *Carlill v Carbolic Smoke Ball Co*.
 Explain how an offer is made in specific situations, eg shopping (above), auctions and tenders: *Payne v Cave*, etc; *Spencer v Harding*, etc.
 Explain some non-standard situations, eg boarding a bus: *Wilkie v London Passenger Transport Board*; promotional campaigns: *Esso v Commissioners of Customs and Excise*; dealing with a machine: *Thornton v Shoe Lane Parking*, distance selling or e-commerce: *The Consumer Protection (Distance Selling) Regulations 2000* and *The Electronic Commerce (E C Directive) Regulations*.
 Explain the principles of termination of an offer, eg counter offer: *Hyde v Wrench*, revocation: *Byrne v Van Tienhoven*, etc.
 Explain the need to principles of acceptance, the need to communicate and the postal rule: *Adams v Lindsell*, *Holwell v Hughes*, etc.

Note: For Assessment Objective 1 candidates are not required to explain the whole of offer and acceptance in detail. *Provided that they address the question sufficiently*, they may obtain maximum marks by breadth or depth.

Assessment Objective 2 (20 marks)

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

- The nature of an offer compared with an invitation to treat: *Fisher v Bell*, etc
- The need for modification of the usual 'rules' in specific circumstances, eg using public transport (*Wilkie*), responding to a general offer (*Carlill*), promotional campaigns (*Esso*), dealing with a machine (*Thornton*)
- The principles developed concerning offers, eg identifying an offer, terminating an offer, acting in ignorance of an offer (*Carwardine*, *Clarke*)
- The reasoning behind the decisions in cases, eg freedom of contract/the right to refuse to sell, exhausted stocks, practicality
- Problems that may arise when modern means of communications are used to convey an offer and/or acceptance.

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 Alf owns a hotel and decides to install a new gym to boost his summer trade. He contracts with Bluequip in January to install the gym by the end of March.

In February, Bluequip informs Alf that the company will not be able to complete the work on time, for the agreed price, because certain materials are not available. Alf therefore agrees to pay Bluequip £5,000 extra in order to allow Bluequip to obtain alternative materials and complete the work as agreed. However, in March when the gym is complete, Alf does not pay Bluequip this £5,000.

Additionally, Callum, the manager of Bluequip, paints the outside of the building. Although Alf did not ask Callum to do this, he is pleased with the result and agrees to pay Callum £200 for the painting. However, Alf later does not pay Callum at all.

Advise Alf regarding any liability to Bluequip and to Callum.

[50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Explain the general need for valid consideration in forming a contract.

Explain the specific issue of consideration when performing an existing contractual duty: *Stilk v Myrick*.

Explain the effect of anything 'extra' being given: *Hartley v Ponsonby*, however little: *Ward v Byham, etc.*

Explain the circumstances of *Williams v Roffey*.

Explain the general principle of past consideration: *Roscorla v Thomas, Re McArdle*.

Explain the circumstances where apparent past consideration may be valid: *Lampleigh v Braithwait, Re Casey's Patents*.

Assessment Objective 2 (20 marks)

Identify the general issue of consideration (or lack of it).

Apply the issue of consideration in performing an existing contractual duty to the facts of the problem, ie the 'extra' payment to Bluequip.

Apply the law on performing an existing duty, and especially the case of *Williams v Roffey*, to the facts of the problem, and consider the particular issues that this may raise, eg the need to finish on time for the summer trade.

Apply the principles of past consideration to the facts of the problem, ie the payment to Callum for the painting.

Consider whether anything takes this situation beyond the general rule on past consideration, to make it valid (as in *Lampleigh v Braithwait* or *Re McArdle*).

Credit any relevant comments on the difficulty or uncertainty in applying the areas of law raised in the question.

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 Kelly, a painter, visits NewArt Gallery and leaves her coat at a cloakroom where she pays a fee and is given a receipt.

While Kelly is walking around one of the exhibition rooms, an attendant who is moving some paintings, accidentally knocks over a ladder which hits Kelly, causing her considerable injury. The attendant apologises to Kelly, but points to a sign at the entrance which states, 'NewArt Gallery takes no responsibility for injury to visitors however caused'.

When Kelly returns to the cloakroom to collect her coat she finds that it has been given to someone else. The cloakroom assistant points out a statement on Kelly's receipt which reads, 'NewArt Gallery takes no responsibility for loss or theft of items, however this may arise'.

Discuss any potential claims that Kelly may have against NewArt Gallery.

[50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the general nature and effect of exemption clauses.

Outline briefly the common law position:

- Incorporation of terms (candidates will not have time to be exhaustive on this): *L'Estrange v Graucob*, *Parker v S E Railway*, *Olley v Marlborough Court Hotel*
- Construction: (the main purpose rule: *Glyn v Margetson*, and the contra proferentem rule).

Explain the main (relevant) provisions of the *Unfair Contract Terms Act 1977*: S 2(1) concerning personal injury or death; S 2(2) concerning 'other' liability.

Explain the tests applied by the court when assessing the reasonableness of an exemption clause under S 2(2).

Explain the provision of the *Unfair Terms in Consumer Contracts Regulations 1999*.

Assessment Objective 2 (20 marks)

Identify the issue of attempts to avoid liability via exemption clauses, ie regarding the injury and the coat.

Apply the law on exemption clauses to the facts of the question:

- Where the contact(s) to visit the gallery and to leave the coat were made
- Whether the notices were incorporated as part of the contracts
- Whether the notices can be construed to cover the personal injury and the loss of the coat - apply the main purpose rule in particular.

Discuss the need for the statutory provision for Kelly regarding personal injury.

Discuss the reasonableness (or otherwise) of the notice regarding the coat.

Apply the statutory provision - *Unfair Contract Terms Act 1977* and the *Unfair Terms in Consumer Contract Regulations 1999*.

- S 2(1) and the Regulations to the personal injury
- S 2(2) and the Regulations (including reasonableness issues) to the coat.

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.

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 or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to 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 or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious central to the question or identify the main points of law in issue. Ability to question or 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 or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

**Mark Scheme 2575
January 2007**

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.**

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

- 1 'The mere fact that one party to a contract believes something that turns out to be untrue does not give that party a right to avoid contractual liabilities.'

Evaluate the truth of this statement considering the ways that the courts apply the concept of mistake. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Explain the basic rule of contract that parties are bound by their voluntary agreements even when they are made under an error.

Explain the types of mistake — common, mutual and unilateral:

- Common mistake - both parties make the same mistake
- Mutual mistake — parties make a different mistake or only one party makes a mistake
- Unilateral mistake — one party knows that the other is making a mistake.

Explain common mistake in Common Law - *Great Peace Shipping Ltd. v Tsavlis Salvage*.
Common mistake as to the existence of the subject matter - *Strickland v. Turner, McRae v. The Commonwealth Disposals Commission, Couturier v. Hastie. Associated Japanese Bank v. Credit du Nord.*

Explain mistake as to quality - *Bell v. Lever Bros., Leaf v. International Galleries*

Briefly explain of mistake as to identity.

Explain mutual mistake - *Raffles v. Wichelhaus*.

State the abolition of the principles of equitable mistake - *Great Peace Shipping Ltd. v. Tsavlis Salvage*.

Cases such as *John Walker v Amalgamated Investment Properties; Kleinwort Benson v Lincoln City Council* may also be considered.

Assessment Objective 2 (20 marks)

Comment on whether the basic rule produces fairness.

Evaluate whether the concept contained in *res extincta* is clear.

Compare cases such as *Strickland v. Turner and McRae v. The Commonwealth Disposal Commission*.

Evaluate the judgement of the *House of Lords* in *Bell v. Lever Bros.*

Consider the two interpretations of the judgement:

- 1 Contract void when parties act on false and fundamental assumption irrespective of existence or quality
- 2 Contract only void with respect to existence.

Evaluate judgement in *Associated Japanese Bank v. Credit du Nord*.

Evaluate the meaning of fundamental.

Evaluate the effects of *Great Peace Shipping v. Tsavlis Salvage*.

Discuss whether the current position produces fairness?

Evaluate cases such as *John Walker v Amalgamated Investment Properties; Kleinwort Benson v Lincoln City Council*.

Assessment Objective 3 (5 marks)

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

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

2 Evaluate the law on breach and performance and the relationship between the two. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the meaning of performance.

Explain the nature of a breach of contract ie one party fails to perform his obligations as set out in the contract.

Illustrate the absolute nature of performance by cases such as *Cutter v. Powell*; *Reardon Smith Line v. Hansen Tangen*.

Explain that non compliance with exact performance traditionally resulted in breach of contract.

Distinguish between types of breach.

Explain actual and anticipatory breach.

Refer to cases such as *Hochster v. De La Tour*, *Avery v. Bowden*, *White & Carter v. McGregor* and *Alaskan Trader*.

Explain the distinction between breach of condition and breach of warranty.

Assessment Objective 2 (20 marks)

Evaluate the factors applied by the courts to decide if there has been performance or breach.

Evaluate the application of Section 30 Sale of Goods Act 1979 and the mitigating effect of Section 15A Sale and Supply of Goods Act 1994 on breach of contract Evaluate how the courts decide whether minor breaches constitute failure to perform or substantial performance.

Evaluate the criteria used by the courts to determine whether a breach should discharge the contract.

Evaluate the use of innominate terms - *Hong Kong Fir Shipping Co. v. Kawasaki Kisen Kaisha*, *The Mihalis Angelos*, *Rice v. Great Yarmouth Borough Council*.

Evaluate the differences in remedy for breach of condition and warranty Evaluate whether the differences in remedies available for breach of condition and warranty produce fairness?

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 Ahmed owns a small record shop that relies on a large record wholesaler, Megamusic, who supplies him with CDs, on credit. This agreement allows Megamusic to terminate the credit agreement at anytime. Megamusic knows that this credit facility is vital to the survival of Ahmed's business.

A dispute arises concerning a batch of CDs that went missing in the post. Ahmed believes that he should not have to pay for them, while Megamusic insists that he should.

Megamusic states that unless Ahmed pays for the missing CDs it will withdraw the credit facility. This will mean either Ahmed has to find another supplier on similar credit terms or he will be forced out of business. To find a new supplier, on similar terms, would be extremely difficult although not impossible.

Discuss the likelihood of Ahmed being able to use duress successfully in resisting withdrawal of the credit arrangement. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the basic principles of duress.

Modern doctrine of economic duress.

Refer to cases such as *The Siboen and the Sibotre*, *North Ocean Shipping v. Hyundai Shipping*.

State Lord Scarman's criteria:

- 1 Did the victim protest?
- 2 Was there an alternative course open to the victim?
- 3 Was the victim independently advised?
- 4 What steps were taken to avoid the agreement?

Explain *Atlas Express v. Kasco*, *North Ocean Shipping v. Hyundai Shipping and CTN. Cash & Carry v. Gallagher*.

Explain the criteria in *Carillion Construction v. Felix*.

Is the party able to take the action under the contract?

Assessment Objective 2 (20 marks)

Apply the principles of economic duress to the problem.

Evaluate whether the threat is within the contractual provisions.

Apply the criteria in *The Siboen and the Sibotre* and *Carillion Construction v. Felix*.

Apply Steyn's judgement in *CTN Cash & Carry v. Gallagher*.

Apply the test of 'bona fide claim'.

Apply the principles in *North Ocean Shipping v. Hyundai Shipping*.

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 Terry has had discussions with Carmen concerning the purchase of a piece of land on which to build a house.

Carmen tells Terry that planning permission for the house he intends to build is a 'formality'. She also states that there are no drains running under the land that would affect the building of a house.

Carmen has not made any investigation concerning the two statements.

Terry purchases the piece of land and discovers that both statements are untrue. Therefore, he will incur considerable expense in obtaining planning permission and making repairs to the drains, with the result that he will suffer a large loss of profit.

Advise Terry whether he can bring an action in misrepresentation and the remedies that might be available to him. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Briefly explain misrepresentation:

- 1 Statement of fact
- 2 Induce the contract
- 3 Must be untrue.

Refer to cases such as *Smith v. Land & House Property Corporation*, *Spice Girls v. Aprilia and Edgington v. Fitzmaurice*.

Explain types of misrepresentation:

- 1 Fraudulent
- 2 Negligent
- 3 Innocent.

Refer to cases such as *Derry v. Peek*, *Hedley Byrne v. Heller*, *Howard Marine & Dredging Co. v. A. Ogden*.

Explain statutory liability under Section 2(1) Misrepresentation Act 1967.

State remedies available for each type of misrepresentation.

Explain calculation of damages for each type.

Refer to cases such as *Doyle v. Olby*, *Smith & New Court Securities v. Scringeour Vickers, Clif Aquitaine SARL v. Laporte Materials and Royscot v. Rogerson*.

Explanation of Section 2(1) Misrepresentation Act 1967 for calculation of damages.

Assessment Objective 2 (20 marks)

Apply definition of misrepresentation to problem.

Application of cases such as *Bissett v. Wilkinson*.

Application of types of misrepresentation.

Consider whether the misrepresentation is fraudulent, negligent or innocent.

Application of cases such as *Smith & New Court Securities v. Scringeour Vickers and Royscot v. Rogerson*.

Consider that Common Law remedy of damages as a matter of right.

Consider whether the damages should be reasonably foreseeable or directly arising.

Consider whether the same tests should apply to negligent as well as fraudulent misrepresentation.

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.

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

**Mark Scheme 2576
January 2007**

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 Source 1 (page 2 lines 34-36 Special Study Materials) the author suggests that “*It is fair to say that certain judges deem it to be within their function to create new principles of law while others believe that any far-reaching change should be left to Parliament....*”

Compare the literal and purposive approaches to statutory interpretation in the light of the above statement. [30 marks]

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 two approaches to statutory interpretation: the literal approach and the purposive approach:

- The literal approach takes meaning from the words themselves - so the literal rule operates by the judge giving the words their plain, ordinary meaning *Fisher v Bell*
- The purposive approach concentrates on the apparent purpose of introducing the legislation and therefore the judge can go beyond the words themselves to find the purpose *Royal College of Nursing v DHSS*.

Credit any reference to the literal rule and golden rule narrow approach (literal rule) and the mischief rule and golden rule broad approach (purposive approach).

Credit any reference to intrinsic aids and language rules (literal approach), or to extrinsic aids (purposive approach).

Use any relevant cases.

Assessment Objective 2

Discuss the fact that whatever rule is used judges claim to be seeking Parliament's intention so in effect there is no room to create new law.

Discuss the fact that the literal rule respects parliamentary sovereignty by focusing on the words alone eg Lord Simonds' criticism of Lord Denning in *Magor & St Mellons v Newport Corporation* as a 'naked usurpation of the legislative function'.

Discuss on the other hand that use of the literal rule can obviously frustrate Parliament's clear purpose eg *Fisher v Bell* where Parliament was forced to introduce new legislation.

Discuss also how use of the literal rule can lead to absurdity *Whiteley v Chappell* or injustice *Berriman* which is not likely to be Parliament's intention.

Discuss the fact that the purposive approach is criticised for allowing judges to be too creative eg Lord Denning and 'filling in the gaps' in *Magor & St Mellons v Newport Corporation*.

Discuss the fact that the purposive approach can be used to develop the law to match developments in society *Royal College of Nursing v DHSS*.

Credit any reference to the fact that the mischief rule can be used in the same way eg *Corkery v Carpenter* and can be used to make assumptions about Parliament's intentions eg *Smith v Hughes*.

Credit any comment on the broad approach of the golden rule which does actually create new law for policy reasons eg *Re Sigsworth*.

Credit any reference to the golden rule narrow approach being used to avoid defeating Parliament's intention eg *R v Allen*.

Make other relevant comment.

Reach any sensible conclusion.

Assessment Objective 3

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

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

- 2 Discuss the extent to which the decision in *Avery v Bowden* (Source 9 page 7 Special Study Materials) amounts to a development of the law on frustration and anticipatory breach. [15 marks]

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 (in Source 9): claimant chartered a ship which was to be loaded by a certain date but the defendant was then unable to provide a cargo and the ship remained in port, the claimant then waited till the contractual date for loading but by that time war had broken out and the contract became impossible to perform because of subsequent illegality.

Identify the possibilities within anticipatory breach, the claimant can consider the contract unlawfully repudiated and sue immediately or wait for the date for performance before suing.

Link to any relevant case on anticipatory breach eg *Hochster v De La Tour*.

Assessment Objective 2

Discuss the purpose of the rule on anticipatory breach - sometimes it will benefit the victim of the breach to sue as soon as he is aware of the anticipatory breach *Hochster v De La Tour* and sometimes it will benefit him to wait for the date that performance is due *White and Carter v McGregor*.

Discuss the reason why the party delayed until the date of breach in the case in question - there was the possibility that a cargo could still be loaded and the claimant would have lost out by going to another port seeking another cargo.

Discuss the significance of the development made in the case to frustration: if a claimant who is the subject of an anticipatory breach delays suing and a frustrating event then occurs before the date performance is due that person is left without a remedy for breach of contract because of the frustration.

Discuss the fact that the case recognises the possibility of frustration even before *Taylor v Caldwell*.

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 4 (page 5 lines 10-13 Special Study Materials) Lord Justice Vaughan Williams states “*I do not think that the principle [of frustration] is limited to cases in which the event causing the impossibility of performance is the destruction or non-existence of something which is the subject matter of the contract....*”

Discuss the ways in which the courts have developed the concept of a frustrating event in the light of the above statement. [25 marks]

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 frustration - where an event that is no fault of either party to the contract makes performance impossible, illegal, or destroys the commercial purpose of the contract the parties are excused further performance and obligations end at the point of frustration *Taylor v Caldwell*.

Explain the situations in which frustration can be applied:

- Impossibility:
 - destruction of the subject matter *Taylor v Caldwell*
 - unavailability of a party *Morgan v Manser*
 - war *Metropolitan Water Board v Dick Kerr & Company*
 - excessive but unavoidable delay *The Evia*
- Subsequent illegality *Denny Mott and Dickinson v James B Fraser* (or on outbreak of war *Re Shipton Anderson*)
- Radical change of circumstances in (commercial sterilisation of) the contract *Krell v Henry*.

Assessment Objective 2

Discuss why the doctrine developed, unfairness of *Paradine v Jane* a party bound by obligations which become impossible to perform through no fault of his own.

Discuss how the principle developed in the original case *Taylor v Caldwell*; which did concern destruction of subject matter.

Discuss how the scope of the initial concept of impossibility has developed:

- Long delays making it impossible to continue the contract *Jackson v Union Marine Insurance Company Limited*
- Unavailability of a party, possibly through illness making performance impossible *Robinson v Davison, Condor v The Baron Knights*
- Outbreak of war making it impossible for the party to perform *Metropolitan Water Board v Dick Kerr and Company*.

Discuss also how the concept also developed to include a frustrating event based on subsequent illegality *Re Shipton Anderson*.

Discuss also how the concept developed to include the loss of the commercial basis of the contract through the frustrating event *Krell v Henry* but that this is limited to situations where no central purpose remains *Herne Bay Steamboat Co v Hutton*.

Credit any reference to frustration and leases *National Carriers Ltd v Panalpina (Northern) Limited*.

Discuss the fact that in all cases the doctrine only operates because the frustrating event destroys 'the very basis of the contract' so that the parties would be doing something entirely different to what they contracted to do.

Discuss the fact that the doctrine only applies if neither party is at fault.

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 the basis on which it might be claimed that the contract has been frustrated in each of the following situations and what factors might prevent the court from accepting that the contract is in fact frustrated.
- (a) Greg Ghastly, a pop star, contracts with Glamdiscs to record a new CD. When the contract is formed, Glamdiscs is aware that Greg is awaiting trial on criminal charges. Greg's trial is two days before recording is due to start and he is convicted and imprisoned for five years. [10]
- (b) Deepak contracts with Eastcars, a car manufacturer in Ardvarkia, a foreign country, to supply three large machines. A clause in the contract states that Eastcars agree to pay Deepak 10% of any costs that he incurs in advance of the contract, if the contract cannot be performed. War breaks out between the two countries and the UK government introduces a ban on all trade with Ardvarkia. Deepak has incurred costs. [10]
- (c) Emma manages a car racing team. She agrees to hire three racing cars from Reliable Racing for the 2007 season before she hears from the Car Racing Authority (CRA) whether she can enter her team. The CRA then gives Emma a permit to race only two cars. Emma only accepts delivery of two of the cars from Reliable Racing and refuses to pay the hire fee for the third car. [10]

[30 marks]

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 and the bars to frustration. Use any relevant cases in illustration.

Assessment Objective 2

In the case of (a):

- Identify that unavailability of a party to the contract is the frustrating event *Morgan v Manser*
- But recognise that Greg's unavailability was a foreseeable risk *Amalgamated Investment and Property Company v John Walker and Sons*
- Recognise that there is no frustration.

In the case of (b):

- Identify that Deepak's argument is likely to be subsequent illegality *Re Shipton Anderson*
- Identify that the contract has indeed been frustrated because of the subsequent illegality of the transaction in *Ardvarkia Denny, Mott and Dickinson v James B Fraser and Re Shipton Anderson*
- Recognise that this mirrors the *Fibrosa* case, there is provision made in the contract for the frustrating event so Deepak will be bound by that clause.

In the case of (c):

- Identify that Emma 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 Emile could have obtained the permits before hiring the cars *Maritime National Fish v Ocean Trawlers Limited*
- Credit any reference to the fact that the contract may be merely more onerous to perform because he has to pay hire for three cars but only race two *Davis Ltd Contractors v Fareham UDC*
- Recognise that there is no frustration Emile is in breach.

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

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

**Mark Scheme 2577
January 2007**

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.**

Mark 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 concept of duty of care has developed in a way that is fair to all parties to a claim in negligence.'

Discuss the accuracy of the above statement.

[50]

Potential answers MAY:

Assessment Objective 1

[25 marks]

Explain the origin of a discreet tort of negligence in *Donoghue v Stevenson*.

Credit any reference to the previous law in *Winterbottom v Wright* and to Lord Atkin developing from the principle in *Heaven v Pender*.

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 (but for test *Cork v Kirby MacLean*)
- which is not too remote a consequence of the breach (reasonable foreseeability *The Wagon Mound*).

Explain the basis for establishing duty from *Donoghue v Stevenson* - Lord Atkin's 'neighbour principle'.

Explain the initial incremental development of duty of care situations.

Explain Lord Wilberforce's two part test from *Anns v Merton LBC*:

- sufficient legal proximity between the parties
- no policy reasons for judges to refuse to impose a duty.

Use any cases criticising the two part test eg *Governors of the Peabody Donation Fund v Sir Lindsay Parkinson*.

Explain that *Anns* was overruled in *Murphy v Brentwood District Council* as a result of these concerns.

Credit any reference to approval of the judgment of Brennan J in *Sutherland Shire Council v Heyman* in the Australian High Court.

Explain the three part test from *Caparo Industries plc v Dickman*, approved in *Murphy*:

- foreseeable harm
- legal proximity
- fair, just and reasonable to impose a duty.

Use any relevant cases to illustrate reasonable foresight, legal proximity and fair, just and reasonable to impose a duty.

Use any cases illustrating how judges use policy grounds (or fair, just and reasonable) in refusing to impose a duty eg *Hill v Chief Constable of West Yorkshire*.

Assessment Objective 2**[20 marks]**

Discuss the fairness of establishing a duty of care in negligence - the unfairness of the privity fallacy to the claimant, the fairness of fixing the defendant with liability for foreseeable harm caused by his breach.

Discuss the fairness of developing duty situations incrementally on a case by case basis eg employer/employee, fellow road users, doctor/patient etc.

Discuss whether the *Anns* test was in fact unfair to either party - the main criticisms were that it created an all embracing single duty of care and that it gave judges too much discretion in imposing or rejecting a duty.

Discuss any of the criticisms raised by judges prior to the case being overruled.

Discuss the effects of policy in deciding whether or not to impose a duty eg whether the protection given to lawyers in *Rondel v Worsley* was unnecessarily harsh on claimants and overprotective of the legal profession.

Discuss the fairness of reasonable foresight in the *Caparo* test - little different to the neighbour principle - although there are clear contrasts in its application eg *Topp v London Country Bus Ltd* and *Margereson v JW Roberts*.

Discuss the fairness of the 'legal proximity' requirement from *Caparo* - again very little different from the 'neighbour principle' but depends on how the court assesses proximity eg *John Munroe Ltd v London Fire* and *Civil Defence Authority, Hill*.

Discuss whether the 'fair, just and reasonable' requirement in the *Caparo* three part test is any different to policy (and indeed is just a way of disguising policy judgments) - *Hill* looks to be a straightforward policy decision.

Discuss any particular areas that appear to involve unfairness to claimants bringing actions against specific bodies such as the police, local authorities etc.

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 Consider the extent to which the Occupiers' Liability Act 1957 promotes adequate deterrents to occupiers of premises so that they take sufficient steps to ensure the safety of lawful visitors. [50]

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 *Maloney 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 *Haseldine 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 (credit any contrast with 1984 Act)
- *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]**

Consider the fact that the major purpose in passing the Act was not necessarily to act as a deterrent but to create a common duty to all lawful visitors since before the Act different duties were owed to different types of lawful visitor — so broadens the deterrent effect.

Consider the fact that there is no definition of occupier in the Act so common law applies, but that there can be dual liability so this broadens the possible deterrent effect of the tort *Stevens v Anglia Water Authority*.

Consider the fact that premises is broadly defined *Wheeler v Copas* so this also increases the deterrent possibilities.

Consider though that liability is only for the state of the premise which may limit it but that an alternative action in negligence is still possible *Ogwo v Taylor* and *Salmon v Seafarers Restaurant*.

Consider the special duty owed to children under s2(3)(a) of the Act which acts as an extra deterrent.

Consider also the rules on those carrying out a trade under s2(3)(b) which relieves the liability of the occupier quite justly but still limits the deterrent effect.

Consider the special rules on work of independent contractors under s2(4)(b) - this limits the deterrent effect but the claimant may still have an action against the contractor in negligence.

Consider the numerous means available to the occupier for avoiding liability -more extensive than under common law and so possibly limiting the deterrent effect.

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 Bert works as a delivery driver for Fastapizza. Bert is paid a lump sum for his work and is expected to pay his own tax and national insurance. Under his contract he must use Fastapizza's van, work full time over seven evenings per week and is prohibited from accepting any other work as a delivery driver, and from smoking during working hours.

Bert is sent to fill up the van with petrol at Pumpup. On leaving the petrol station he throws his lighted cigarette out of the van window causing a major fire and the destruction of the petrol station.

On his next delivery Bert comes back out to his van and sees a youth, Stefan, stealing Pizzas from the van. Bert grabs hold of Stefan and punches him severely breaking Stefan's jaw. On the way back to Fastapizza's premises Bert decides to divert to a pub, miles off his route, for a beer. On the way, because he is driving too fast and not paying attention to the road, Bert collides with a car driven by Mia, wrecking her car and causing her injuries.

Advise Fastapizza of any liability they may owe to Pumpup, Stefan and Mia.

[50]

Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Define vicarious liability - imposing liability on a person other than the tortfeasor (usually an employer).

Identify that for liability the tortfeasor must:

- be an employee of the defendant
- be acting within the course of employment when the tort occurs
- have committed a tort (although in some cases there can be liability for the crimes of employees - but only where there is eg dishonesty *Grace v Lloyd Smith* or more recently where the tort is closely connected with the nature of the employment *Trotman, Lister v Hesley Hall*).

Explain the tests of employment: control test *Mersey Docks & Harbour Board v Coggins and Griffiths*; integration test *Stevenson, Jordan & Harrison v Macdonald & Evans*; economic reality (multiple) test *Ready Mixed Concrete* case.

Identify 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*.

Identify 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*.

Use any other relevant cases.

Assessment Objective 2**[20 marks]**

Discuss whether Bert is an employee or an independent contractor:

- both the control test and the economic reality test could be used
- Bert is expected to pay his own tax and NI contributions - leans towards self-employment
- but has to use Fastapizza's van and is prevented from taking other work so lacks any real independence
- Bert is most likely an employee - so that Fastapizza may be liable for Bert's torts if they are in the course of employment.

Discuss whether each act is a tort and in the course of Bert's employment:

In the case of Pumpup Petrol Station:

- identify that Bert's act is negligence leading to foreseeable harm *Century Insurance v Northern Ireland Transport Board*
- identify that by smoking Bert was engaged in an act prohibited by Fastapizza
- identify that vicarious liability is still possible in the case of prohibited behaviour *Limpus v London General Omnibus Co* and that Fastapizza are likely to be held liable for Bert's actions here.

In the case of Stefan:

- identify that there is possibly a crime as well as a tort involved
- discuss whether Bert is impliedly or expressly authorised to protect Fastapizza's property in which case they may be liable for his tort *Poland v Parr*
- discuss whether the crime is sufficiently connected to Bert's employment for Fastapizza to be liable *Lister v Hesley Hall; Mattis v Pollock*.

In the case of Mia:

- identify that Bert has diverted from his route so will probably be seen as 'on a frolic on his own' *Hilton v Thomas Burton*
- conclude that it is unlikely that Fastapizza will be liable.

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 Carol and Mark are attending their mother's funeral. Owing to the negligence of the funeral directors, Berrimore, on the way to the cemetery, the rear door of the hearse opens as it goes over a bump going up a steep hill. The coffin falls out and opens ahead of the mourners' car. Carol suffers Post Traumatic Stress Disorder as a result of seeing her mother's corpse. The driver of the mourner's car has to swerve to avoid the coffin and the car hits a lamp-post. Mark is thrown through the windscreen and Ted, a pedestrian on the other side of the road, suffers severe depression and has to give up work as a result of seeing Mark's horrific injuries. John, a fire fighter, who is called to the scene, suffers from insomnia after witnessing Mark's injuries. The next day Carol telephones her father, Denis, who is unavoidably out of the country at the time of the funeral. Denis suffers from grief after hearing of the events.

Advise Carol, Ted, John and Denis on any claims that they may have against Berrimore. [50]

Potential answers MAY:

Assessment Objective 1 [25 marks]

Define nervous shock (psychiatric injury) - PTSD is sufficient, severe depression may also count *Vernon v Boseley*, emotional reactions such as grief, and conditions such as claustrophobia and insomnia will not *Reilly v Merseyside HA*.

Distinguish between primary victim and secondary victim:

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

Define the requirements for a successful claim by a secondary victim *Alcock v Chief Constable of South Yorkshire*.

- Close tie of love and affection to a primary victim *Hambrook v Stokes*
- Sufficient proximity in time and space to the event or its immediate aftermath *McLoughlin v O'Brien*
- Witnessed the traumatic event or its immediate aftermath with own unaided senses, either sight or hearing *Alcock*
- Injury 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*.

Explain the restrictive definition of 'immediate aftermath' as applied in *Alcock* (credit any comparison with *Taylor v Somerset, N E Glamorgan NHS Trust v Walters, W v Essex CC*).

Explain that a rescuer can only claim if a genuine primary victim *White v Chief Constable of South Yorkshire* or a genuine secondary victim *Greatorex v Greatorex*.

Identify the anomalous application of nervous shock in *Owens v Liverpool Corp*.

Use any other relevant cases.

Assessment Objective 2**[20 marks]**

In the case of Carol:

- identify that Carol is potentially a primary victim, present at the scene and at risk of foreseeable harm *Page v Smith*
- identify that as a secondary victim according to the criteria in *Alcock* she satisfies all three criteria ie close tie of love and affection, proximity in time and space and witnessing or hearing the event with her own unaided senses
- identify the similarity with *Owen v Liverpool Corporation* also making a successful claim possible
- consider that she also suffers from a recognised psychiatric illness, PTSD.

In the case of Ted:

- identify that Ted is not at risk of harm so cannot be a primary victim
- identify Ted as a bystander with no apparent close tie of love and affection with the victim so the claim fails *McFarlane v EE Caledonia*, *Duncan v British Coal*, *Robertson and Rough v Forth Road Bridge Joint Board*
- discuss how otherwise his injury, severe depression, falls within the definition of nervous shock *Vernon v Boseley*.

In the case of John:

- identify John 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 victim ie at risk themselves - which appears not to be the case here
- identify also that his injury, insomnia, is not a recognised psychiatric injury *Vernon v Boseley* so any claim will fail.

In the case of Denis:

- identify Denis as a secondary victim
- passes first *Alcock* test as close tie is presumed for husbands and wives
- but fails the other two tests, restrictive view of immediate aftermath and did not witness with own unaided senses but was told
- conclude that mere grief in any case is insufficient to be classed as psychiatric injury *Vernon v Boseley* so the claim will fail.

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.

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

Mark Scheme 2578
January 2007

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.**

Mark 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 Compare the relative effectiveness of the torts of private nuisance and public nuisance. [50]

Potential answers **MAY**:

Assessment Objective 1

(25 marks)

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

Explain the need for the claimant to show an interest in the land affected by the nuisance for a successful claim *Malone v Laskey, Hunter v Canary Wharf*

Identify the types of indirect interference giving rise to liability eg noise *Sturges v Bridgman*, smoke and fumes *St Helens Smelting v Tipping*

Identify 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*

Explain the term unlawful – meaning unreasonable and identify the elements that may be taken into account in determining whether the use of land is unreasonable:

- Locality what is a nuisance in one area may not be in another *Sturges v Bridgeman, Kennaway v Thompson, Laws v Florinplace*
- Duration – a nuisance must involve continuous behaviour *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*

Identify the potential defendants: occupier of the land *Tetley v Chitty*, creator of the nuisance *Southport Corporation v Esso Petroleum*, person adopting the nuisance, independent contractors, and landlords

Explain the possible defences – prescription *Sturges v Bridgman*, statutory authority *Allen v Gulf Oil*, local authority planning permission *Gillingham BC v Medway Dock & Wheeler v Saunders*, act of a stranger *Sedleigh Denfield v O’Callaghan*, and the effect of public policy *Adams v Ursell, Miller v Jackson*

Identify the remedies – damages *Halsey*, injunctions *Kennaway v Thompson*,

Define public nuisance – something which affects the comfort and convenience of a class of people

Explain that a claimant must suffer special damage over that suffered by the class

Tate & Lyle v GLC which can involve personal injury *Castle v St Augustine Links*, and financial loss *Rose v Miles*

Explain that most actions involved the highway eg obstruction to the highway and condition of the highway

Explain that public nuisance is also a crime

Assessment Objective 2**(20 marks)**

Compare the effectiveness of private nuisance in resolving and even preventing disputes between neighbours:

- the limitation on potential claimants eg *Hunter v Canary Wharf*
- the difficulties of establishing use of land as unreasonable
- the relative ease of proving nuisance where there is damage in comparison with interference with enjoyment of land
- the potential unfairness of liability being dependent on the locality in which the nuisance occurs
- the fact that many modern nuisances will be covered by the defence of statutory authority or planning permission
- the effects of malice by either the claimant or defendant
- the fairness of the defences to both claimant and defendant
- the problem of seeking the correct remedy *Miller v Jackson*
- the fact that statutory nuisance through the Environment Act and the Environmental Protection Act is available

Compare the effectiveness of public nuisance:

- the lack of clarity in the definition
- the fact that there is no need to show an interest in the land makes the action less restrictive than private nuisance
- the meaning of class of people – although this should be relatively simple to establish in each case
- is a crime as well as a tort so may have more deterrent value
- is brought by the Attorney-General on behalf of each party affected which may mean it is harder to bring but more likely to be successful – and in any case it means that an injunction can be gained when it would be difficult for an individual to bring an action
- the problem of proving special damage – if this cannot be shown then no action is 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.

- 2 'It is only fair that the keeper of an animal, whether of a dangerous or non-dangerous species, should be liable for all damage done by the animal and the rules in the Animals Act 1971 reflect this.'

Consider the accuracy of the above statement.

[50]

Potential answers **MAY**:

Assessment Objective 1

(25 marks)

Define keeper – either the owner of the animal or the head of a household in which a person under 16 is the owner of the animal

Define dangerous species under the Act:

- Defined in s6(2) – animal not commonly domesticated in UK and with characteristics that, unless restricted, likely to cause severe damage or any damage caused likely to be severe
- Dangerous is a question of fact in each case *Behrens v Bertram Mills Circus*
- Keeper is strictly liable

Define where there is liability for non-dangerous species under the Act:

- Duty is under s2(2)
- The keeper liable if:
 - a) The damage is of a kind animal is likely to cause unless restrained or if caused by animal is likely to be severe; and
 - b) The likelihood or severity of damage is due to characteristics of individual animal or species or of species at specific times; and
 - c) The keeper knows of the characteristics

Use any relevant case

Explain the defences:

- S5(1) – Damage due entirely to fault of victim *Sylvester v Chapman*
- S5(2) – Victim voluntarily accepted risk *Cummings v Grainger*
- S5(3) – Animal was either not kept for protection or if so then it was reasonable to do so *Cummings v Grainger*
- S10 – Contributory negligence *Cummings v Grainger*

Credit any reference to straying livestock (although the wording of the question makes this unnecessary)

Assessment Objective 2**(20 marks)**

Consider the aspects of the proposition:

- That it is only fair that the keeper of an animal should be liable for all damage done by the animal
- That the Animals Act 1971 achieves this principle

Consider that the definition of keeper is very broad even imposing liability on the head of households where children keep the animal – so that there is a greater chance of an action and thus the Act does satisfy the principle – although there may be an element of unfairness on the person made liable

Consider the fact that in the case of ‘dangerous’ animals liability is strict so that the keeper is liable for any damage caused by the animal – so the Act does reflect the principle

Consider the fact that the definition of dangerous may even include animals that are not actually dangerous *Tutin v Chipperfields*, *Behrens v Bertram Mills Circus* – so this may be potentially unfair to the keeper unless one of the defences in s5 or s10 apply

Consider the more restrictive rules on non-dangerous species – dependent on specific characteristics and knowledge of those characteristics so that eg ‘the dog always gets the first bite free’ – so this may limit liability and be unfair in certain circumstances

Consider the approach of the court in *Mirhavedy (FC) v Henley* which appears to have created a form of strict liability in the case of non-dangerous species – and so the Act seems to satisfy the principle

Consider the fact that there is no need for a link between the characteristics and the damage *Curtis, Jandrill v Gillett*, *Dhesi v West Midlands Police* which also makes a claim easier

Consider the difficulty of distinguishing between permanent and temporary characteristics *Kite v Japp*, *Gloster v Greater Manchester Police*, *Curtis v Betts* which makes a claim harder to bring

Consider the position in relation to animals used for guard purposes *Cummings v Grainger*

Consider the possible impact of the defences on claims – and the extent to which this reduces the possibility of a successful claim even though the animal has caused damage – which would seem to go against the Act mirroring the principle

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 Megan lives downhill from her next door neighbour, Barry, a painter and decorator. Barry keeps tins of highly toxic stripper in his back garden. Rain makes the tins rusty, the seals split and the paint stripper escapes downhill into Megan's garden and into her ornamental pond, killing all of her expensive fish.

Some local youths, who Megan has told off on a number of occasions break into Barry's shed, take tins of paint and pour the paint under the fence so that it escapes onto Megan's garden killing her prize Dahlia flowers. Megan has often won first prize at the local flower show and was expected to win this year.

Helen lives on the other side of Barry's house, uphill from him. Following a sharp frost Helen's water pipes burst and the water escapes down hill flooding Barry's house and ruining a stock of wall paper in one of the rooms that is worth £500.

Discuss the potential liability of Barry and of Helen including any possible defences.

[50]

Potential answers MAY:

Assessment Objective 1

(25 marks)

Define the tort of *Rylands v Fletcher* – liability for a bringing onto land and accumulating a thing likely to cause mischief if it escapes, amounting to a non-natural use of land, and the thing does escape causing damage

Explain the various elements of the tort:

- The bringing on and accumulation *Rylands v Fletcher*, *Ellison v MOD* (no liability for accumulations caused naturally, *Giles v Walker* (no liability for natural accumulations)
- Thing likely to cause mischief if it escapes *Musgrove v Pandelis* (does not need to be inherently dangerous *Shiffman v The Order of the Hospital of St John of Jerusalem*)
- Non-natural use *Cambridge Water v Eastern Counties Leather* (some things are always non-natural use), *Rickards v Lothian*, *Perry v Kendrick's Transport* (others may depend on whether the context is domestic or commercial), *Rylands v Fletcher* (or upon the volume of the accumulation)
- Escape – compare *Read v Lyons* (an escape from land within the defendant's control to land not in his control) with *British Celanese v Hunt* (an escape from circumstances within the defendant's control to circumstances over which he has no control) – (note also that it is not the thing itself which has to escape *Miles v Forest Rock Granite*)
- Harm must be foreseeable *Cambridge Water v Eastern Counties Leather plc*, *Transco plc v Stockport MBC*

Credit any reference to the Prevention of Fires (Metropolis) Act 1774

Explain the available defences:

- Act of God *Nicholls v Marsland*
- Act of a stranger *Perry v Kendrick's Transport*
- Consent *Peters v Prince of Wales Theatre*

Assessment Objective 2**(20 marks)**

Identify that the problem involves the tort of *Rylands v Fletcher*

In the case of any claims by Megan against Barry:

- Identify that Megan can be a claimant – both under *Read v Lyons* principles or under *British Celanese v Hunt*
- Discuss whether there is a bringing onto land and accumulation of a thing likely to do mischief if it escapes – this could be true of both the toxic paint stripper and the paint
- Discuss whether there is a non-natural use – relate to commercial use *Transco plc v Stockport MBC* – the toxic paint stripper is clearly a chemical that would come under Lord Goff's point in *Cambridge Water* that some things are always a non-natural use of land – the paint is still likely to be seen as non-natural if it is stored in sufficient volume *The Charing Cross* case
- Discuss the fact that there is an escape and damage in both cases – the killing of the fish and of the flowers
- Discuss also whether the harm is foreseeable in the circumstances – seems likely in the case of the fish because of the careless way in which the stripper is stored, maybe less so in the case of the flowers *Cambridge Water*, *Transco*
- Discuss whether any defences apply in the circumstances – Act of God looks the only possibility for the killing of the fish but there is no extreme weather conditions so would fail, act of a stranger is possible for the destruction of the flowers

In the case of a claim by Barry against Helen:

- Identify that Barry is a potential claimant *Read v Lyons*
- Discuss that there is a bringing onto land and accumulation of a thing liable to cause mischief if it escapes – the water
- Discuss whether or not there is non-natural use – *Rickards v Lothian* would suggest that, as it is domestic use, there is not
- Discuss the issue of foreseeability – depends on what test of remoteness is used
- Discuss the possible defences – only consent seems possible, as the neighbours live on a hill – bit is unlikely to succeed

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 Jack, a police officer, is patrolling an alley between rows of terraced houses at 3 o'clock in the morning when he sees Buster and Ronnie coming out of the back gate of one of the houses. Jack, thinking that they are burglars, shouts "Stop right there". Buster turns, beckons with his finger and says "You make me, if you think you're hard enough". Jack then punches Buster on the nose with such force that it knocks Buster unconscious. Ronnie runs away. Jack quickly handcuffs the unconscious Buster to the gate post and runs after Ronnie. Jack catches up and grabs hold of Ronnie's shoulder. Ronnie shouts. "Take your hand off me or you'll get worse than you gave my mate". However, Jack manages to overpower Ronnie and returns with him to Buster. Jack takes the handcuffs off Buster. When Buster regains consciousness Jack takes Buster and Ronnie to the police station. In questioning them Jack discovers that Buster and Ronnie were coming out of the back gate of their own house.

Discuss any legal liability of Jack, Buster and Ronnie arising out of the above situation.

[50]

Potential answers **MAY**:

Assessment Objective 1

(25 marks)

Identify that there are three types of trespass to the person: assault, battery, false imprisonment.

Define assault – intentionally and directly causing the other to apprehend imminent battery

Explain the essential elements of the tort:

- Intention concerns effect produced in claimant *Blake v Barnard*
- Traditionally required an active threat *Read v Coker*
- Words alone were insufficient *Tuberville v Savage* (but see *R v Ireland*, *R v Burstow*)

Define battery – intentionally and directly inflicting unlawful force

Explain the essential elements of battery:

- Must involve intention not carelessness *Letang v Cooper*
- And requires direct contact *Scott v Shepherd*
- Requirement of hostility – compare *Wilson v Pringle* with *Collins v Wilcock*

Possible defences – *volenti* *Simms v Leigh RFC* and *Condon v Basi*, inevitable accident *Stanley v Powell*, 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 a short period *White v WP Brown*
- Need not be aware of the restraint *Meering v Graham White Aviation*, *Murray v MOD*

Possible defences – lawful arrest and lawful detention *Tims v John Lewis*, *White v WP Brown*

Use any other relevant cases.

Assessment Objective 2**(20 marks)**

In the case of Jack's original words:

- Words alone generally are not assault and there is no additional threat here
- This could not be seen as a lawful arrest since no caution has been given

In the case of Buster's reply:

- Words alone do not generally amount to an assault – but Buster has made what amount to a threatening gesture and also appears to invite confrontation – and see also *R v Ireland*, *R v Burstow* which may be persuasive

In the case of Jack hitting Buster and knocking him unconscious:

- Technically this can amount to a battery – unwanted force
- The question is whether Jack can claim that he acted in self defence – he may have genuinely feared being attacked by Buster but appears not to have used reasonable force

In the case of Jack handcuffing Buster to the gate post:

- This does amount to a total restraint
- It does not matter that Buster is unaware of it
- As there is no lawful arrest it is not a lawful detention so can be false imprisonment

In the case of Jack grabbing hold of Ronnie's shoulder:

- Technically this can be a battery
- On the basis of *Collins v Wilcock* there is sufficient unwanted force applied

In the case of Ronnie's threat:

- It is the apprehension it causes in Jack that matters not whether Ronnie actually intended to carry out the threat
- Ronnie has made no physical move
- So it is possibly an assault on the basis of *Ireland and Burstow*

In the case of the pair being taken to the station and questioned:

- There is no indication that the two have been lawfully arrested so the detention is equally unlawful and false imprisonment can be claimed

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

**Mark Scheme 2579
January 2007**

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 Source 1 [page 2 lines 34-36 Special Study Materials] the author suggest that “*It is fair to say that certain judges deem it to be within their function to create new principles of law while others believe that any far-reaching change should be left to Parliament...*”

Compare the literal and purposive approaches to statutory interpretation in the light of the above statement. [30 marks]

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

Potential answers **MAY**:

Assessment Objective 1

Define the two approached to statutory interpretation: the literal approach and the purposive approach:

- the literal approach takes meaning from the words themselves – so the literal rule operates by the judge giving the words their plain, ordinary meaning *Fisher v Bell*
- the purposive approach concentrates on the apparent purpose of introducing the legislation and therefore the judge can go beyond the words themselves to find the purpose *Royal College of Nursing v DHSS*.

Credit any reference to the literal rule and golden rule narrow approach (literal rule) and the mischief rule and golden rule broad approach (purposive approach).

Credit any reference to intrinsic aids and language rules (literal approach), or to extrinsic aids (purposive approach).

Use any relevant cases.

Assessment Objective 2

Discuss the fact that whatever rule is used judges claim to be seeking Parliament's intention so in effect there is no room to create new law.

Discuss the fact that the literal rule respects parliamentary sovereignty by focusing on the words alone eg Lord Simonds' criticism of Lord Denning in *Magor & St Mellons v Newport Corporation* as a 'naked usurpation of the legislative function'.

Discuss on the other hand that use of the literal rule can obviously frustrate Parliament's clear purpose eg *Fisher v Bell* where Parliament was forced to introduce new legislation.

Discuss also how use of the literal rule can lead to absurdity *Whiteley v Chappell* or injustice *Berriman* which is not likely to be Parliament's intention.

Discuss the fact that the purposive approach is criticised for allowing judges to be too creative eg Lord Denning and 'filling in the gaps' in *Magor & St Mellons v Newport Corporation*.

Discuss the fact that the purposive approach can be used to develop the law to match developments in society *Royal College of Nursing v DHSS*.

Credit any reference to the fact that the mischief rule can be used in the same way eg *Corkery v Carpenter* and can be used to make assumptions about Parliament's intentions

eg *Smith v Hughes*.

Credit any comment on the broad approach of the golden rule which does actually create new law for policy reasons eg *Re Sigsworth*.

Credit any reference to the golden rule narrow approach being used to avoid defeating Parliament's intention eg *R v Allen*.

Make any other relevant comment.

Reach any sensible conclusion.

Assessment Objective 3

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

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

- 2 Discuss the extent to which the decision in *McKew v Holland & Hannen & Cubitts (Scotland) Ltd* [Source 7 page 6 Special Study Materials] amounts to a development of the law on causation. [15 marks]

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

Potential answers **MAY**:

Assessment Objective 1

Briefly describe the facts of the case (in Source 7): the claimant's leg was injured as a result of the defendant's negligence, claimant then had weakness in his leg which was also prone to giving way without warning, he descended a steep staircase with no handrail and did not go cautiously and then fell when his leg gave way and suffered worse injuries. Identify the key elements of the defence of *novus actus interveniens* by the claimant, no liability on defendant because claimant's actions broke chain of causation. Link to any relevant case on *novus actus* eg *Weiland v Cyril Lord Carpets*.

Assessment Objective 2

Identify the main problem in the case, whether or not the claimant's actions broke the chain of causation relieving the defendant of liability.

Discuss the circumstances in which the defence will apply:

- claimant's intervening act was the real cause of the injury, loss or damage
- the claimant not the defendant was at fault.

Discuss the defendant's argument in the case, that the injury was not the probable or foreseeable cause of the claimant's injury.

Discuss the reasoning given by the court for applying the defence:

- claimant must act reasonably and carefully *The Oropesa*
- the claimant here acted in a way that was unreasonable and showed insufficient regard for his own safety.

Discuss the significance of the development made in the case: the claimant himself must act unreasonably for a *novus actus interveniens* to break the causal chain *Weiland v Cyril Lord Carpets*, *The Oropesa*.

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 12 [page 9 lines 9-10 Special Study Materials] the author suggests that *"The requirement [in contributory negligence] that the reduction be just and equitable means that there is no single test for determining the level of the reduction in damages"*.

Discuss the ways in which the courts have developed the test for reduction of damages for contributory negligence in the light of the above statement.

[25 marks]

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

Potential answers **MAY**:

Assessment Objective 1

Explain the basic principles of the defence, originated as a complete defence but under the Law Reform (Contributory Negligence) Act 1945, while the defendant is still liable, damages will be reduced by the extent to which the claimant has been responsible for the harm he has suffered.

Explain what must be proved for the defence to succeed:

- the claimant has failed to take proper care for his own safety
- this failure has partly caused the damage that the claimant has suffered.

Explain that the court has a discretion to reduce damages to the extent that it feels is 'just and equitable' in the circumstances and identify examples:

- not wearing crash helmets *O'Connell v Jackson*
- not wearing seat belts *Froom v Butcher*
- not following works safety rules *Jones v Livox Quarries*
- claimant placing himself in danger *Davies v Swan Motor Co*
- committing suicide while in police custody *Reeves v Commissioner of Police*
- being a passenger in a stolen vehicle *Pitts v Hunt*.

Assessment Objective 2

Discuss the fact that the defence is a partial defence only, not a complete defence, so it allows judges to reduce damages by the proportion to which the claimant is responsible *Sayers v Harfow UDC*.

Discuss whether in fact the requirement that the reduction is just and equitable means that there is 'no single test for determining the level of the reduction':

- the test is about not overcompensating or under compensating the victim and not imposing an unfair burden of responsibility on the defendant at the same time as imposing liability for his wrong doing
- very often the defendant will be insured so will not bear the burden of paying while the claimant is less likely to be insured for the reduction and so will bear all of his burden with the reduction - this in itself is not equitable
- existing assessments seem arbitrary and not linked to equitable apportionment eg 15% in *Froom v Butcher* for not wearing a seat belt, 20% in *Dann v Hamilton* for accepting a lift from a drink driver, 33.3% in *Stinton v Stinton* for the same, 25% in *Sayers v Harfow UDC* for climbing on the toilet roll holder
- 100% contributory negligence is also possible *Jayes v IMI (Kynoch)* and the trial judge in *Reeves v Commissioner of Police* (although the House of Lords changed this to 50%) which seems to support the theory that there is no single test.

Discuss John Cooke's view (Source 12) that a test of causative potency should logically result in a 50/50 apportionment of blame.

Discuss whether the requirement has affected the development of the defence:

- apportionment seems to be decided on a case by case basis
- the move from the defence being a complete defence prior to the Act would seem to be the bigger development.

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 issues of causation in fact will affect each of the following potential claims.
- (a) A lorry negligently driven by Rashpal recently crashed into Gurdeep's house. As a result of the damage caused by the crash, Gurdeep will have to have the house demolished and rebuilt because it is not safe in its present state. Before work starts on the house a plane, negligently piloted by Stan, also crashes into Gurdeep's house and the whole house is flattened as a result. [10]
- (b) Rudi has worked for several employers as a painter using highly toxic paints that are known to provoke lung cancer. He has never been provided with any protective face masks. Rudi has recently been diagnosed as suffering from terminal lung cancer. A number of his employers have subsequently gone out of business and it is not known at what point Rudi contracted the illness. Rudi's current employer is resisting Rudi's claim for damages. [10]
- (c) Ahmed goes to his doctor, Harold, because he is worried about a mole that has increased in size and become very sore. Harold fails to examine him and says that it is quite common. Six months later Ahmed is diagnosed as having skin cancer and is given only a 25% chance of being cured. Medical evidence shows that there would have been a 45% chance of Ahmed being cured if Harold had sent him for tests when he first approached him and the cancer had been diagnosed at that time. [10]

[30 marks]

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

Use any relevant cases in illustration.

Assessment Objective 2

In the case of a):

- identify that Rashpal is negligent and on the 'but for' test is liable
- recognise that Stan is also negligent and the issue is whether Rashpal is relieved of any liability
- apply *Performance Cars v Abraham*, since Stan has not in effect altered or increased the damage to the house Rashpal is liable in full.

In the case of b):

- identify that there is negligence by all the employers for failing to provide the appropriate safety equipment, masks
- identify that the 'but for' test is hard to apply in the situation
- recognise that *Wilsher* on multiple causes cannot apply because there is only a single cause, exposure to the toxic paint
- recognise the similarity to *Fairchild v Glenhaven* and consider whether each employer has 'materially increased' the risk of disability - if so the current employer can be sued.

In the case of c):

- discuss whether there may be negligence on Harold's part - failure to examine is obvious negligence *Barnett v Chelsea & Kensington*
- recognise the similarity to *Hotson* and to *Greg v Scott* Amandeep's chances of recovery have been reduced from 45% to 25%
- Identify that there is no recovery for loss of a chance.

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

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

**Advanced GCE Law (3839/7839)
January 2007 Assessment Series**

Unit Threshold Marks

Unit		Maximum Mark	a	b	c	d	e	u
2568	Raw	60	42	37	32	27	23	0
	UMS	90	72	63	54	45	36	0
2569	Raw	60	46	40	34	29	24	0
	UMS	90	72	63	54	45	36	0
2570	Raw	60	54	48	43	38	33	0
	UMS	120	96	84	72	60	48	0
2571	Raw	100	73	65	57	50	43	0
	UMS	90	72	63	54	45	36	0
2572	Raw	100	80	71	63	55	47	0
	UMS	90	72	63	54	45	36	0
2573	Raw	100	79	71	63	55	48	0
	UMS	120	96	84	72	60	48	0
2574	Raw	100	80	71	63	55	47	0
	UMS	90	72	63	54	45	36	0
2575	Raw	100	72	64	56	49	42	0
	UMS	90	72	63	54	45	36	0
2576	Raw	100	79	71	63	55	48	0
	UMS	120	96	84	72	60	48	0
2577	Raw	100	74	66	58	51	44	0
	UMS	90	72	63	54	45	36	0
2578	Raw	100	79	69	60	51	42	0
	UMS	90	72	63	54	45	36	0
2579	Raw	100	79	71	63	55	48	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)

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

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

	A	B	C	D	E	U	Total Number of Candidates
3839	11.9	28.9	55.1	78.6	92.0	100	376
7839	3.3	24.6	54.1	82.0	95.1	100	65

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