

Mark Schemes for the Units

June 2007

3839/7839/MS/R/07

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CONTENTS

Advanced GCE Law (7839)

Advanced Subsidiary GCE Law (3839)

MARK SCHEMES FOR THE UNITS

Unit	Content	Page
2568	Machinery of Justice	1
2569	Legal Personnel	11
2570	Sources of Law	21
2571	Criminal Law 1	31
2572	Criminal Law 2	41
2573	Criminal Law Special Study	49
2574	Law of Contract 1	59
2575	Law of Contract 2	69
2576	Law of Contract Special Study	77
2577	Law of Torts 1	87
2578	Law of Torts 2	97
2579	Law of Torts Special Study	107
*	Grade Thresholds	116

**Mark Scheme 2568
June 2007**

- 1 Describe the powers of the police to arrest a person on the street. [20]

Mark Levels

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

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of rights set out under the Police and Criminal Evidence Act 1984 as amended by the Serious Organised Crime and Police Act 2005 and the Criminal Justice Act 2003 and the Codes of Practice.

Arrest

- S.24 PACE as amended by SOCPA 2005 - sets out the power to arrest without warrant
- If a person has committed an offence or is in the act of committing an offence or is about to commit an offence or there are reasonable grounds for suspecting one of these occurrences. (even if no offence is actually committed)
- There is a necessity test and this power of arrest can only be used for one of the following reasons - to enable the name and address of suspect to be ascertained, to prevent physical injury, loss or damage to property, causing an offence against public decency, obstruction of the highway, to allow effective investigation of the offence, protect a vulnerable person or prevent any prosecution being hindered by the disappearance of the person in question.
- Arrest for breach of the peace (common law power)
- Arrest for breaching bail conditions
- Any other power of arrest eg aggravated trespass under the Criminal Justice and Public Order Act 1994
- Arrest with a warrant
- Police must tell person they are under arrest and the reason for arrest, why the arrest is necessary and give a caution. They also have to identify themselves to make arrest lawful if not in uniform.
- Reasonable force may be used
- Credit the fact that the arrested person may be searched for anything that may help them escape.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 2 Describe the different types of custodial and community sentences available to the courts for adult offenders. [20]

Mark levels

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

Potential answers **MAY**:

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

- Mandatory or discretionary life
- Term of years
- Minimum sentences for certain crimes eg firearms offences
- Home detention Curfew - allows early release from prison with curfew attached.
- New indeterminate sentence for public protection
- Extended sentences for certain violent or sexual offences
- Custody plus – short period of custody followed by longer period on licence
- Intermittent custody- sentence between 26 and 51 weeks must serve 14-90 days in custody
- Suspended sentence – 28-51 week sentence suspended for between 6 months and 2 years, can be combined with a community sentence – may be referred to as custody minus.

Community sentences

New generic “community order” under Criminal Justice Act 2003 which can include a range of requirements such as:

- Unpaid work requirement- unpaid work in the community (40-300 hours)
- Activity requirement.
- Prohibited activity requirement
- Supervision requirement - the offender is put under the supervision of a probation officer.
- Drug rehabilitation requirement.
- Alcohol treatment requirement
- Mental health treatment requirement
- Residence requirement
- Exclusion requirement – offender not allowed to go to a certain place.
- Curfew requirement - for a certain number of hours a day the offender has to be in a specific place. (May include electronic tagging)

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 Describe the different methods of Alternative Dispute Resolution available to deal with civil cases. Do not include tribunals. [20]

Mark levels

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

Potential answers **MAY**:

Assessment Objective 1

Describe each of the different methods of ADR.

- Negotiation – parties reach agreement themselves with no third party. May use solicitors.
- Mediation - neutral person helps parties reach a compromise solution. Mediator does not offer an opinion.
- Conciliation - conciliator goes beyond mediation in that they have the power to suggest grounds for compromise or a settlement.
- Mediation and conciliation both allow the parties to have control over the resolution process as they can withdraw at any time and a resolution to the dispute cannot be imposed on them as they must agree to it.
- Arbitration – both parties voluntarily agree to let their dispute be left to the judgment of an arbitrator or a panel of arbitrators who is neutral. Agreements to arbitration are governed by the Arbitration Act 1996 and are usually in writing. Agreement to go to arbitration can be made before a dispute arises [usually by a *Scott v Avery* clause in a contract]. Agreement will either name an arbitrator or provide a method for choosing one. A court may also appoint an arbitrator. The parties agree the procedure for hearings and this ranges from a ‘paper’ arbitration to a formal court like hearing. Arbitration decisions are binding on the parties and can be enforced by the courts if necessary. An award by an arbitrator can be challenged in the courts for serious irregularity in the proceedings or on a point of law.

Credit mention of the Centre for Dispute Resolution or any other service available for mediation or conciliation will also be rewarded eg ACAS

Credit will be given for any other details.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

4 Describe the process and the factors applied in deciding whether to grant bail. [20]**Mark levels**

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

Potential answers **MAY**:

Assessment Objective 1

Demonstrate a clear understanding of the Bail Act 1976 and subsequent amendments in the Bail (Amendment) Act 1993, the Crime and Disorder Act 1998 and the Criminal Justice Act 2003

- Identify that bail enables a defendant to remain at liberty until the next stage of their case.
- Show a clear understanding that both police and magistrates can grant bail and the powers of the magistrates' court
- General right to bail
- Reasons for refusing bail eg failure to surrender to custody, likely to commit further offences or interfere with witnesses/the course of justice.
- Factors to be taken into account including: nature and seriousness of offence, antecedents of defendant, previous bail record, strength of evidence against defendant.
- Demonstrate a clear understanding of unconditional and conditional bail, and the types of conditions that may be imposed on a defendant including sureties
- Bail only granted in exceptional circumstances for murder, attempted murder, manslaughter, rape or attempted rape if the defendant has already served a custodial sentence for such a crime.
- Bail is restricted for adult drug users under the Criminal Justice Act 2003 in certain circumstances.

Candidates may also mention the process involved in making renewed applications and an appeal against a rejected bail application by the defendant but it is not necessary for full marks.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

5 Ashley [aged 25] has been charged with the theft of a pair of jeans.

- (i) Identify the two courts in which Ashley could be tried and who would try her in those courts. [5]
- (ii) Discuss whether or not Ashley should have the option of choosing either court. [15]

Mark levels	(i)	(ii)
Level 4	5	13-15
Level 3	3-4	9-12
Level 2	2	5-8
Level 1	1	1-4

Potential answers **MAY**:

Assessment Objective 2

- (i) Identify Ashley's as a triable either way offence.
Identify the Magistrates' Court tried by magistrates or district judge and Crown Court tried by judge and jury.
- (ii) Discuss whether a defendant should have the right to choose trial by jury or should it be up to the magistrates. The following points may be considered and commented on:
- Plea of guilty results in loss of right to Crown Court trial
 - Magistrates initially decide whether to accept jurisdiction
 - On a plea of not guilty the defendant can elect the mode of trial. Even for very minor theft. Should there be a monetary limit?
 - Point out the different acquittal rates in each court and that conviction is more likely in the Magistrates' Court.
 - Strong opposition to abolishing the right to jury trial as it is seen as safeguarding people's liberty.
 - The Government has tried to limit the right to trial by jury but have been defeated in the House of Lords on several occasions.
 - Crown Court trial is much more expensive than trial in the Magistrates' court.
 - Many defendants elect trial in the Crown Court and plead guilty before trial.
 - Many offences that were triable either way have been reclassified as summary.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 6 Discuss whether or not the powers of the police to detain and interview a person at the police station are adequate for the investigation of crime. [20]

Mark levels

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

Potential answers **MAY**:

Assessment Objective 2

Demonstrate knowledge of powers set out under the Police and Criminal Evidence Act 1984 and the Codes of Practice most recently amended in 2003 and how these enable the police to investigate crime during a suspect's detention.

- To detain a suspect for up to 24 hours normally but that can be extended to 36 hours with permission of a police officer of the rank of superintendent or above (senior officer) for any indictable offence (amended to 36 hours plus 12 hours by SOCPA 2005) or up to 96 hours if authorised by magistrates for an indictable offence. Comment on whether these time limits are adequate for police investigation. Discussion of the extended time limits for suspected terrorists will also be credited.
- For indictable offences a senior officer may authorise a delay of up to 36 hours to the right of the suspect to have someone informed of their arrest if they believe that it may *inter alia* lead to interference with evidence or allow others to escape. Comment on this power.
- For indictable offences a senior officer may authorise a delay of up to 36 hours to the right of the suspect to legal advice for similar reasons. This would be very rarely justified. Comment on this power.
- Detention is monitored by a custody officer who keeps a custody record to ensure the codes of practice are adhered to. Comment on fact that custody officer is often junior to the interviewing officer.
- Power to interview suspects provided it is recorded and caution given.
- Point out that police powers are limited by the codes of practice and breach of the codes may lead to evidence being excluded from court.

Comment on whether these powers are adequate to enable the police to investigate 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 eg *R v Samuel*

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 7 Discuss how the aims of sentencing are taken into account when sentencing offenders. [20]

Mark Levels

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

Potential answers **MAY**:

Assessment Objective 2

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

- Punishment – retribution for wrongdoing, society’s revenge for the offence. ‘Let the punishment fit the crime’. Based on proportionality or ‘just desserts’ it contains an element of denunciation – society’s outrage at the offence committed. Failure by courts to punish according to society’s expectations can lead to vigilante action but if used in isolation from other aims a sentence may be disproportionate. In particular used for very serious crimes by offenders eg murder or robbery.
- 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.
 - 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. Usually more individualised sentences rather than tariff sentences and can lead to inconsistency in sentencing. It is now accepted that custodial sentences only have very limited rehabilitative effect. Rehabilitation seen as particularly important for young offenders.
- Protection of the public by preventing the offender from re-offending. Eg Long prison sentences, electronic tagging or disqualification from driving.
- Reparation – considers the victim when sentencing the offender. Compensation orders used to make offender make amends to the victim. Young offenders are now often required to apologise to the victim

Comment on how these aims sometimes conflict with one another and how more than one aim may be used in deciding the sentence for an offender.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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 a sensible and informed conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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, and reach a conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited ability to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited ability to present logical and coherent arguments and communicates relevant material in a very limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Mark Scheme 2569
June 2007**

- 1 Describe the training, work and organisation of solicitors. [20]

Mark Levels

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

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of training

- academic: law degree (7 core subjects) or other degree plus PgDL/CPE to cover core subjects
- vocational: 1 year Legal Practice Course, includes dealing with client, accounts
- practical: 2 years working in a solicitors office shadowing and working under supervision

Demonstrate knowledge of work

- give advice on a range of legal topics
- conveyancing, commercial and residential
- wills and probate
- litigation, civil and criminal
- commercial, setting up companies, conveyancing, take overs
- some advocacy, in Magistrates and County Court only, unless has certificate of advocacy

Demonstrate knowledge of organisation

- mainly work in partnerships, dealing with private clients and businesses; most solicitors specialise in one area
- can also work as employed solicitors in companies, CPS, local authorities
- represented and disciplined by Law Society

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 2 Describe and explain conditional fee agreements and publicly funded Legal Representation in civil cases. [20]

Mark Levels

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

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of conditional fee agreements

- introduced by Courts and Legal Services Act 1990
- agreed with solicitor at beginning of case
- no win, no fee
- if do win, fee uplifted by agreed amount (maximum 100% of standard fee)
- uplift usually payable by other side
- client usually takes out insurance against losing and paying other side's costs if win, premium payable by other side
- not for family cases

Demonstrate knowledge of Legal Representation

- Access to Justice Act 1999
- covers preparation (Investigative Help) and representation (Full Representation)
- application to Community Legal Service
- means tested; income and capital
- upper financial cut off point, may pay contributions
- also assessed on chances of success
- priority given to welfare of children, social welfare, domestic violence cases
- not for personal injury cases, defamation
- not for small claims or tribunals

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 Describe the roles of judges in civil cases. Include both courts of first instance (trial courts) and appeal courts. [20]

Mark Levels

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

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of role in House of Lords

- decide issues of law in important cases
- can change, amend or clarify law where appropriate

Demonstrate knowledge of role in appeal courts

- review hearing at first instance, whether law correctly decided and whether hearing carried out properly
- decide whether result wrong
- can change decision or uphold
- can revise award

Demonstrate knowledge of role in courts of first instance

- ensure hearing carried out fairly
- decide questions of law
- decide verdict and award, in small claims procedure help parties put their case
- direct jury where used

Demonstrate knowledge of other roles in civil cases

- as case manager; decide track, hold preliminary hearings to clarify issues, keep parties to time limits, may be responsible for running court office

Credit also knowledge of judicial review and the Human Rights Act but not needed for maximum marks.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

4 Describe the selection and training of lay magistrates.**[20]****Mark Levels**

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

Potential answers **MAY**:**Assessment Objective 1**

Demonstrate knowledge of selection

- application
- two interviews, one to assess attitudes and one practical and based on sentencing
- advisory committee actively try to achieve a good cross section
- committee will be looking for people with good character, communication skills, judgement, social awareness and commitment
- names put forward to DCA which appoints
- must be between 18 and 65 and usually live or work locally
- will not be chosen if have serious conviction, have a conflict of interests (eg police officer, relative on bench) or a condition which would interfere with their duties

Demonstrate knowledge of training

- reading and distance exercises re role and responsibilities
- induction before sitting in court for 18 hours plus three court observations
- visits to prison, young offenders institution and probation service
- six sittings with mentor
- consolidation training (12 hours) after two years
- covers law and procedure and development of skills, eg decision making, communication
- appraisal after one year
- MNT2

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 5 Discuss the advantages and disadvantages of the current system of choosing judges. [20]

Mark Levels

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

Potential answers **MAY**:

Assessment Objective 2

Demonstrate brief knowledge of the selection of judges

- have to have spent some years (10/7 years) as a barrister or solicitor
- usually sit as a part time judge before being chosen for a permanent position

Discuss advantages of current system

- all judges have experience and have developed knowledge of the law
- usually have experience of way court and advocates work
- experienced at dealing with clients, understand parties' point of view
- mature, not appointed until in 40s
- selected from known pool
- senior judges chosen from those who have already shown ability at lower level
- many senior judges have spent time at the Bar, and have established a tradition of independence
- senior judges have demonstrated independence, especially in judicial review and use of the Human Rights Act
- although still mainly white and male at the top, an increasingly diverse group now becoming judges and superior judges gradually becoming more varied
- new Judicial Appointments Commission reduces political influence and bases selection solely on merit
- wider range of candidates actively being sought by JAC

Discuss disadvantages of current system

- experience as an advocate does not necessarily make a good judge
- possibly have become set in ways by time appointed
- come from a small group of society - mainly white, male and from the older universities (especially superior judges), limited outlook and has appearance of bias for some defendants
- limited training, learning on the job
- new judges expected to take criminal cases even if no experience in that area

Credit any relevant conclusion, eg since CLSA greater diversity and JAC actively seeking a greater diversity, criticisms of current system mainly answered

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 6 Discuss the criticisms that have been made of the public funding available for criminal cases. [20]

Mark Levels

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

Potential answers **MAY**:

Assessment Objective 2

Demonstrate knowledge of the public funding available in criminal cases

- Access to Justice Act 1999
- run by Criminal Defence Service, part of Legal Services Commission
- different types for different circumstances
- sometimes free and sometimes means tested

Discuss criticisms of Duty Solicitor scheme at police station

- variable quality of advice given *but* increased training and qualification now needed
- not all suspects avail themselves *but* free to all and suspects must be made aware

Discuss criticisms of Duty Solicitor at Magistrates Court

- representation only available in certain cases but free and Duty Solicitor can advise about asking for an adjournment to obtain representation

Discuss criticisms of Advice and Assistance

- abrupt cut off point on financial limits
 - may have difficulty finding a contracted solicitor, often fairly junior/inexperienced
- but*
- help given in applying for Legal Representation

Discuss criticisms of Legal Representation

- legal advisors vary in their assessment of the 'interests of justice test'
 - can appeal against refusal but need funding
 - difficult to get approval for forensic tests
 - low rates of pay so few solicitors contracted and therefore limited choice
 - fixed fees for lawyers for most cases, may mean lower standard of work
- but*
- almost all defendants in Crown Court are represented
 - and those charged with more serious offences in the Magistrates Court

NB Credit discussion of reintroduction of means testing.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

7 Discuss whether or not it is appropriate to use juries in serious criminal cases. [20]**Mark Levels**

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

Potential answers **MAY**:

Assessment Objective 2

Demonstrate knowledge of role of juries in criminal cases

- decide verdict having heard case
- in Crown Court, hearing indictable offences

Discuss some of the ways in which use of jury is appropriate

- twelve people making decision rather than one, so probably right
- good range of people sitting, so broad points of view
- express society's disapproval of defendant's actions when convict
- public involvement in criminal justice system, not just the state charging, convicting and sentencing
- procedure must be clear so that jury can understand it
- jury equity; jury protects individual against unjust state and unacceptable laws (Kronlid)
- public confidence
- unaccountable, so free to make fair decisions without fear of consequences (Bushell)
- not case hardened

Discuss some of the ways in which use of jury not appropriate

- some trials too long, disruptive of jurors' lives, jurors lose money
- no selection, no minimum educational standard
- some trials too complex to easily understand, 10% of jurors admit having difficulties understanding
- doubts about 5% of jury convictions
- possibility of bias, more dubious convictions when defendants black
- possibility of media bias (Huntley)
- no way of knowing whether a reasoned conclusion has been reached (Young)

Credit knowledge of removal of juries from fraud trials.

Credit discussion of possible alternatives.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited ability to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited ability to present logical and coherent arguments and communicates relevant material in a very limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

Mark Scheme 2570
June 2007

1 Exercise on Legislation and Delegated Legislation

- a) **Source A** at lines 2–3 refers to making an Act of Parliament.

Describe how an Act of Parliament is created.

[15]

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 1

Describe the stages involved:

Green paper

White paper

First Reading

Second Reading

Committee stage

Report stage

Third reading

Switch house and repeat

Royal Assent

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- b) Identify and explain the most suitable type of delegated legislation to implement law in the following situations.
- (i) A national emergency such an outbreak of war involving the UK. [5]
- (ii) Where an enabling Act authorises the issuing of regulations concerning police powers. [5]
- (iii) The local imposition of penalties for dogs fouling footpaths. [5]

Mark Levels	AO2 (for each of i, ii, iii)
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 2

- (i) Recognise that the use of Orders in Council would be most suited to this situation. They are used in times of emergency or when Parliament is not sitting. The main use for Orders in Council is to give effect to European Directives.
- (ii) Recognise that the use of Statutory Instruments would be most suitable to this situation. Explain that Government ministers introduce particular regulations under powers delegated to them by Parliament in enabling legislation.
- (iii) Recognise that the use of Bylaws would be most suited to situation. Bylaws can be made by local authorities or public corporations. Local authorities can enforce rules regarding dog fouling.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

(c) With reference to Source B:

- (i) describe the controls on delegated legislation; [15]**

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 1

- Describe the enabling act
- Describe the powers of the Scrutiny Committee
- Describe affirmative and negative resolutions
- Describe the process of judicial review
- Describe substantive and procedural ultra vires

- (ii) discuss the effectiveness of the controls of delegated legislation. [15]**

Mark Levels	AO2
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

- Discuss the fact that Parliamentary powers are limited.
- Discuss Parliamentary controls are affected by the parameters set by the Enabling Act.
- Recognise that under affirmative resolution procedures Parliament can only approve annul or withdraw.
- Discuss the fact that the Scrutiny Committee has no power to alter the statutory instrument it can only refer it back to Parliament on certain technical matters.
- Explain that judicial review relies on an individual starting a claim. This can be affected by a lack of knowledge due to volume or limited finances.
- Discuss the potential for ultra vires is limited due to the breadth of most enabling acts.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

2 Exercise on Judicial Precedent

- (a) Using the Source and other cases, describe the powers of the Court of Appeal. [15]

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 1

- Explain the current powers of the Court of Appeal. It binds all Courts below it in the hierarchy.
- Explain that the Court of Appeal for many is the final appeal court.
- Describe the limitations on the Court of Appeal – bound by the House of Lords and bound by its own previous decisions.
- Explain the effect of the *Human Rights Act 1998* and membership of the European Union.
- Explain the *Young* criteria
- Describe how Lord Denning tried to extend the power of the Court of Appeal
- Use appropriate cases – *Broome v Cassell (1971)*, *Schorsch Meier*, *Davis v Johnson (1979)*, *Gallie v Lee (1969)* etc.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- b) Consider each of the following situations and explain whether or not the Court of Appeal can depart from the previous decision.
- (i) A case concerning a death resulting from medical negligence was heard by the Court of Appeal (Civil Division). A year later, a similar issue is being heard by the Court of Appeal (Criminal Division). [5]
- (ii) A case concerning breach of contract was decided by the Court of Appeal (Civil Division). Days later a similar issue is heard by the same court but the judges now feel the decision should be different. [5]
- (iii) A case concerning murder was decided by the House of Lords. The Court of Appeal (Criminal Division) believes the decision of the House of Lords is out of date. [5]

Mark Levels	AO2 (for each of i, ii, iii)
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Assessment Objective 2

Potential answers **MAY**:

In the case of (i): recognise that the court of appeal is normally bound by its own previous decisions. Discuss the fact that this situation involves the two divisions of the Court of Appeal and they are not bound by each other.

In the case of (ii): recognise that the Court of Appeal is bound by its own previous decisions – subject to the exceptions in *Young v Bristol Aeroplane (1944)*. Discuss that the most applicable exception is per incurium. Discuss the possibility of distinguishing.

In the case of (iii): recognize that the Court of Appeal is bound by the decisions of the House of Lords – *Miliangos v George Frank (Textiles) Ltd (1976)*. Discuss that the Court of Appeal can only refuse to follow a decision of the House of Lords if they conflict with the *Human Rights Act 1998* or a decision of the European Court of Justice. Discuss the possibility of distinguishing.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- (c) (i) The Source line 13 refers to *stare decisis*.

Describe the concept of *stare decisis* using the source and 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

Potential answers **MAY**:

Assessment Objective 1

- Define *stare decisis* - standing by previous decisions.
- Describe how *stare decisis* operates in the court hierarchy eg higher courts binding lower courts.
- Describe how *stare decisis* is created through the *ratio decidendi*.
- Describe that accurate law reporting is essential for *stare decisis* to operate.
- Describe how *stare decisis* can be avoided – distinguishing, overruling and reversing etc.
- Use cases to illustrate *stare decisis* eg *Donoghue v Stevenson*, *Knulier v DPP*, *Jones v Secretary of State for Social Services*.

- (ii) Discuss whether or not the powers of the Court of Appeal within the doctrine of precedent, should be extended. [15]

Mark Levels	AO2
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 2

- Discuss the reluctance of the House of Lords to use the Practice Statement.
- Discuss Lord Denning's limitations regarding the existing system. Not all defendants have the financial capacity to appeal, companies settle with litigants to prevent precedents, the time it takes to reach the House of Lords.
- Discuss that since Lord Denning's departure, the Court of Appeal has not challenged the authority of the House of Lords.
- Discuss the practical difficulties that extending the Court of Appeal's power would create – uncertainty for the lower courts regarding what decision to follow and difficulties for lawyers in giving legal advice.
- Discuss that it would allow the law to develop more quickly as in *Miliangos*
- Discuss the expertise of the Court of Appeal. It hears more appeals and its criminal expertise is stronger.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited ability to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited ability to present logical and coherent arguments and communicates relevant material in a very limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Mark Scheme 2571
June 2007**

		AO1	AO2	AO3	
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 'Strict liability offences contribute to a safer, cleaner and more efficient society and can be justified on these grounds alone.'

Consider the extent to which you agree with this statement using relevant examples to illustrate your answer. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Define the concept of strict liability by reference to the lack of requirement of *mens rea*
 Demonstrate knowledge of the relevant principles relating to strict liability
 Explain the common law presumption of mens rea eg *Sweet v Parsley*; *B v DPP*; *R v K*
 Explain the statutory nature of strict liability offences
 Explain the significance of statutory interpretation in this context
 Explain the summary nature of most strict liability offences
 Explain the principles referred to in *Gammon v A-G for Hong Kong*
 Provide examples of strict liability offences – road traffic, licensing, food safety, pollution etc
 Elaborate the examples by reference to appropriate cases eg *Sherras v De Rutzen*, *Alphacell*, *Smedleys v Breed*, *James & Son v Smee* etc
 Credit reference to the distinction between 'absolute' and 'strict' liability
 Credit reference to examples of 'no-negligence'/'due diligence' defences.

Assessment Objective 2 (20 marks)

Consider some of the following 'benefits':

- protection of society from harmful acts/the 'quasi-criminal' nature of strict liability offences creates little stigma
- regulatory nature, promotes high standards of care in socially important activities/practical effectiveness

ie too many polluted rivers, too many drunk drivers as it is/administrative convenience, difficulty of establishing *mens rea* in many such cases removed etc

Consider the potential unfairness of such offences by a consideration of some of the potential injustices arising from a willingness to dispense with proof of a 'guilty mind'; *Callow v Tillstone*; *Lim Chin Aik*

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

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.
 Reward grammar, spelling and punctuation.

		AO1	AO2	AO3	
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

- 2 'A person who genuinely attempts to commit a criminal offence and fails, still deserves to be punished just as much as a person who succeeds in committing an offence.'

Consider whether you agree with this view of attempts.

[50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Explain the 1981 Criminal Attempts Act so as to define the *actus reus* and *mens rea* of the offence

Explain the importance of establishing at what point a criminal intention can be said to have progressed to the stage of an attempt - *Gullefer* etc

Cite relevant cases that provide principles applying the meaning of 'more than merely preparatory' these may include: *Widdowson*, *Geddes*, *Campbell*, *Jones and Tosti & White* etc

Explain that aspects of attempting the impossible may very well refer to the practical and theoretical absence of an *actus reus* of any sort unless defined by the accused's belief and refer to Ss 1 (2) and (3) as well as *Haughton v Smith*, *Anderton v Ryan* and *Shivpuri*
Demonstrate an awareness of the Law Commission's Report, which preceded the Criminal Attempts Act and describe some of the questions considered by the Report. eg the desirability of striking a balance between the protection of the public from the social danger caused by the contemplation of crime and the individual freedom to think or even fantasize.

Assessment Objective 2 (20 marks)

Consider and analyse the rationale of criminalising attempts

Consider the importance of the accused's guilty mind in this context insofar as they are intending to commit a crime

Consider, however, the principle that a person ought not to be punished for merely contemplating the commission of offence

Consider the emphasis placed upon the 'guilty mind' by Parliament in intending to create liability for 'impossible' attempts and the House of Lords confusion over attempting the impossible in *Anderton v Ryan* and *Shivpuri*

Consider the difficulties in defining at what precise point if any an attempt can be said to have occurred eg the problems in *Gullefer*, *Campbell*, *Jones* and *Geddes* in relation to the words 'genuinely attempts' in the question

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

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

Credit any reference to, for example, any possible alternatives eg the U.S. model of 'substantial steps strongly corroborative of the actor's criminal purpose'
Consider the deterrent value of the current law
Consider the justification of the sentencing implications ie subject to the same maximum sentence as a person who successfully completes the intended crime
Consider whether it should be necessary eg in a case of attempted murder that the accused need go as far as pointing a gun at his/her intended victim? etc would this limit the power of the police to intervene *Campbell*.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

		AO1	AO2	AO3	
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

- 3 Mike, a drug dealer, meets Shirley, Rita and Zara in his house where he sells them heroin. Mike sees that Shirley is suffering from withdrawal symptoms and sympathetically suggests that he injects her there and then with a 'shot' of heroin from a syringe which he prepares. Mike injects the heroin into Shirley's arm. He then helps Rita to prepare her arm so that she may inject herself with some heroin. Rita injects the heroin herself. Shirley, Rita and Zara then leave.

Next day Shirley and Rita die from the effects of the heroin. Zara is so overcome with grief that she injects herself with heroin and dies as a result. Medical evidence states that they have all died as a result of overdosing on the drug.

Discuss the liability of Mike for the manslaughter of Shirley, Rita and Zara. [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

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

Define unlawful act manslaughter by reference to the relevant cases *Church; Newbury & Jones; Lamb; Goodfellow; Dalby; Cato; Dias; Rogers; Kennedy; Watson; Slingsby; Kennedy 2005*; etc

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

Define reckless manslaughter by reference to *Cunningham; Pike; Lidar* etc.

Refer to principles of causation and describe V's own actions as a potential intervening cause *Kennedy No. 2*

Assessment Objective 2 (20 marks)

Discuss the possibility of a conviction for unlawful act manslaughter (candidates who consider murder are not dealing with the question as set)

Shirley

Discuss the fact that the injection of heroin into Shirley by Mike is an unlawful criminal act – *Franklin* - which is at least a S.23 OAP offence or wounding contrary to S.20 OAP to which consent is not allowed – contrast *Lamb*

Discuss that it is an objectively dangerous act – *Church* – even if Mike doesn't think so and the injection of the drug is directly applied by Mike

Rita

Discuss the fact that Mike is liable for unlawful act manslaughter as a joint principal according to *Rogers* – he is playing an active part in the administration of the drug – joint principal; which is not broken by an act of self-injection – confirmed in *Kennedy 2005*

Zara

Discuss the fact that merely supplying the heroin to Zara may be an unlawful and dangerous act but as she injects it herself there may well be a break in the chain of causation *Dalby*

Discuss, in the alternative, the possibility of gross negligence or reckless manslaughter although in *Khan* it was stated that merely supplying drugs to a user who subsequently self-injects them does not create a duty of care on the dealer and the causation problem remains.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

		AO1	AO2	AO3	
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

- 4 Adam and Sakina have been married for many years. Adam is very timid and submissive. Sakina often teases him about this and even slaps his face from time to time hoping to make him react more aggressively. Recently Adam has become sexually impotent. He refuses to seek medical advice about his condition and Sakina increasingly insults him saying he isn't being a real husband.

One evening, in the kitchen, they argue again about his impotence. Sakina laughs at him, calls him pathetic and pours a drink over his head. Adam grabs a carving knife and stabs Sakina in the chest. Overcome with grief, he immediately telephones for an ambulance.

Sakina is admitted to hospital but refuses a blood transfusion because she is frightened about contracting a virus from contaminated blood. She dies the next day.

Discuss Adam's liability for Sakina's death.

[50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Define murder, *Coke's* amended definition

Explain the concept of direct intention *Mohan*

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

Define diminished responsibility S2 Homicide Act *Byrne; Ahluwalia*

Refer to 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

Refer to the relevant rules of causation *White; Pagett; Blaue*.

Assessment Objective 2 (20 marks)

Discuss the fact that this would be a murder charge and recognise this as an example of direct intention - *Mohan*

Discuss the potential relevance of provocation S3 Homicide Act 1957

Discuss the fact that words and acts may be evidence of provocative conduct

Discuss the fact that a history of provocative conduct that may be relevant *Humphreys*

Apply the evidence of Adam's loss of self control as being 'sudden and temporary' *Duffy*

Consider an analogy with 'Battered Woman Syndrome'

Discuss and apply the relevance of impotence as a potential characteristic to be attributed to the 'reasonable' man in these circumstances (*Bedder; Camplin; Smith (Morgan James); Weller; Rowland; Holley; Mohammed; Karimi & James* etc

Discuss the debate over 'characteristics' affecting the gravity of the provocation to the accused which are definitely relevant and the effect of a characteristic affecting the defendant's ability to exercise self-control in relation to Adam's impotence

Discuss whether Adam's timidity and /or impotence and /or "battered man syndrome is a diminished responsibility defence.
Conclude that the jury may well decide that neither defence is available to Adam in these circumstances.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Mark Scheme 2572
June 2007**

		AO1	AO2	AO3	
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 'Duress by threats is an important defence. It makes concessions to human frailty but it must not become an excuse for criminals, gang leaders and terrorists.'

Discuss whether the limitations which the courts have placed on the availability of the defence of duress by threats support the above statement. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Demonstrate knowledge of the relevant principles relating to duress by threats
 Explain the subjective/objective aspects of the defences *Graham, Martin, Bowen, Flatt*
 Explain that duress is a recognition that an accused may be entitled to be asked to be excused liability on the basis of their will being overborne in the face of an external threat as a result of which they felt compelled to commit the alleged offence
 State the limited availability of the defences

- only available where D is told to commit a criminal offence nominated by the threatener *Cole*
- only available for threats of death or serious harm *Valderrama Vega*
- appears to be restricted to threats to close family members or those for whose safety he reasonably regards himself as having responsibility – *Wright; Hasan*
- not available in answer to a charge of murder etc *Lynch, Howe, Gotts;*
- the requirement of imminence; *Hudson & Taylor, Abdul – Hussain* or immediacy; *Hasan*
- not available for those who voluntarily associate themselves with criminals or gangs *Fitzpatrick; Sharp; Shepherd; Flatt; Ali; Heath; Hasan.*

Assessment Objective 2 (20 marks)

Discuss the type of threat and whether threats other than death or serious harm should be allowable
 Discuss the policy arguments for not allowing duress as a defence to murder etc the anti-terrorism element of policy *Hailsham in Howe* etc
 Discuss the statement in the question in the light of the limitations extended to those who voluntarily associate themselves with persons of a violent disposition *Ali; Heath; Hasan*
 Discuss which characteristics (frailty, cowardice, submissiveness, low IQ) ought to be taken into account perhaps making a comparison with provocation etc
 Discuss the moral arguments that can be applied to duress concerning the degree of resistance to be expected from an individual under threat and whether there is hypocrisy in claiming this higher moral ground
 Discuss the fact that it is still apparently available to a S.18 OAP Act 1861 gbh charge.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
 Reward grammar, spelling and punctuation.

		AO1	AO2	AO3	
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

- 2 'Despite the development of the defence of automatism, a mentally disordered defendant is not always dealt with justly under English law.'

Consider the extent to which you agree with the above statement.

[50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Define automatism by reference to *Bratty v A-G for N.I.*

Explain that it is a loss of control by the 'mind' over the movements of the muscles and provides a complete defence as it more than merely negates the *mens rea*

Explain that it may be a defence to any crime including crimes of strict liability providing that there has been a complete loss of control *Broome v Perkins*

Demonstrate knowledge of the 'external factor' theory *Quick* etc

Provide examples of automatism by reference to cases *Charlson; Quick; R v T; Wholley; Hill v Baxter*

Explain the restriction of the defence by reference to the *McNaghten Rules* on insanity

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

Demonstrate understanding of the effect of the relationship of the defences and refer to the 'special verdict' and the provisions of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 as amended.

Assessment Objective 2 (20 marks)

Consider the distinction between non-insane automatism and insanity

Consider the reasons given by the courts for restricting the availability of the defence since its recognition in *Charlson*

Consider that Charlson would now fall within the *McNaghten rules* as his tumour would be an 'internal factor' and behaviour which 'manifests itself in violence and is prone to recur' – *Kemp* is the 'external/internal factor' theory and the 'continuing danger' theory

Consider that the courts thus have the power to deal appropriately with such behaviour under the Criminal Procedure and Unfitness to Plead Act 1991

Consider examples of these restrictions on automatism in cases such as *Bratty; Sullivan; Burgess; Hennessy; Broome v Perkins* etc

Consider that the view of a diabetic in similar circumstances to *Quick* would probably be regarded as a condition that was self-induced and the defence may only be available to a crime of specific intent if at all.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

		AO1	AO2	AO3	
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

- 3 Shane has been drinking heavily all evening and returns to what he believes is his own house. It is, in fact, an identical looking house a few doors down the road whose owner is away. When the key fails to open the door he finds a small window. He breaks the glass and lets himself in. Only then does he realise, in the dark, that he is in the wrong house. Whilst trying to find the light switch he knocks over an expensive piece of pottery which shatters on the floor.

Having switched on the light he notices an umbrella in the hallway and takes it because it has started to pour with rain. Shane leaves and makes his way back to his own house.

Discuss Shane's criminal liability.

[50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Define theft S.1 Theft Act 1968

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

Define criminal damage Criminal Damage Act 1971

Refer to the rules governing voluntary intoxication and intoxicated mistake *Majewski*; *Fotheringham*; *Jaggard v Dickinson*.

Assessment Objective 2 (20 marks)

Discuss the criminal damage to the window and consider 'lawful excuse' S.5(2)(a) CDA and intoxicated honest belief – *Jaggard v Dickinson*

Identify that voluntary intoxication is not otherwise a defence to criminal damage since it is a crime of basic intent and that an intoxicated mistake would not normally be a defence *Fotheringham*

Discuss possible criminal damage to the pottery (not S9(1)(a) burglary since he did not enter with any ulterior intent) provided that it can be established that Shane is subjectively reckless *R v G & R* (would he be aware of a risk of damage in the dark?)

Discuss theft of the umbrella under S.1 Theft Act 1968 and, therefore, a S.9(1)(b) burglary since, having entered part of a building (the hallway) as a trespasser? Shane has now gone on to steal the umbrella if he has the *mens rea* - dishonest intention to permanently deprive

Discuss whether voluntary intoxication may be a defence to any potential later offences eg the second incident of criminal damage to the pottery. It may not be, as he is now aware he is in fact trespassing and perhaps no longer sufficiently intoxicated so as to be unable to form the relevant *mens rea*

Discuss the fact that voluntary intoxication could theoretically be a complete defence to the theft and burglary charges since they are specific intent with no 'fall back' but conclude that it will probably not be available since by now the intoxication may not be preventing Shane from forming the relevant guilty mind.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

		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

- 4 Ian is at a party and is very drunk. He picks up a glass of beer and tries to throw the contents over Jiao, his former girlfriend. The glass slips from his hand as he is throwing it and it strikes Jiao, cutting her cheek. Jiao's new boyfriend, Kapil, calls Ian a 'drunken idiot'. Angered by this, Ian lurches at Kapil but stumbles over a chair breaking one of the chair legs. He picks up the broken leg and, believing Kapil is about to punch him, tries to hit Kapil over the head with it but only succeeds in hitting Jiao. Jiao is taken to hospital where x-rays reveal she has a fractured skull.

Discuss Ian's potential criminal liability including any defences he may have available to him.

[50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Define assault and battery

Define S.47 Offences Against the Person Act 1861

Define S.20 Offences Against the Person Act 1861

Define S.18 Offences Against the Person Act 1861

Define criminal damage Criminal Damage Act 1971

Explain the rules relating to voluntary intoxication - *Majewski Rules*; *O'Grady*

Explain the rules relating to the mistaken use of force in self – defence S3 Criminal Law Act 1967 and *Gladstone Williams*; *O'Grady*; *Hatton*.

Assessment Objective 2 (20 marks)

Discuss a possible common law assault against Jiao if she apprehends the infliction of an imminent battery - *Logdon v DPP*; similarly the potential common law assault on Kapil

Discuss whether the cut to Jiao's cheek amounts to a potential incident of actual bodily harm contrary to S.47 Offences Against the Person Act 1861; *Donovan*; *Miller*; *Chan Fook*

Discuss the potential wounding to Jiao's cheek contrary to S.20 and *Eisenhower* reasoning that even though he may have only intended or foreseen the risk of some minor physical harm by throwing the beer rather than the glass he will still possess the necessary mens rea for S.20 *Savage & Parmenter*

Discuss whether he has committed criminal damage to the chair, subjective recklessness will suffice *R v G & R* but this could be viewed as accidental damage

Discuss the attack on Jiao, a possible S.18 offence since a fractured skull clearly amounts to serious harm *Saunders*

Discuss the potential defence of voluntary intoxication and apply the *Majewski Rules*, no defence to assault, S.20 or criminal damage since they are crimes of basic intent

Discuss the effect of the mistaken use of force in self-defence whilst intoxicated and conclude that the defence is unavailable according to *O'Grady*; *Hatton*, even to a crime of specific intent

Discuss the apparent contradiction that a simple plea of intoxication to a specific intent S.18 charge may very well lead to a 'fall-back' conviction under S.20

It is likely that candidates may apply the doctrine of transferred malice *Latimer* to the above scenario and, although it may technically sit in Unit 2571, should be given appropriate credit for this.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Mark Scheme 2573
June 2007**

- 1 In Source 1 [page 3 lines 64-66 Special Study Materials] the author suggests that “...it is a truism that hard cases make bad law and the courts have from time to time, been prepared to assume the authority to supply omissions left by the legislature”.

Consider the accuracy of the above statement in relation to decided cases using the literal rule and the golden rule. [30]

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

Potential answers **MAY**:

Assessment Objective 1

Define the literal rule giving the words in question their plain ordinary literal meaning; Explain that under the rule judges must give words their plain, ordinary meaning even if this would result in a ‘manifest absurdity’ (Lord Esher in *R v City of London Court*); Define the golden rule and identify it as a subsidiary of the literal rule;

Explain the two approaches of the golden rule:

- Narrow approach – where the words have different meanings and the plain meaning would lead to absurdity then the better meaning is chosen *Adler v George*;
- Broad approach – where there is a single meaning but for policy reasons a different meaning is given *Re Sigsworth*;

Use any relevant cases in illustration of either rule.

Assessment Objective 2

Consider the extent to which cases involving statutory interpretation show that it is ‘a truism that hard cases make bad law’:

- Possible with the literal rule *Fisher v Bell* meant that Parliament had to legislate again; *IRC v Hinchey* and *Berriman* both lead to injustice;
- But it is arguable whether any of these are in fact ‘hard cases’
- Less likelihood of ‘bad law’ arising with the golden rule eg *Adler v George* preserved the security of the state and *Sigsworth* protected the vulnerable by preventing people from killing relatives in order to inherit
- But as Professor Zander suggests the golden rule can be seen as an ‘unpredictable safety valve’;

Consider the extent to which ‘courts have been prepared to assume the authority to supply omissions left by the legislature’:

- The literal rule relies exclusively on the words themselves and so judges using it are very unlikely to do so eg *Whiteley v Chappell*
- Credit any reference to Lord Simonds criticism in *Magor St Melons v Newport Corporation* which was to ‘fill the gaps’ as Lord Denning suggested, was ‘a naked usurpation of the legislative process’
- But the broad approach of the golden rule in effect is filling the gaps in the law for policy reasons *Re Sigsworth*
- And even the narrow approach adds to or changes words to avoid absurd results eg *Adler v George* includes ‘in’ within ‘in the vicinity of’ and *R v Allen* distinguishes between different meanings of ‘married’ by referring to the ‘marriage ceremony’

Reach any sensible conclusion.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 2 Discuss the significance of the decision in *Jones and Smith* [Source 12 page 9 lines 7-13 Special Study Materials] to the development of the law on burglary.

[15]

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

Potential answers **MAY**:

Assessment Objective 1

Briefly describe the facts of the case (Source 12): although not living with them, the defendant was a regular and welcome visitor to his parents' home, but was convicted of burglary under s9(1)(a) when he stole two television sets having entered with the intention of doing so; Identify the important words in s9(1)(a) and (b) 'enters any building or part of a building as a trespasser';

Link to any other case on the meaning of trespasser eg *Collins*.

Assessment Objective 2

Identify the key issue in the case: whether or not the defendants were trespassing when they entered the premises to steal the televisions

Discuss the existing meaning of trespass applied in the case:

- Based on civil law concept, entering without the consent of the lawful possessor
- And the requirement from *Collins* that the defendant must know that he is entering as a trespasser

Discuss the argument put by the defendant that since he had regular consent to enter the house he could not be a trespasser

Discuss the significance of the development made in the case:

- Court could infer that the father would not have consented to the entry if he had known that it was in order to steal
- So trespass extends to entries where the lawful reason for the visit is exceeded.

Make any other sensible comment eg. the defence has faults, causes injustices, etc.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 In Source 6 [page 6 lines 2-3 Special Study Materials] the authors suggest that “very little [force] may be required to turn a case of theft into one of robbery....”

Discuss the circumstances in which courts will accept that the offence of robbery can be shown in the light of the above statement. [25]

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

Potential answers **MAY**:

Assessment Objective 1

Define the offence of robbery under s8 Theft Act 1968 – defendant immediately before or at the time of stealing uses force in order to steal or puts the other person in fear of force being used; Explain that the key elements are theft and force:

Explain that the two essentials of force are:

- That it is used immediately before or at the time of stealing *Corcoran v Anderton*;
- That it is used in order to steal *Hale*;

Explain that the word force was changed from the previous word violence as recommended by the Criminal Law Revision Committee;

Explain that force is a word that is intended to be within the understanding of jurors;

Explain that the amount of force can be quite small *Dawson* and *Clouden*;

Explain that the force is supposed to be directed at the victim not the property itself *Clouden* but compare with *Corcoran v Anderton*.

Assessment Objective 2

Discuss the fact that it is the force or threat of force to the victim before at the time of stealing and in order to steal that turns an offence of theft into one of robbery.

Discuss that there is a difference from the word used in the Larceny Act before the Theft Act which was ‘violence’ and that Parliament changed the word on the advice of the Criminal Law Revision Committee;

Discuss Lawton LJ’s comments in *Dawson* that ‘force’ is not a legal word but one that can be easily understood by the jury so could be given different meanings;

Discuss his comment that it was wrong for the trial judge to insist on using the word ‘substantial’ so that possibly very little may in fact amount to force;

Discuss the problems of deciding what level of force is sufficient for the offence to have been committed, in *Dawson* mere jostling was sufficient for a conviction and in *Corcoran v Anderton* tugging at a handbag was sufficient force;

Discuss Professor Smith’s views that the slight physical contact necessary to pick a pocket would be insufficient force, but that a struggle, even a fleeting one, for possession of a handbag or snatching an earring from an ear is sufficient force;

Discuss the more obvious type of force in *Hale*, putting a hand over the woman’s mouth and later tying her up;

Discuss that in *Clouden* the force was applied to the property rather than to the person but was accepted;

Discuss the fact that the force must be used in order to steal so if force is used for another purpose it may mean the offence is not made out although in *Lockley* the force was used in order to make a getaway;

Reach any sensible conclusion.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

4 Consider whether a conviction for burglary is possible in each of the following situations.

(a) Alex is passing Mary's house. He sees that Mary has taken an apple pie out of the oven and has left it on the window sill to cool. The window is open so Alex decides that he will take the pie if he gets the chance. When Mary leaves the kitchen Alex takes the apple pie and eats it as he is walking away from Mary's house. [10]

(b) Sid has been sacked by his employer, Mike. Sid is very annoyed and decides to break into Mike's house and give Mike a good beating. When Sid gets into the house Mike is not there. In frustration Sid breaks all of Mike's furniture before he leaves. [10]

(c) Norris has lived in a tent in his parents' back garden for several years. Basil, who knows this, enters the tent when Norris is out at work on the night shift in order to take Norris' books. The books are not in the tent so Basil steals Norris' clothes instead. [10]

[30]

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

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

Potential answers **MAY**:

Assessment Objective 1

Define burglary under ss9(1)(a), 9(1)(b) in respect of the two offences, 9(2) in respect of the ulterior offences for 9(1)(a); and 9(4) in respect of definition of building; Use any relevant cases in illustration.

Assessment Objective 2

In the case of (a):

- Identify that Alex intends to commit one of the offences under 9(2)
- So a conviction under s9(1)(a) may be possible
- Identify that the main issue is whether Alex has entered an 'effective and substantial entry' as trespasser *Collins*
- Apply *Brown* Alex has been able to carry out the ulterior offence, and *Ryan* it would not have mattered if he had been unable to complete it

In the case of (b):

- Identify that Sid is intending one of the ulterior offences under s9(2), GBH, and this will make him a trespasser *Collins*
- Identify that as a result he may be convicted of s9(1)(a) even though it is impossible for him to carry out the assault;
- Identify that he cannot be convicted under s9(1)(b) – the offence which he goes on to commit is not covered under that section so that is not possible;
- Credit any reference to a s9(1)(a) offence
- Credit reference to s9(1)(b) via an appropriation

In the case of (c):

- Consider whether or not Norris' tent satisfies the definition of building – does not conform to s9(4) but possibly comes within *B & S v Leathley*
- If so identify that Basil conforms with s9(1)(a) – he enters a building as a trespasser with the intent to commit theft, one of the offences in s(2) *Jones & Smith*
- Identify that, while the articles he wants are not there, he still goes on to steal the clothes and so could be guilty of burglary under s9(1)(b)
- Credit reference to part of a building

Assessment Objective 3

Present logical arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited ability to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Mark Scheme 2574
June 2007**

- 1 'It appears at times that the 'rules' of consideration have developed more by the chance of a case arising than by design.'

Discuss the extent to which the 'rules' of consideration are fair and effective in the light of the above statement. [50]

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

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the general rules of consideration, ie:

- It must be sufficient (recognisable legally), even if not adequate (market value): *Thomas v Thomas*, *Chapple v Nestlé*, *Bainbridge v Firmstone*.
- It must not be vague: *White v Bluett*.
- It must move from the promisee: *Tweddle v Atkinson*, *Contracts (Rights of Third Parties) Act 1999*.
- It must not be past: *Roscorla v Thomas*, *Re McArdle*, *Lampleigh v Braithwait*, *Re Casey's Patents*.
- It may be in the form of forbearance to sue: *Haigh v Brooks*.
- It must be legal: *Foster v Driscoll*.
- It should not form an existing duty: *Collins v Godefroy*, *Stilk v Myrick*, and the effect of doing more than an existing duty: *Glasbrook v Glamorgan*, *Hartley v Ponsonby*, *Ward v Byham*.

Credit relevant explanation of the principles of part payment of debt: *Pinnel's case*, *High Trees*.

[**Note**: candidates may answer the question fully, and therefore obtain maximum marks, without necessarily explaining all of these rules.]

Assessment Objective 2 (20 marks)

Discuss the way in which 'rules' have developed almost by chance as the need for justice in individual cases has been considered by courts, eg sufficiency: *Thomas v Thomas*, 'past' consideration: *Lampleigh v Braithwait*.

Discuss the merits (fairness or otherwise) of decisions, especially borderline ones, such as *Ward v Byham*, *White v Bluett*, *Bainbridge v Firmstone*, and the reasoning behind decisions.

Discuss the arguments for the requirement of consideration, eg the views of Atiyah, the judgments in *Baird v Marks and Spencer*. (Credit will be given to candidates who discuss the way in which estoppel has developed to enforce promises even where there is no consideration.)

Discuss the effect on consideration of the case of *Williams v Roffey* and its limitation in *Re Selectmove*.

Discuss whether the Contracts (Rights of Third Parties) Act 1999 has further diminished the importance of consideration in contract law.

Discuss whether this is an area in which the law could, or should, be reformed or consolidated.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 2 Consider whether there is still a need for courts to identify terms as conditions and warranties, given the increased use of innominate terms. [50]

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

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the difference of terms within a contract.

Distinguish between conditions and warranties: *Poussard v Spiers and Pond*, *Bettini v Gye*, *Photo Production v Securior*.

Explain the use of the innominate term: *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha*, *The Mihalis Angelos*, *Bunge Corp v Tradax*, *The Hansa Nord*.

Show a clear understanding of the effects of a breach of each type.

Explain other ways in which a term may be 'labelled', eg by statute, or by the parties: *Sale of Goods Act 1979*, *Schuler v Wickman Tools*; *Lombard North Central v Butterworth*.

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

Assessment Objective 2 (20 marks)

Consider in a general way the effect of a term being a condition (*Poussard*) or a warranty (*Bettini*) and the need to distinguish between different types of terms.

Consider the extent to which the courts make use of the innominate term approach (*Hong Kong Fir*, etc).

Consider the reasons for the use of the traditional approach in specific types of contracts where there is a need for certainty (*Mihalis Angelos*) and where time is of the essence.

Consider the various alternative approaches that may be taken to dealing with the types of terms in a contract: intentions of the parties (*Schuler*), effect of statute (SGA), the negotiations of the parties, appraisal by the courts, the status of the parties, and consider whether they result in justice.

Consider the reasoning for the decisions in cases, whether the lack of certainty in this area is outweighed by the need for the 'new' approach, and whether the innominate term approach should become the norm.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 Whilst on holiday Jodi loses her bag containing several important items. She places a notice in a nearby shop window, saying that she will give a reward to anyone finding and returning any of the items.

Karl, who is staying at the same hotel as Jodi, finds a wallet in a field. He takes it back to the hotel receptionist, who informs Karl that it probably belongs to Jodi. Karl returns the wallet to Jodi, but is later annoyed to find that a reward was available and feels that he should have been paid.

A week later, Omeed finds some keys in the car park. He remembers seeing the reward notice, but knows that it has now been removed. Nevertheless he takes the keys to Jodi, hoping for a reward. Jodi does not pay Omeed, saying that the removal of her notice has ended the arrangement.

One month later Patsy finds a bracelet. At home, Patsy's sister tells her that the notice is no longer in the shop window, but Patsy says that she will return the bracelet anyway, feeling sorry for Jodi, but also hoping for a reward.

Consider whether Jodi is obliged to pay the reward money to Karl, Omeed, or Patsy. [50]

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

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

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

Explain the legal nature of an advert giving a reward: *Carlill*.

Explain that there must be general knowledge of an offer for any act that may form acceptance to be valid: *R v Clarke*, but acceptance may be valid for mixed motives *Williams v Carwardine*.

Explain the principles of revocation: must be communicated before acceptance of *Byrne v Van Tienhoven*, it may be communicated via a third party *Dickinson v Dodds*, if revoking a general offer it must be advertised in a similar way to the offer *Shuey v US*.

Explain the principles of lapse of an offer: *Ramsgate v Montefiore*.

Assessment Objective 2 (20 marks)

Consider the reward notice is likely to be a legal offer (*Carlill*).

Consider the relevant areas of offer and acceptance and apply and distinguish relevant case-law to the facts of the problem.

- Karl – carrying out an act that could amount to acceptance in ignorance of the offer (*Clarke*). Does the law match his expectations?
- Omeed – revocation of the offer – is it revoked effectively (*Byrne, Shuey*)?
- Patsy – does her late response indicate lapse of the offer (*Ramsgate*)? Does she have knowledge of the revocation? Would her mixed motives matter (*Carwardine*)?

Credit any comments on whether the law is satisfactory regarding the characters in each of the above incidents.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 4 Tom invites two friends, Dick and Harriet, to a meal. Tom is to provide the main course, Dick will bring the dessert and Harriet will provide the drinks. Dick and Harriet arrive but find that although they have brought their contribution, Tom has not provided the main course.

The friends decide that they will have a pizza in place of Tom's food, so they order one from Pizza Palace where they have seen an advertisement stating that free garlic bread will be delivered with each pizza order. When the pizza arrives the delivery girl says that they do not have any garlic bread that evening.

The three friends then decide to enter the lottery together, each paying £1 and choosing some numbers. They agree that they will share any prizes equally. They are lucky and have four winning numbers, but when Tom collects the prize money he decides to keep it for himself.

Consider whether any of the situations above would be seen as intending to form a legal relationship. [50]

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

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the presumption of legal intent in social and domestic agreements: *Balfour v Balfour*, *Merritt v Merritt*, and the extension of this from relatives to friends: *Buckpitt v Oates*, etc.

Explain the presumption of legal intent in commercial context: *Carlill*, *Esso*, etc.

Explain that either of the presumptions may be rebutted: *Parker v Clarke*, *Simpkin v Pays*, etc.

Explain the particular position regarding honourable pledge clauses: *Rose and Frank v Crompton*, *Jones v Vernons Pools*, etc.

Credit explanation of the contractual status of notices in shops – *Fisher v Bell*, *Carlill v Carbolic Smoke Ball Company*.

Assessment Objective 2 (20 marks)

Apply the law on regarding legal intent to the situations in the problem:

- The agreement over the food – is this purely social/domestic (*Balfour*, *Buckpitt*, etc)?
- The garlic bread – is this promotional campaign binding (compare *Esso*)?
- The lottery entry – friends (*Buckpitt*), and problems of syndicate entry, as in *Simpkin*.

Consider whether the presumptions apply, or whether they have been rebutted in each incident.

Consider the impact of this law on the characters, as consumers, and whether the law meets the expectations of the parties involved in the scenario.

Credit any discussion of whether the notice about the free garlic bread amounted to an offer or an invitation to treat.

Assessment Objective 3 (5 marks)

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Mark Scheme 2575
June 2007**

- 1 Consider the changing ways that the doctrine of frustration has been applied including the apportionment of losses. [50]

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

Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Explain the basic doctrine of frustration

Refer to cases such as *Paradine v. Jane*, *Taylor v. Caldwell* and *Davis v. Fareham UDC*

Explain criteria the courts use to determine the impossibility to perform the contract

- Availability of subject matter – *Condor v. Barron Knights*
- Stipulated method of performance – *Finelvet v. Vinaja Shipping* and *Blackburn Bobbin v. T W Allen*
- Failure of specific events – *Amalgamated Investment Property v. John Walker*
- Illegality – *Denny. Mott & Dickson v. James Fraser*
- Commercial sterility

Explain the limitations to the doctrine

- Express provision in the contract
- Self-induced frustration – *Super Servant Two*
- Leases – *National Carriers v. Panalpina*

Explain the apportionment of losses contained in The Law Reform (Frustrated Contracts) Act 1943

Refer to cases such as *Gamerco v. ICM/Fair Warning* and *BP v. Hunt*

Assessment Objective 2

[20 marks]

Consider the changes that the courts have made in restricting the concept of frustration

Compare cases such as *Krell v. Henry* and *Herne Bay Steam Boat Co. v. Hutton*

Consider the court's use of reasonably foreseeable in *Davis v. Fareham UDC*

Consider the judgement of *Paradine v. Jane* as to whether this case should only be applied to leases and consider the judgement in *National Carriers v. Panalpina*

Consider the concept of substantial time loss in *National Carriers v. Panalpina*

Consider the broad interpretation of *Paradine v. Jane* and its subsequent application in cases such as *Amalgamated Investment Property v. John Walker*

Consider whether the broad or narrow approach to frustration creates fairness

Consider whether the provisions of the Law Reform (Frustrated Contracts) Act 1943 produces a fair balance to the apportionment of losses

Consider whether the stricter interpretation of frustration produces more fairness.

Assessment Objective 3

[5 marks]

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

2 'The remedies for misrepresentation depend on the type of misrepresentation.'

Evaluate the types of misrepresentation and the remedies available for each in the light of the above statement. [50]

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

Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Define misrepresentation and give a brief explanation

Explain types of misrepresentation

- Fraudulent - definition from *Derry v. Peek*
- Negligent misstatements at Common Law, *Hedley Byrne v. Heller*, *Caparo v. Dickman*
- Negligent misrepresentation under The Misrepresentation Act 1967 Section 2(1), *Howard Marine & Dredging Co. v. A Ogden and Cooper v. Tams*
- Innocent misrepresentation
- The Misrepresentation Act 1967 Section 2(1)

Explain the remedies available both at Common Law and in Equity

Explain the general principles of rescission

- Explain the bars to rescission:
1. affirmation
 2. delay
 3. restitution impossible
 4. third party rights
 5. The Misrepresentation Act 1967 Section 2(2)

Explain the method of calculating damages – *Smith & New Court Securities v. Scrimgeour Vickers*, *Royscot v. Rogerson* and *Zanzibar v British Aerospace*.

Assessment Objective 2

[20 marks]

Evaluate whether each type of misrepresentation produce fairness

Evaluate the difficulties in proving fraudulent misrepresentation

Evaluate whether negligent misrepresentation is confusing when an action can be brought either in tort or contract

Evaluate whether a contractual action is easier to bring

Evaluate the problem of calculating damages

Evaluate the distinction between reasonable foreseeability and direct consequence – *Doyle v. Olby*, *Smith & New Court Securities v. Scrimgeour*, *Royscot v. Rogerson* and *Zanzibar v British Aerospace*.

Evaluate the decision in *Clef Aquitaine SARL v. Laporte Materials*

Evaluate the award of damages instead of rescission.

Assessment Objective 3

[5 marks]

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 Susan wishes to re-carpet the reception area of the hotel she owns. She needs a very heavy duty carpet to withstand the constant usage.

A representative of Carpets Ltd visits the hotel and recommends a particular type of carpet that is only sold to approved installers.

Susan signs a contract with Brown Flooring Ltd., an approved installer, specifying the type of carpet recommended by Carpets Ltd.

Brown Flooring Ltd. lays the carpet to Susan's complete satisfaction but, after a month, holes appear in the carpet. Tests establish that the carpet was laid properly. Carpets Ltd. had supplied the wrong type of carpet to Brown Flooring Ltd. and Carpets Ltd. has admitted this.

Brown Flooring Ltd. is no longer in business.

Discuss any claims that Susan might have against Carpets Ltd. [50]

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

Potential answers **MAY**:

Assessment Objective 1 [25 marks]

Identify the parties to the contract

Define the general Privity Rule – *Dunlop v. Selfridge*

Explain the provisions of the Contracts (Rights of Third Parties) Act 1999 Section 1.

Indicate the right of a third party to sue

Explain the meaning of 'benefit'

Explain the meaning of 'identified by the contract'

Explain collateral contracts

Explain how a collateral contract may be used if the provisions of the Act are not available

Refer to cases such as *Shanklin Pier v. Detel Products*.

May explain agency as a method of avoiding privity.

Assessment Objective 2 [20 marks]

Apply the Privity Rule to the problem identifying that the basic contract is with Brown Flooring Ltd.

Consider whether an action against Brown Flooring Ltd is worthless as they are now out of business

Apply the provisions of The Contracts (Rights of Third Parties) Act 1999

Apply Section 1 and the tests contained in that Section

Apply whether the parties are identified

Apply the principles of collateral contracts as an alternative means of bringing an action as in *Shanklin Pier v. Detel Products*.

May apply agency as a method of avoiding privity.

Assessment Objective 3**[5 marks]**

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 4 Chris has obtained a car from Cardealers Ltd. by means of a forged credit agreement with Loans Ltd. In order to obtain the credit agreement, Chris has used a stolen driving licence and forged the signature on the credit agreement.

Chris sells the car to Jasmine who is unaware of the forgery.

In credit agreements of this type it is the finance company that is the legal owner. Loans Ltd. financed the purchase of the car here and is now seeking re-possession from Jasmine as it has not received any payments from Chris.

Advise Loans Ltd. whether they will be able to argue unilateral mistake in order to re-possess the car. [50]

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

Potential answers **MAY**:

Assessment Objective 1 [25 marks]

Explain unilateral mistake – identity of the person

Explain the criteria needed to be proved

- intention to deal with another person
- the latter was aware of that intention
- identity was of fundamental importance
- reasonable steps were taken to verify identity

Explain cases such as *Cundy v. Lindsay*, *Kings Norton Metal v. Edridge Merrett*, *Bolton v. Jones*, *Phillips v. Brooks*, *Ingram v. Little*, *Lewis v. Averay*, *Shogun Finance v. Hudson*.

Assessment Objective 2 [20 marks]

Apply the principles of mistake as to identity to the problem

Apply the reasoning in *Shogun Finance v. Hudson*

Evaluate the legal ownership of the car

Evaluate whether Jasmine must return the car if possession is sought

Evaluate the likelihood of a successful action

May evaluate the basis of any legal action against Chris

Assessment Objective 3 [5 marks]

Present logical and coherent arguments and communicate relevant material in a very clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

Mark Scheme 2576
June 2007

- 1 In Source 1 (page 3 lines 64-66 Special Study Materials) the author suggests that “...it is a truism that hard cases make bad law and the courts have, from time to time, been prepared to assume the authority to supply omissions left by the legislature”.

Consider the accuracy of the above statement in relation to decided cases using the literal rule and using the golden rule. [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 literal rule, giving the words in question their plain ordinary literal meaning. Explain that under the rule judges must give words their plain, ordinary meaning even if this would result in a ‘manifest absurdity’ (Lord Esher in *R v City of London Court*). Define the golden rule and identify it as a subsidiary of the literal rule.

Explain the two approaches of the golden rule:

- Narrow approach – where the words have different meanings and the plain meaning would lead to absurdity then the better meaning is chosen *Adler v George*;
- Broad approach – where there is a single meaning but for policy reasons a different meaning is given *Re Sigsworth*.

Use any relevant cases in illustration of either rule.

Assessment Objective 2

Consider the extent to which cases involving statutory interpretation show that it is ‘a truism that hard cases make bad law’:

- Possible with the literal rule eg *Fisher v Bell* meant that Parliament had to legislate again; *IRC v Hinchey* and *Berriman* both lead to injustice;
- But it is arguable whether any of these are in fact ‘hard cases’;
- Less likelihood of ‘bad law’ arising with the golden rule eg *Adler v George* preserved the security of the state and *Sigsworth* protected the vulnerable by preventing people from killing relatives in order to inherit;
- But as Professor Zander suggests the golden rule can be seen as an ‘unpredictable safety valve’.

Consider the extent to which ‘courts have been prepared to assume the authority to ‘supply omissions left by the legislature’:

- The literal rule relies exclusively on the words themselves and so judges using it are very unlikely to do so eg *Whiteley v Chappell*;
- But the broad approach of the golden rule in effect is filling in gaps in the law for policy reasons *Re Sigsworth*;
- And even the narrow approach adds to or changes words to avoid absurd results eg *Adler v George* includes ‘in’ within ‘in the vicinity of’ and *R v Allen* distinguishes between different meanings of ‘married’ by referring to the ‘marriage ceremony’;
- Credit any reference to Lord Simonds’ criticism in *Magor & St Melons v Newport Corporation* was that to ‘fill in the gaps’, as the Lord Denning suggested, was a ‘naked usurpation of the legislative process’.

Reach any sensible conclusion.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 2 Discuss the significance of the decision in *Chandler v Webster* (Source 10 page 7 Special Study Materials) to the development of the law on frustration. [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 (partly in Source 10): claimant hired a room overlooking the procession route for the coronation, which was then cancelled when the King was ill, claimant had paid for the room in advance and had hired it with the sole purpose of watching the procession, contract was frustrated but claimant could not recover his money.

Identify the important aspect of frustration, all obligations cease at time of the frustrating event.

Link to any relevant case on frustration eg *Krell v Henry*, *Fibrosa*.

Assessment Objective 2

Identify the key issue in the case: whether or not the claimant could recover for the money paid in advance of the hiring of the room.

Discuss the application of the doctrine of frustration to the case:

- Obligations cease at the point of frustration;
- Therefore the 'loss lies where it falls' – *Chandler* had paid in advance and could not recover his money.

Discuss the contrasting result in *Krell v Henry* – *Henry* was not bound to pay until after the event so was relieved of the obligation to pay because of the frustrating event.

Discuss the significance of the development made in the case – the effects of frustration of the parties is entirely unpredictable and potentially unfair – so led to later common law and statutory reform.

Comment on comparison with *Fibrosa* or 1943 Act.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 In Source 8 (page 6 lines 14-15 Special Study Materials) Lord Radcliffe states that “...it is not hardship or inconvenience or material loss itself which calls the principle of frustration into play.”

Discuss the circumstances in which courts will reject a claim that a contract is frustrated 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*.

Identify those situations in which frustration will not apply and the contract continues (the so-called ‘limits on frustration’):

- Self induced frustration *Maritime National Fish Ltd v Ocean Trawlers Ltd*;
- Where the contract merely becomes more onerous or costly to perform *Davis Contractors Ltd v Fareham UDC*;
- Where the frustrating event could have been foreseen by the parties *Amalgamated Investment & Property Co v John Walker & Sons*;
- Where the frustrating event is provided for in the contract *The Fibrosa case*;
- Where there is an absolute undertaking to perform *Paradine v Jane*.

Assessment Objective 2

Discuss the justifications for the doctrine – the unfairness of the rule in *Paradine v Jane* – why should a party be bound by obligations which become impossible to perform through no fault of his own.

Discuss the simple application of the principle in the original case *Taylor v Caldwell*.

Comment on the fact that one party may still suffer unfairly depending when the frustrating event occurs eg *Krell v Henry* and *Chandler v Webster*.

Consider that the doctrine applies where no blame attaches to either party.

Discuss the fairness/unfairness of situations where frustration is denied:

- Self-induced frustration – the one party has in effect created the frustrating event and so is also blameworthy – the other party may lose out as a result;
- Contract merely more onerous to perform – may be down to the one party not preparing adequately for the contract or operating on too tight a budget to be sensible so if the contract is frustrated it would appear to be unfair on the other party but again if the added burden is unforeseeable it could be seen as unfair on the party still bound by a contract under which they lose out;
- Frustrating event foreseen – then should have been catered for in the contract but there still appears to be an element of unfairness in *Walker*;
- Frustrating event provided for – then there is no unfairness;
- Absolute undertaking to perform – with the hindsight of *Paradine*, *Fibrosa* and the provisions in the Act can still work unfairly.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 4 Consider whether the contract has been frustrated and how loss would be apportioned in each of the following situations.
- (a) Stewart has contracted to supply five million cartons of cigarettes to Ashcan, tobacco wholesalers in Zotonia, a foreign country. Shortly before the cigarettes are due to be shipped, the Zotonian government passes a law making the sale of cigarettes illegal in Zotonia. Stewart has paid a £1,000 non-returnable deposit to the carriers. [10]
- (b) Pedro, an expert in old shipwrecks, contracts with the Maritime History Club (MHC) to give a lecture on ‘Deep Sea Treasure Finds’ and is paid his fee of £500 in advance. On the day before the lecture Pedro suffers a nervous breakdown and is unable to attend and there is no similar expert. MHC wishes to recover the £500. [10]
- (c) Richard paid £100 in advance for a ticket for entry to the horse racing at the Woolheanton Race Track. Richard had told the manager who sold him the ticket that he particularly wanted to see two shire horses that were to be paraded there. The night before the meeting Richard saw on the news that the shire horses had been killed in a crash while being transported to the event. Richard has now asked the Woolheanton Race Track for return of his £100. [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.
Use any relevant cases in illustration.

Assessment Objective 2

In the case of (a):

- Identify that the contract has been frustrated because of the subsequent illegality of the transaction in Zotonia *Denny, Mott & Dickinson v James B Fraser and Re Shipton Anderson*;
- Consider whether Stewart could recover a fair amount of his costs
- Refer to the courts’ discretion in s1(2) of the 1943 Act;
- Credit any reference to the similarity with *Fibrosa* situation where Stewart has incurred costs in advance of the contract that were not recoverable at common law.

In the case of (b):

- Identify that the frustrating event in this case is impossibility (unavailability of a party to the contract through illness *Morgan v Manser*, *Robinson v Davis*, *Condor v Baron Knights*;
- Identify that obligations cease at the point of frustration but that money has been paid over in advance;
- Identify that by s1(2) of the 1943 Act the £500 paid in advance is recoverable subject to any expenses.

In the case of (c):

- Identify that Richard's only possible argument that the contract with Woolheanton was frustrated would be commercial sterility as the manager knew that he attend the races because of the parade of shire horses *Krell v Henry*;
- Discuss whether there is still a commercial purpose because he can still attend the races *Herne Bay Steamboat Co v Hutton*;
- Consider that the contract is probably not frustrated and Richard will not be able to recover the £100.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

Mark Scheme 2577
June 2007

- 1 Consider the extent to which the rules on liability for a negligent misstatement are fair to both the claimant and the defendant. [50]

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

Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Explain the basic criteria for liability for misstatement arising under *Hedley Byrne*:

- existence of a special relationship *Yianni v Edwini Evan*';
- possession of specialist skill by the person giving the advice *Hedley Byrne, Mutual Life and Citizens Assurance v Evatt*;
- reasonable reliance on the defendant's skill and judgement *Smith v Eric S Bush, Harris v Wyre Forest DC*.

Identify situations in which liability could be found at its widest *Chaudhry v Prabhaker* but that liability does not usually arise for advice given in a social context.

Identify situations where liability could not be found *JEB Fasteners v Marks Bloom*.

Explain the rejection of a general test of foreseeability and the narrower test of knowledge of the purpose for which the advice is needed *Caparo v Dickman*.

Explain the tests of knowledge in *James McNaughten Paper Group v Hicks Anderson*.

Identify also the requirement of assumption of responsibility for the advice in *Henderson v Merritt Syndicates*.

Use any other relevant cases to demonstrate the development of the tort.

Assessment Objective 2

[20 marks]

Credit any reference to the original reluctance of the courts to accept any action for pure economic loss arising from a negligent act *Spartan Steels v Martin*.

Consider the original reluctance of judges to accept liability for economic loss arising from a negligently made statement *Candler v Crane Christmas*.

Consider the fact that these early judicial attitudes were based on policy and floodgates and so were possibly fair to a defendant but not to a claimant.

Consider the original basis for accepting potential liability in *Hedley Byrne* – the dissenting judgment of Lord Denning in *Candler*, the test in *Hedley Byrne* of specialist knowledge and reasonable reliance and the difference as a result from a claim based on pure economic loss.

Consider the unfairness to possible defendants of the successful claim in *Chaudhry v Prabhaker*.

Consider the acceptance of reasonable foreseeability as the basis for early liability leading to expansion of the tort in cases such as *Yianni v Edwin Evans*.

Consider the effect that this expansion had on eg valuers and estate agents – fair on claimants but possibly seen as unfair by those professions as defendants.

Consider how the courts have gradually rejected the expansion and have narrowed the basis for the test, particularly in *Caparo* but also in *McNaughten v Hicks Anderson* and *Henderson v Merritt* clearly with a view to being fair to defendants but at the expense of claimants.

Consider that further expansion is unlikely *Morgan Crucible v Hill Samuel* with possible unfairness to claimants.

Make any other relevant comment on the fairness of policy or the floodgates argument restricting development of the tort.

Assessment Objective 3**[5 marks]**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 2 'Claiming as a primary victim is only a matter of proving foreseeable harm, but the rules regarding secondary victims who suffer from nervous shock (psychiatric injury) make it practically impossible for a successful action to be brought.'

Discuss the accuracy of the above statement.

[50]

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

Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Define nervous shock as a recognised psychiatric injury eg post traumatic stress disorder but not normal emotions such as grief *Alcock v Chief Constable of South Yorkshire*, *Vernon v Boseley*.

Explain that the injury must be caused as the result of a single traumatic event *Sion v Hampstead HA* so there can be no recovery for an injury that develops over a period of time.

Define primary victim:

- present at the scene and at risk of injury *Page v Smith*;
- present at the scene and suffering injury *Dulieu v White*.

Identify that recovery by a primary victim is indeed based on foreseeable harm *Dulieu v White*.

Explain also that the normal rules on standard of care apply eg the 'thin skull' rule *Page v Smith*.

Explain that a rescuer can claim if a genuine primary victim *White v Chief Constable of South Yorkshire* but that formerly it was presumed that rescuers were primary victims *Chadwick v BR Board*, *Hale v London Underground*.

Define secondary victim:

- present at the scene and fearing for the safety of a closely related victim *Hambrook v Stokes*.

Explain the *Alcock* criteria:

- must have a close tie of love and affection to the primary victim *Hambrook v Stokes*;
- must have sufficient proximity in time and space to the event or its immediate aftermath *McLoughlin v O'Brien*;
- must have witnessed, heard or seen, the event or its immediate aftermath with own unaided senses *Alcock*.

Explain also that secondary victims must display the phlegm and fortitude of a reasonable man.

Identify those who cannot claim eg bystanders *McFarlane v EE Caledonia*, close friends and colleagues who cannot prove a close tie to the primary victim *Duncan v British Coal*, and *Robertson and Rough v Forth Road Bridge Joint Board*, rescuers unless they are also primary victims *White v Chief Constable of South Yorkshire*.

Assessment Objective 2**[20 marks]**

Discuss the fact that originally scepticism prevented a claim of any type from succeeding *Victoria Railway Commissioners v Coultas*.

Discuss how the first successful claim was restricted only to a person at risk of foreseeable harm (primary victim) *Dulieu v White*.

Discuss how this was extended to include a person fearing for the safety of a loved one (secondary victim) in *Hambrook v Stokes* because of the apparent unfairness of the 'Kennedy test'.

Discuss the relative simplicity of a claim by a primary victim – according to *Page v Smith* providing there is a recognised psychiatric injury suffered that is causally connected to the defendant's negligence then the claimant need only show that injury was foreseeable, it does not have to be specifically psychiatric injury and the 'thin skull' rule applies.

Discuss the potential difficulties involved in claiming successfully as a secondary victim eg:

- The narrowness with which the close tie of love and affection is interpreted eg brother/brother relationship rejected in *Alcock*, close friends and close working colleagues were unable to bring themselves within the definition in *Duncan v British Coal*, and *Robertson and Rough v Forth Road Bridge Joint Board*;
- Anyone classed as a bystander will fail in a claim *McFarlane v EE Caledonia*;
- The restrictive definition given to 'immediate aftermath' in *Alcock* (limited to two hours) and Trevor Hicks' claim of eight hours failed;
- A different approach was taken in *NE Glamorgan HA v Walters* and in *W v Essex CC* but the first is CA and the question is whether it will be followed by HL;
- Before *White* professional rescuers were treated more liberally than amateurs – compare *Frost* with *McFarlane v EE Caledonia*;
- Secondary victim must show that psychiatric injury would foreseeably have been suffered by a person of reasonable phlegm and fortitude, so a secondary victim already suffering a psychiatric illness has no claim, whereas there is no such restriction on primary victims, only 'injury' need be foreseeable *Page v Smith*.

Reach any sensible conclusion.

Assessment Objective 3**[5 marks]**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 Rottendean Primary School organises a 'Summer Fun Day' for its pupils. It hires a 'bouncy castle' from Toys2Rent which is placed in the main hall. Toys2Rent erect the bouncy castle but its employee inflates it with too much air. Penny and Jennifer are the first children to play on the bouncy castle. The first time that they jump on it the material bursts and both children are injured when they are tossed aside by the rush of escaping air. As she falls, Jennifer also ruins, beyond repair, an expensive watch that her parents had recently bought for her birthday.

Another child, Rowland, wanders to the back of the hall and enters an unlocked door into a storage room behind. The school has allowed Toys2Rent to place a generator in the room for a roundabout that the school has also hired. Rowland is badly burned when he touches the terminals on the generator and his jacket is ruined.

Consider any potential claims that may be made by Penny, Jennifer and Rowland against Rottendean Primary School under the Occupiers' Liability Acts.

[50]

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

Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Identify that occupiers' liability concerns damage arising from the state of the premises.

Explain that liability comes from two Acts: Occupiers' Liability Act 1957, in the case of lawful visitors; and Occupiers' Liability Act 1984, in the case of trespassers.

Explain the term occupier – one who is in control of premises *Wheat v Lacon*.

Explain that premises has a fairly broad definition *Wheeler v Copas*.

Explain that under the 1957 Act a lawful visitor can be an invitee, a licensee, and someone with a legal right to enter.

Identify the common duty of care under OLA 57 s2(1).

Identify the scope of the duty under OLA 57 s2(2) – to keep the visitor safe for the purposes for which he is invited to enter.

Identify also that the occupier can exclude or modify the duty but consider the effect of UCTA s2(1).

Explain the special duty owed to children under the Act – the occupier must expect that children will be less cautious than adults and must not place any allurements in their way *Glasgow Corporation v Taylor*.

Explain also that an occupier is generally entitled to rely on parents of young children to supervise them *Phipps v Rochester Corporation*.

Explain that an occupier can be relieved of liability under s2(4) if an independent contractor is at fault for the damage – but:

- it must be reasonable to hire one *Haseldine v Daw*;
- a competent contractor must be chosen *Ferguson v Welsh*; and
- the work must be inspected if it is possible ie not too technical *Haseldine v Daw*, *Woodward v Mayor of Hastings*.

Identify that a visitor going beyond the terms of his entry may become a trespasser *The Calgarth* – so may then be subject to the 1984 Act.

Explain that a lesser duty is owed under the 1984 Act – it covers injury but not property *Tomlinson v Congleton BC* (credit any reference to *B R Board v Herrington*).

Explain the basis of liability under s1(3) of the 1984 Act:

- the occupier has reason to believe that there may be a trespasser;
- is aware of the danger, and
- ought reasonably to offer some protection.

Explain the availability of the defence of *volenti* under s1(6) *Ratcliffe v c Connell*.

Assessment Objective 2

[20 marks]

In the case of Penny and Jennifer:

Identify both Penny and Jennifer as lawful visitors (children at the school).

Identify that Rottendean has control and is identifiable as an occupier, and that the school is also identifiable as premises.

Identify that Rottendean owes a duty to keep the girls safe for the purpose of their visit.

Discuss both girls are injured while engaged in that legitimate purpose.

Consider the fact also that Rottendean owes a higher standard of care to children.

Consider the fact also that the children are in the school's care (*loco parentis*).

Consider whether they suffer foreseeable harm *Jolley v London Borough of Sutton*.

Consider whether or not Rottendean can avoid liability if the injuries are seen as the fault of Toys2Rent – it is reasonable to hire contractors for a skilled task – the question is whether competent contractors have been hired and whether it was reasonable to inspect their work – if not then Toys2Rent will be liable in negligence.

Consider the fact that damages for both personal injury and property damage is available under the 1957 Act.

In the case of Rowland:

Consider that Rowland has exceeded his permission by entering the room without authorisation – *The Calgarth* – so falls under the 1984 Act.

Apply s1(3) – Rottendean is likely to be liable.

Consider the fact that there is no apparent warning, the door is not locked and Rowland is a child so it is unlikely that damages will be reduced for contributory negligence – and that the defence of *volenti* is unlikely in the circumstances as Rowland is a child of primary school age *Tomlinson v Congleton BC*.

Consider the fact that, under the 1984 Act Rowland can only claim for his injury not for the damage to his clothes.

Assessment Objective 3

[5 marks]

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 4 Sally has just passed her driving test. She drives too fast round a tight bend, loses control, veers onto the wrong side of the road and collides with a car driven by Pete. Pete's car is destroyed and Pete's left eye is badly injured when his windscreen shatters. Pete is taken to Bent Cross Hospital where doctors diagnose that his eye needs to be removed. Doctor Burns, the surgeon, operates on the wrong eye leaving Pete totally blind.

On the same day, Doctor Burns also operates on another patient of Bent Cross Hospital, Jim, to remove a cancerous tumour in Jim's bowel. The operation is successful but Doctor Burns carelessly omits to stitch up the wound in Jim's intestine. Another operation is impossible because Jim also suffers from asthma and the risk of post operative shock is too great. Jim dies six days later from an infection from the wound in the intestine.

Advise Pete of any claims that he may make in negligence against Sally and Bent Cross Hospital and advise Jim of any claim in negligence he may make against Bent Cross Hospital.

(Do not discuss vicarious liability).

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
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Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Explain the basic elements of a negligence claim:

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

Explain that a duty of care is owed by motorists to fellow road users.

Explain the appropriate standard (the reasonable driver) *Nettleship v Weston* (credit any reference to the reasonable man test and *Cork v Kirby MacLean*).

Explain the factors that may be taken into account in determining breach:

- foreseeability of harm *Roe v MOH*;
- likelihood of harm *Hale v London Electricity Board*;
- practicability of any precautions *Latimer v AEC*.

Explain the duty of care owed by doctors to their patients *R v Bateman* (or any case involving doctors).

Explain the different standard of care – that appropriate to a competent body of medical opinion *Bolam v Friern Hospital Management Committee*.

Explain the factors indicating breach, including the 'thin skull' rule *Paris v Stepney BC*.

Explain that there can be liability for negligent omissions as well as negligent acts where there is a duty to act.

Explain that this applies where there is a special relationship such as doctor and patient *Airedale NHS Trust v Bland*.

Assessment Objective 2**[20 marks]**

In the case of Pete's claim against Sally:

- identify that Sally owes Pete a duty of care;
- identify that she has breached this duty by going too fast and by being on the wrong side of the road;
- identify that there is no reduction in the standard of care because of inexperience *Nettleship v Weston*;
- identify that Sally has caused property damage and the loss of Pete's left eye;
- identify that Sally has caused foreseeable harm.

In the case of Pete's claim against Bent Cross Hospital:

- identify that Bent Cross owes Pete a duty of care;
- identify that Doctor Burns has breached this duty by removing the wrong eye – credit any discussion of whether a 'reasonably competent doctor' would have done the same, which is unlikely – and any discussion of the view of HL in *Bolitho* that some things are so obviously negligent that there is no need to take into account the views of doctors in establishing the breach;
- identify that Bent Cross has caused Pete foreseeable harm;
- identify also that it is responsible for total blindness, not just the loss of one eye *Paris v Stepney BC*.

In the case of Jim's claim against Bent Cross:

- identify that Bent Cross owes Jim a duty of care;
- identify that because of the relationship this will also cover the omission to stitch the wound;
- apply the *Bolam* test on standard of care and discuss whether a reasonably competent doctor would have done the same;
- identify that Bent Cross has caused Jim's death which is foreseeable in the circumstances.

Reach any sensible conclusions.

Assessment Objective 3**[5 marks]**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Mark Scheme 2578
June 2007**

- 1 “*Rylands v Fletcher* can never be an effective tort because, amongst other things, the meaning of ‘non-natural use of land’ inevitably changes over time and there is too much uncertainty on the meaning of ‘escape’.”

Consider the accuracy of the above statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
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Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Define the tort:

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

The above were the elements identified by Blackburn J.

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

Identify the available defences:

Volenti non fit injuria - *Peters v Prince of Wales Theatre*;

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

Assessment Objective 2**[20 marks]**

Consider the fact that the style of liability apparently envisaged by Blackburn J in the original case was for a general head of liability for accumulations of hazardous things that then did damage – the tort has developed in such a way that this is not possible.

Consider the fact that the scope of the tort was limited straightaway by Lord Cairns in HL with the addition of a requirement of non-natural use of land.

Consider the difficulties of showing non-natural use in a technological age eg it is unlikely that *Musgrove v Pandelis* would be decided the same way now.

Consider, in contrast, the views of Lord Goff in *Cambridge Water* that certain activities by their nature are always a non-natural use of land.

Consider how the meaning of non-natural appears to vary according to the context in which the thing escapes ie domestic use is natural *Collingwood v Home and Colonial Stores* industrial and commercial use is non-natural *The Charing Cross* case.

Consider the meaning given to accumulation - not unlike fault liability.

Consider the limitation on the meaning of escape in *Read v Lyons* (although this contradicts the tests in both *Hale v Jennings* and *British Celanese v A H Hunt*) so that this does make the meaning of escape uncertain.

Consider the fact that HL in *Transco plc v Stockport MBC* failed to clear up this apparent contradiction.

Credit discussion of other factors that make the tort ineffective:

- the unusually wide range of available defences;
- the requirement of foreseeability in *Cambridge Water* and in *Transco* making it little different from negligence;
- that the tort has been described as a more specific type of nuisance - but again an action is harder to bring;
- that the tort has more in common with fault liability than with strict liability - and therefore negligence may be a better option;
- that, while the tort has always been described as strict liability, this clearly is not the case.

Reach any logical conclusion.

Assessment Objective 3**[5 marks]**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 2 Discuss the extent to which the tort of trespass to the person effectively protects people from unwanted personal interference. [50]

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

Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Explain that there are three torts: assault, battery, and false imprisonment.

Define assault - directly and intentionally causing the claimant to apprehend an imminent battery.

- must involve threatening behaviour *Read v Coker*;
- the threat must be real and imminent *Thomas v NUM*;
- and create a feeling of being threatened in the claimant *Stephens v Myers*;
- words can negate the fear of assault *Tuberville v Savage*;
- but words alone were traditionally insufficient *Read v Coker*;
- however, silent telephone calls have now been accepted in criminal assault *R v Ireland*; *R v Burstow*.

Define battery - directly and intentionally applying unwanted force:

- direct is given a broad interpretation *Scott v Shepherd*; *Nash v Sheen*;
- it does not include the careless or negligent application of force *Letang v Cooper*;
- or indirect but intentional force *Wilkinson v Downton*;
- hostility was identified as a requirement in *Wilson v Pringle* and *Cole v Turner* suggests that 'the least touching of another in anger is battery';
- but this conflicts with *Collins v Wilcock* – and hostile touching could not be a requirement in medical battery *F V West Berks HA*.

Explain that defences to assault and battery include statutory authority, lawful arrest, Mental Health Act 1983, consent *Re T*, necessity *F v West Berks HA*, parental authority *A v UK*, self-defence using reasonable force *Lane v Holloway*.

Define false imprisonment - a direct and intentional total bodily restraint:

- restraint must be total *Bird v Jones*;
- but need not be physical *Meering v Graham White Aviation*;
- and the claimant need not be aware of the restraint *Murray v MOD*;
- and the restraint may be justified by a contractual relationship *Robinson v Balmain Ferry*;
- or by the reasonable expectation of an employer *Herd v Weardale Steel*.

Defences include lawful arrest and detention under PACEA (as amended) (but note different rules for citizen's arrest), Mental Health Act 1983, and consent.

Assessment Objective 2**[20 marks]**

Consider that the tort is actionable *per se* so a remedy is available without proof of damage – meaning that the tort is quite effective in dealing with unwanted interference.

In relation to assault:

- consider the difficulties of assessing damages, making it less effective;
- discuss the difficulties associated with use of words - may limit the effectiveness;
- discuss the fact that the tort may be less effective as a means of dealing with the threat of future harm *Tuberville v Savage*;
- discuss the fact that the threat must be real and imminent may limit the effectiveness of the tort as a means of preventing threatening behaviour *Thomas v NUM*.

In relation to battery:

- discuss the fact that there is no need for actual harm to be proved so that the tort is effective;
- discuss the broad view applied to 'direct' eg *Nash v Sheen* again making the tort more effective;
- discuss the limitations associated with the requirement of hostility in *Wilson v Pringle*;
- discuss the fact that this cannot apply in medical cases – but that in any case negligence is more commonly used in this context as it is more effective;
- discuss the difficulties associated with consent in sporting context – compare *Simms v Leigh RFC* and *Con don v Basi*;
- discuss the difficulties associated with consent in medical context *Re T, Ms B, Chatterton v Gerson* and particularly the lack of informed consent *Sidaway v Governors of the Royal Maudsley and Bethlem Hospitals*.

In relation to false imprisonment:

- discuss the limitations of requirement of total bodily restraint making the tort less effective;
- discuss the fact that there is even no need to know of the restraint making the tort more effective;
- discuss how the defences may limit the effectiveness, particularly in relation to complaints about the police.

Reach any sensible conclusion.

Assessment Objective 3**[5 marks]**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 Frank's wife, Betty, has recently given birth to a baby who they have named Jessica. Frank erects a huge sign in his front garden that reads "Welcome home Betty and Jessica". The sign is so big that it overhangs the garden of his neighbour, Maureen, by several metres.

Frank promised Betty that he would repair the garden fence while she was in hospital. Frank takes the fence to pieces but does not have time to put it up again before fetching Betty and Jessica from the hospital. Frank leaves several panels of the fence lying in Maureen's garden. Several days later Frank has still not moved the fence panels and Maureen's flowers that are underneath the panels have died as a result. Maureen had given Frank permission to go onto her land to repair the fence. Both Frank and Maureen own their houses.

While Frank is repairing the fence he digs new holes for the fence posts and some of the holes extend at least a metre under Maureen's garden.

Advise Maureen of any claims that she may have against Frank.

[50]

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

Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Define the tort of trespass to land – an intentional and direct entry onto land in another person's possession.

Recognise that the tort is actionable *per se* (without proof of damage).

Explain the ways in which the tort can be committed:

- entering land voluntarily and intentionally *League Against Cruel Sports v Scoff*;
- remaining on the land after permission is withdrawn *Holmes v Wilson*;
- placing things on the land *Smith v Stone*;
- taking things away from the land *Basely v Clarkson*.

Explain that even the merest contact with the land can amount to a trespass *Westripp v Baldock*.

Explain how land is defined for liability under the tort:

- covers the land itself and anything on the land such as buildings;
- extends to the airspace above *Kelsen v Imperial Tobacco, Bernstein v Skyways*, Civil Aviation Act 1982;
- and to the subsoil below *Hickman v Maisey, Harrison v The Duke of Rutland*.

Distinguish between lawful entry and unlawful entry eg express and implied consent, statutory right to enter under PACEA.

Identify the defences of permission, and of necessity *Cope v Sharp*.

Explain the concept of trespass *ab initio* where a lawful visitor abuses the proper limits on their right to enter *Cinnamond v British Airport Authority*.

Identify the need to show an interest in land to claim *Hunter v Canary Wharf*.

Explain that a claimant must show a superior right of possession to the defendant *Delaney v TP Smith, White v Bayley*.

Outline the possible remedies:

- damages – but only if some damage to the land – and mesne profits possible;
- injunctions – the usual remedy – but see *Anchor Brewhouse v Berkley House*.

Assessment Objective 2**[20 marks]**

Identify that the problem involves the tort of trespass to land.

Identify that Maureen appears to own the land next to Frank's so does have a proprietary interest and a right in law to claim for trespass.

Discuss the fact that Maureen gave Frank permission to go onto her land to repair the fence but that this does not extend to leaving the fence panels on her land – so this would be a trespass.

In relation to the sign overhanging Maureen's garden:

- identify that Maureen's rights extend to the air space above up to a reasonable height;
- consider that there are clear precedents to make this a trespass;
- remedy includes an injunction.

In relation to the fencing panels left on Maureen's land:

- identify that even something left on the land can be a trespass – and permission has not been extended to this;
- identify that damage has also been caused to Maureen's plants;
- identify that the probable remedy is damages.

In relation to the holes extending under Maureen's garden:

- identify that Frank had no permission for this;
- identify that this would therefore be a trespass into Maureen's subsoil (the rights to subsoil extend to a reasonable limit as here);
- identify that an injunction is unlikely because it would be mandatory – but that Maureen could have the holes filled and charge Frank.

Discuss the applicability of trespass *ab initio*.

Candidates should also be given credit for any discussion of whether a legal claim is the best course of action or whether conciliation might be better.

Assessment Objective 3**[5 marks]**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 4 Nicholas lives in a quiet cul-de-sac and each year from November to January he covers the outside of his house with Christmas lights, adding more each year. Nicholas keeps the lights lit throughout the hours of darkness. A neighbour, Ebenezer, often complains to Nicholas that the light prevents him from sleeping despite putting up heavy curtains at his windows, but Nicholas ignores the complaints. Nicholas uses a generator to power the lights and this makes a loud humming noise and vibrations from it can be felt in his neighbours' houses. The lights have become famous and attract so many people and cars that often Jacob, another neighbour, cannot get into his drive when he returns from work. The heat from the lights is so great that it causes paint to peel on Bob's house, next door. Ebenezer, Jacob and Bob again complain to Nicholas who says that he will not turn the lights off because they give so many people pleasure. Ebenezer retaliates by playing loud Christmas music through the night to keep Nicholas awake.

Advise Ebenezer, Jacob and Bob on any potential claims that they may bring against Nicholas.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
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Potential answers **MAY**:

Assessment Objective 1

[25 marks]

Define the tort of private nuisance – unlawful, indirect interference with another person's use or enjoyment of land.

Explain the need for the claimant to have an interest in the land affected by the nuisance *Malone v Laskey*, *Hunter v Canary Wharf*.

Explain that potential defendants are occupier of land or those authorizing or adopting the nuisance *Tetley v Chitty*.

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

Explain that there is a difference between nuisance causing damage and one causing interference with comfort or the enjoyment of land *Halsey v Esso Petroleum*.

Explain the term unlawful – meaning unreasonable.

Identify the elements that may be taken into account in determining whether the use of land is unreasonable:

- locality – more likely to be a nuisance in residential areas than in industrial and commercial areas *Sturges v Bridgman*, *Kennaway v Thompson*, *Laws v Florinplace*;
- duration – must involve continuous interference *Spicer v Smee*, *De Keyser's Royal Hotel v Spicer Bros*;
- abnormal sensitivity of the claimant *Robinson v Kilvert*;
- the presence of malice *Christie v Davey*, *Hollywood Silver Fox Farm v Emmett*.

Explain the possible defences - prescription *Sturges v Bridgman*, public policy *Adams v Ursell*, *Miller v Jackson*.

Identify the basic remedies - damages *Halsey*, injunctions *Kennaway v Thompson*, abatement. Credit any relevant explanation of public nuisance.

Assessment Objective 2**[20 marks]**

Identify that the problem concerns private nuisance.

Consider the fact that Nicholas appears to be an occupier so that he is a potential defendant.

Identify also that Ebenezer, Jacob and Bob all appear to be occupiers also so may be claimants.

Discuss whether or not Nicholas has *prima facie* created a nuisance:

- the use of the lights is continuous;
- the lights indirectly interfere with his neighbours' use of their land;
- the question is whether or not they are unreasonable;
- locality may be important because of the nature of the activity and the fact that it is a quiet cul-de-sac *Sturges v Bridgman*;
- none of the neighbours appears to be abnormally sensitive;
- there is no apparent malice by Nicholas.

Discuss the possible distinction between the interference with enjoyment of land and actual damage *St Helens Smelting v Tipping* and *Halsey v Esso* – Ebenezer cannot sleep because of the lights, all three suffer the noise and vibrations from the generator, Jacob cannot park in his drive, Bob actually suffers physical damage, the peeling paint.

Consider that Bob will probably have a successful claim for the peeling paint - but for all the other interference unreasonable use of land must be shown.

Discuss the effect of any possible defences – Nicholas's suggestion of public utility will fail *Adams v Ursell* – but public policy may be possible *Miller v Jackson*.

Consider the likely remedies – damages for the peeling paint, otherwise an injunction.

Consider that Ebenezer may lose the right to a remedy because of his apparent malice *Christie v Davey*.

Credit any sensible application of public nuisance to Jacob's situation.

Assessment Objective 3**[5 marks]**

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good quality to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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 based on their material or apply points of law mechanically to a given factual situation, and reach a conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Mark Scheme 2579
June 2007**

- 1 In Source 1 (page 3 lines 64-66 Special Study Materials) the author suggests that “...it is a truism that hard cases make bad law and the courts have, from time to time, been prepared to assume the authority to supply omissions left by the legislature”.

Consider the accuracy of the above statement in relation to decided cases using the literal rule and using the golden rule. [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 literal rule, giving the words in question their plain ordinary literal meaning. Explain that under the rule judges must give words their plain, ordinary meaning even if this would result in a 'manifest absurdity' (Lord Esher in *R v City of London Court*).

Define the golden rule and identify it as a subsidiary of the literal rule.

Explain the two approaches of the golden rule:

- narrow approach – where the words have different meanings and the plain meaning would lead to absurdity then the better meaning is chosen *Adler v George*;
- broad approach – where there is a single meaning but for policy reasons a different meaning is given *Re Sigsworth*.

Use any relevant cases in illustration of either rule.

Assessment Objective 2

Consider the extent to which cases involving statutory interpretation show that it is 'a truism that hard cases make bad law':

- possible with the literal rule eg *Fisher v Bell* meant that Parliament had to legislate again; *IRC v Hinchey* and *Berriman* both lead to injustice;
- but it is arguable whether any of these are in fact 'hard cases';
- less likelihood of 'bad law' arising with the golden rule eg *Adler v George* preserved the security of the state and *Sigsworth* protected the vulnerable by preventing people from killing relatives in order to inherit;
- but as Professor Zander suggests the golden rule can be seen as an 'unpredictable safety valve'.

Consider the extent to which 'courts have been prepared to assume the authority to supply omissions left by the legislature':

- the literal rule relies exclusively on the words themselves and so judges using it are very unlikely to do so eg *Whiteley v Chappell*;
- but the broad approach of the golden rule in effect is filling in gaps in the law for policy reasons *Re Sigsworth*;
- and even the narrow approach adds to or changes words to avoid absurd results eg *Adler v George* includes 'in' within 'in the vicinity of' and *R v Allen* distinguishes between different meanings of 'married' by referring to the 'marriage ceremony';
- credit any reference to Lord Simonds' criticism in *Magor & St Melons v Newport Corporation* was that to 'fill in the gaps', as Lord Denning suggested, was a 'naked usurpation of the legislative process'.

Reach any sensible conclusion.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 2 Discuss the significance of the decision in *Hoston v East Berkshire HA* (Source 5 page 5 lines 25-36 Special Study Materials) to the development of the law on causation. [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 (Source 5): the claimant, a 13 year old boy, injured his leg, he was x-rayed at hospital but his injury did not show up and doctors failed to carry out an exploratory examination, he later developed avascular necrosis resulting in painful deformity, his claim for compensation failed.

Identify the significant causal problem in the case, the boy had a 25% chance of full recovery if he had been treated immediately but there was still a 75% chance that he could have developed the condition from the injury even with prompt treatment.

Link to any other relevant case on causation in fact eg *Barnett, Wilsher, Gregg v Scott*.

Assessment Objective 2

Identify the key issue in the case: whether or not the defendant was liable for damages representing the loss of a chance of recovery by the claimant.

Discuss the basic rules on factual causation applicable to the case:

- the 'but for test', if the claimant would not have suffered damage but for the defendant's negligence then defendant is liable *Cork v Kirby Maclean*;
- where there are multiple causes the defendant is not liable unless his negligence is shown to be the exact cause of the damage *Wilsher v Essex HA*.

Discuss the stance taken by the Court of Appeal in the case – claimant lost a 25% chance of full recovery so could recover 25% of the appropriate damages.

Discuss the significance of the development made in the case, HL rejected CA approach – no liability for loss of a chance in negligence only for damage proved to be caused by the defendant's negligence (credit reference to *Gregg v Scoff* 2005).

Credit any discussion of the unfairness of the rule.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

- 3 In Source 8 (page 7 lines 6-7 Special Study Materials) Lord Justice Stephenson suggests that “*Negligent conduct is more likely to break the chain of causation than conduct which is not...*”

Discuss the circumstances in which courts will accept a defence of *novus actus interveniens* 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 the term *novus actus interveniens* – literally means 'a new act intervenes'.

Explain the effect of a successful plea: the chain of causation is broken when there is an intervening event which is the actual cause of the damage.

Identify the three ways in which a *novus actus interveniens* can occur:

- an intervening act of the claimant himself – which breaks the chain of causation if it is a foreseeable cause of harm *McKew v Holland & Hannen & Cubitts*, but does not if the claimant's action is reasonable *Wieland v Cyril Lord Carpets*;
- an intervening act of nature – which only breaks the chain of causation if it is unforeseeable *Carslogie Steamship Co v Royal Norwegian Government*;
- an intervening act of a third party – which must create foreseeable harm in order to break the chain *Knightley v Johns*, so it will not if not foreseeable *Lamb v Camden LBC*, but damages can also be apportioned *Rouse v Squires*.

Assessment Objective 2

Identify that the *novus actus* must be the real source of the damage and the defendant's negligent action is not the real cause of the damage.

Discuss whether the chain of causation is only broken if the intervening act is negligent:

- in the case of an intervening act of the claimant discuss the fact that the chain is not broken if the claimant's actions are reasonable *The Oropesa and Wieland v Cyril Lord Carpets*, but is where the claimant's response to the defendant's negligence is unreasonable in the circumstances *McKew*, consider whether 'unreasonable' is the same as negligence in this context;
- in the case of intervening acts of nature discuss the fact that the plea is rarely accepted since the claimant is then left uncompensated *Carslogie Steamship* but in any case there is no negligence involved;
- in the case of intervening act of a third party discuss the fact that in a successful plea a claimant has no action if the *novus actus* is not itself negligence, but this generally involves unreasonable behaviour by the intervening party *Knightly v Johns*, and even if there are two causes both may be unreasonable but damages can be apportioned *Rouse v Squires* – also consider that a claimant may have no remedy even where he may have expected the defendant to take care because the party intervening lacks the resources to be sued *Lamb*, but that this may be overcome where it can be shown that the defendant had a duty to guard against the intervening act so is still liable *Ward v Cannock Chase DC* and *Reeves v Commissioner of the Metropolitan Police*, so the statement is generally true here.

Reach any sensible conclusion.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

- 4 Consider how each of the following potential claims may be affected by issues of causation in fact or contributory negligence.
- (a) Fran, an actress, reluctantly consents to an operation advised by a surgeon, Stephen, to stop a slight twitch in her right eyelid. Fran is reluctant to have an operation because she is afraid that it might go wrong. She would prefer a less drastic form of treatment that is available. Stephen fails to warn Fran that there is a slight chance, between 1% and 2%, that the operation could lead to blindness in the eye. The operation is not carried out negligently but Fran does in fact go blind in her right eye as a result. (10)
- (b) Terry, a professional cricketer, suffers multiple fractures to his right leg when he is involved in a collision in his car caused by the negligent driving of Mark. As a result Terry has to give up his cricketing career for a lower paid job. Before Terry's negligence claim against Mark is heard, Terry develops a crippling orthopaedic illness in both legs that causes him to give up work altogether. The illness is the result of injuries Terry sustained over the years while playing cricket. (10)
- (c) Andy works in a hairdresser's salon. His employer, Estelle, is bound by law to provide Andy with rubber gloves because of the chemicals in the dyes and bleaches and the potential that they have for causing skin diseases. The law also states that Estelle is bound to ensure that Andy wears the gloves at all times when using dyes and bleaches. Andy never wears the gloves because he finds that they make his hands sweat. Andy then contracts dermatitis and is suing Estelle. (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

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

Explain the but for test *Cork v Kirby MacLean*.

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

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

Use any relevant cases in illustration.

Assessment Objective 2

In the case of a):

- identify that there is no actual mention of negligence in relation to the operation itself;
- discuss whether there may be negligence on Stephen's part – the failure to warn of the possible blindness;
- identify the similarity with *Chester v Ashfar* it is probable that Françoise would not have agreed to the operation if she had been warned of the risks attached – the judges may be willing in the circumstances to treat it that Stephen's failure to warn was the cause of the blindness (credit any application *Sidaway*).

In the case of b):

- identify that Mark is negligent and on the but for test is liable *Cork v Kirby Maclean*;
- recognise that Terry has a reduced income as a result and after he develops the illness has to stop work altogether;
- apply *Jobling v Associated Dairies* and *Baker v Willoughby*, the former is the more appropriate since the illness would have happened anyway Mark has only caused the loss of income up to the time of the illness developing.

In the case of c):

- identify that Estelle was bound to ensure that Andy wore the rubber gloves and so is negligent and under the 'but for' test can be said to be the cause of the dermatitis *Cork v Kirby MacLean*;
- identify that Andy has been contributorily negligent by not wearing the gloves – he satisfies both tests: he failed to take care of his own safety and that partly caused the damage *Jayes v IMI (Kynoch)*;
- Andy's damages will be reduced.

Assessment Objective 3

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.

Reward grammar, spelling and punctuation.

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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.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.
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.	A very limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using little appropriate legal terminology. Reward grammar, spelling and punctuation.

**Advanced GCE Law (3839/7839)
June 2007 Assessment Session**

Unit Threshold Marks

		<i>Unit</i>	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	48	42	37	32	27	0
	UMS		90	72	63	54	45	36	0
2570	Raw		60	48	42	36	30	24	0
	UMS		120	96	84	72	60	48	0
2571	Raw		100	72	63	54	45	37	0
	UMS		90	72	63	54	45	36	0
2572	Raw		100	72	64	56	49	42	0
	UMS		90	72	63	54	45	36	0
2573	Raw		100	77	69	61	53	46	0
	UMS		120	96	84	72	60	48	0
2574	Raw		100	78	68	58	48	39	0
	UMS		90	72	63	54	45	36	0
2575	Raw		100	70	63	56	49	42	0
	UMS		90	72	63	54	45	36	0
2576	Raw		100	77	69	61	53	46	0
	UMS		120	96	84	72	60	48	0
2577	Raw		100	74	64	54	44	35	0
	UMS		90	72	63	54	45	36	0
2578	Raw		100	73	65	57	49	42	0
	UMS		90	72	63	54	45	36	0
2579	Raw		100	77	69	61	53	46	0
	UMS		120	96	84	72	60	48	0

Specification Aggregation Results

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

	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	14.1	34.4	53.9	74.6	90.7	100	823
7839	18.4	40.1	64.7	84.5	96.4	100	6607

For a description of how UMS marks are calculated see;
www.ocr.org.uk/OCR/WebSite/docroot/understand/ums.jsp

Statistics are correct at the time of publication.

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