

# **Mark Scheme for the Units**

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**June 2008**

**H124/H524/MS/R/08**

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

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

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## CONTENTS

### Advanced GCE Law (H524)

### Advanced Subsidiary GCE Law (H124)

### MARK SCHEMES FOR THE UNITS

<b>Unit/Content</b>	<b>Page</b>
G141: English Legal System	1
G142: Sources of Law	17
G143: Criminal Law	25
G144: Criminal Law Special Study	41
G145: Law of Contract	46
G146: Law of Contract Special Study	62
G147: Law of Torts	67
G148: Law of Torts Special Study	81
Grade Thresholds	86

## G141: English Legal System

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

When using the mark scheme the points made are merely those that a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant.

**Candidates can score in the top bands without citing all the points suggested in the scheme. Answers, which contain no relevant material at all, will receive no marks.**

- 1 (a) Describe the different methods of Alternative Dispute Resolution available to deal with civil cases. [18]

Mark levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Describe each of the different methods of ADR:

- 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.
- Mention of the Centre for Dispute Resolution or any other service available for mediation or conciliation will also be rewarded eg ACAS.

Credit negotiation – parties reach agreement themselves with no third party.

Credit will be given for any other details.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss the advantages and disadvantages of using arbitration rather than using the courts. [9]

Mark levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

Explain the advantages of using arbitration:

- That the parties can choose their arbitrator and appoint a technical expert if appropriate.
- Use of an expert to decide saves the necessity for expert witnesses.
- The time and place of the hearing can be decided by the parties to suit their needs and is held in private.
- Likely to be dealt with quicker than the courts.
- Tends to be cheaper than court.
- Award is final and can be enforced by the courts.
- Avoidance of bad feeling between the parties.
- Confidentiality

Explain the disadvantages of using arbitration such as:

- The lack of availability of legal funding which may disadvantage an individual.
- Professional arbitrators may be very expensive.
- Unexpected legal points may crop up which the arbitrator may not be able to fully take into account.
- Rights of appeal are more limited than the courts.
- Some commercial arbitration can take as long as the courts to complete.

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

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

### Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**

2 (a) Describe the role of juries in both criminal and civil cases.

[18]

Mark levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Describe when juries are used and their role in criminal cases.

- 12 jurors in Crown Court for trials on indictment - less than 1% of criminal cases.
- Listen to evidence and judge's summing up.
- Decide whether the defendant is guilty or not guilty.
- Only decide questions of fact not law.
- Do not give reasons for their decisions.
- Majority verdicts may be given – introduced to prevent jury nobbling.
- Discussion takes place in secret.

Describe when juries are used and their role in civil cases.

- Used only in four types of case, defamation, false imprisonment, malicious prosecution and fraud.
  - Only retained for these cases because they deal with character or reputation.
  - Can be refused even in these cases if the judge thinks the evidence is too complicated.
  - Allowed in personal injury cases in the High Court in exceptional circumstances. *Ward v James*
  - Personal injury cases since that case have not been deemed exceptional so none have had juries.
  - Dual role in civil cases to decide liability and assess damages to be awarded.
- Credit description of Coroner's Courts use of Juries.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

(b) Discuss the arguments for retaining juries.

[9]

Mark levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:**Assessment Objective 2**

Discuss the arguments for retaining juries.

- Public confidence in the system – regarded as one of the fundamental indicators of a democratic system "the lamp that shows that freedom lives".
- Traditionally seen as fair but with only 40% conviction rate in Crown Court this can be disputed.
- Jury equity – can disagree with a particular law and apply their own idea of fairness even if they do not follow that law as they do not need to give reasons for decisions *Ponting, Owen*, but this could lead to unsafe verdicts.
- Allows the ordinary person to take part in the administration of justice, but there are no educational requirements.
- Juries are likely to be impartial as they are not connected with anyone involved in the case, but can make judgements on arbitrary grounds.
- Lawyers have to explain matters simply and clearly for the jury so the defendant is better able to follow the proceedings and they become more accessible to the public.

Credit suggestions for alternatives

Credit any other relevant points

**Assessment Objective 3**

Marks are awarded holistically at the end of the question.

**Assessment Objective 3**

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

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

Reward grammar, spelling and punctuation.

**Total Marks [30]**



- 3 (a) Describe the theory of the separation of powers using examples to illustrate your answer. [18]

Mark levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

#### Assessment Objective 1

Demonstrate clear understanding of theory first put forward by Montesquieu:

- The three arms of the state must be kept independent of each other.

Demonstrate knowledge of the three arms of the state:

- Legislature: makes law, Parliament and Queen.
- Executive: put laws into effect and administer nation's affairs, ministers (and their departments).
- Judiciary: interpret and enforce law, judges.
- Some overlap occurs in this country with the executive and the legislature.
- More overlap was present in the role of the Lord Chancellor before his role was reformed.
- Some countries eg USA incorporate the separation of powers in their constitution which prevents any overlap.

Illustrate with some examples eg:

Independence of judiciary:

- security of tenure of judiciary (Act of Settlement)
- judges try to implement intention of Parliament in statutory interpretation
- judges cannot question legality of legislation except in relation to EU law and declarations of incompatibility with Human Rights Act.

Exercise of controls:

- judiciary provide check on executive through judicial review
- judiciary can be thought to limit legislature through statutory interpretation eg golden rule – judges may decide a literal interpretation would lead to an absurd or obnoxious result and give a different interpretation
- legislature controls terms of judges' employment, eg pay, retirement age
- legislature can amend law if Minister has been held to be acting ultra vires.

Credit any other relevant points.

#### Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss why the theory of the separation of powers is important to judicial independence. [9]

Mark levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

Discuss the importance of the separation of powers to the independence of the judiciary.

- Until recently senior judges were selected by the Prime Minister and Lord Chancellor – political bias could be present and it was secretive. This could influence judges who were seeking promotion but the new Judicial Appointments Committee should remove the political bias in senior judicial appointments and keep the executive out of judicial selection or promotion. However, the Lord Chancellor still has a limited power to reject a proposed new judge which allows some political influence to remain.
- Inferior judges' appointments are more transparent and based on merit which prevents any political influence.
- Law Lords were members of the House of Lords in its legislative capacity but with the creation of the Supreme Court this will no longer be the case which prevents conflict of power with the legislature.
- Reform of the role of Lord Chancellor ensures he no longer sits as a judge or is involved to any great extent in the appointment of the judiciary.
- Ensuring that the three arms of the state are kept independent of each other means that each can exercise control over the other two and without this separation it is easier for one person or a small group to take complete control (eg Zimbabwe).

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

### Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**

- 4 (a) Describe the custodial, community and other sentences available for adult offenders convicted in the Crown Court. [18]

Mark levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Demonstrate knowledge of the sentences available to the Crown Court for adult offenders under the Criminal Justice Act 2003.

- Custodial sentences:
- Life or term of years:
- Can be mandatory or discretionary with minimum sentences for certain crimes eg firearms offences:
- Indeterminate sentences for dangerous offenders for public protection:
- Extended sentences for certain violent or sexual offences:
- Custody plus – short period of custody followed by longer period on licence:
- Custody minus – suspended sentence:
- Community sentences:
- Community order which can include a number of requirements:
- Unpaid work requirement - unpaid work in the community (40-300 hours);
- Supervision requirement - under supervision of a probation office;
- Drug treatment and testing requirement;
- Curfew requirement – including electronic tagging.
- Fines – dependent on offender's ability to pay
- Conditional discharge
- Absolute discharge.

Mention of other sentences or possible requirements on community orders will be credited. Credit will also be given for details of sentences.

### Assessment Objective 3

Marks are awarded holistically the end of the question.

- (b) Discuss which types of sentence would be most appropriate where the main aims of sentencing are rehabilitation and reform. [9]

Mark levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

Discuss which sentences would be most appropriate where the main aims of sentencing are rehabilitation and reform.

- Community sentences seen as the most appropriate for rehabilitation and reform e.g. drug testing and treatment requirements.
  - Unpaid work requirement seen as rehabilitating as it is focused on helping the community. It also helps offenders to understand the impact of their crime and therefore reform their behaviour.
  - Supervision requirement involves offender having to confront and take responsibility for their behaviour.
  - Custodial – not usually seen as appropriate for reform unless it is a long sentence. Prisons concentrate their funds on work experience, anger management and psychology departments for long term prisoners as they feel the training has time to work.
  - Discharges and fines both seen as deterrent rather than rehabilitation.
- Credit will be given for any other relevant points.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

### Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**

- 5 (a) Describe the ways in which a client can make a complaint about their solicitor or barrister or otherwise claim compensation. [18]

Mark levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Describe the ways in which clients can make a complaint against their solicitor.

- Can complain directly to the solicitor's office.
- Can complain to the Legal Complaints Service (formerly Consumer Complaints Board) which has the power to reduce a solicitor's bill and order a solicitor to pay compensation to a client.
- Solicitors Regulatory Authority – can reprimand a solicitor or refer them to the Solicitors Disciplinary Tribunal.
- Legal Services Ombudsman - can order solicitor or Law society to pay compensation to client.
- Legal Services Complaints Commissioner - investigates the handling of complaints and sets targets.
- Can sue for breach of contract.
- Can sue for negligence for work done out of court – *Griffiths v Dawson*.
- Can sue for negligence for work done in court – *Hall v Simmons*.

Describe the ways in which clients can make a complaint against their barrister.

- Can complain to the Head of Chambers.
- Complaints dealt with by the Bar Standards Board supervised by the Complaints Commissioner and can order a barrister to apologise, repay fees and compensate a client.
- Barristers can be disciplined by the Senate of the Inns of Court.
- Bar Council can pay compensation to the client for poor service.
- Legal Services Ombudsman.
- Cannot sue for breach of contract as no contract with the client except where there is direct access.
- Can be sued for negligence for work outside court *Saif Ali*.
- Can also be liable in negligence for advocacy in court *Hall v Simmons*.

Credit detail and any reference to the Legal Services Act and the proposed Office for Legal Complaints.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss whether the current system for clients to make such complaints is satisfactory. [9]

Mark levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

Discuss the strengths and weaknesses of the present system of complaints and suggest reforms.

- Both professions have complaints procedures run by their own professional bodies so they are not seen as independent but the Clementi review suggested there should be a new complaints body independent of the professions which would deal with complaints from all consumers of legal services.
- There are disadvantages in suing a lawyer – reluctance to start new proceedings, cost, difficulty in finding another lawyer although the Law Society has a panel.
- Both professions have now included a greater lay representation on their complaints boards which should improve matters.
- There are considerable delays in dealing with complaints particularly those involving solicitors. However the Legal Services Complaints Commissioner is able to set targets for handling complaints and can fine the professional body concerned if the targets are not met. This should help to deal with the delays.
- There are low limits on the amount of compensation which will be paid which do not adequately compensate clients for their actual losses.

Credit should be given for any other relevant points.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

### Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**

- 6 (a) Describe the powers of the police to stop and search a person on the street. [18]

Marks levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

Demonstrate knowledge of powers to stop and search set out under the Police and Criminal Evidence Act 1984, the codes of practice, the Criminal Justice Act 2003 and other relevant legislation.

- S 1 of PACE – police have the power to stop and search a person in a public place if they have reasonable suspicion that prohibited articles, stolen goods or articles made, adapted or intended for use in burglary or criminal damage are in their possession. (Prohibited fireworks were added in the Serious Organised Crime and Police Act 2005).
- Police officer must give his name, station + reason for the search.
- Written report required for every stop and search.
- Only a request to remove outer coat, jacket and gloves is permitted.
- Code of Practice A sets out guidance for police on stop and search.
- Meaning of reasonable suspicion.
- Abolition of "voluntary search" there must be a statutory power for any search.
- Identify other statutes that give power to the police to stop and search eg Misuse of Drugs Act 1971 and Terrorism Act 2000.
- S60 Criminal Justice and Public Order Act 1994 and the different rules that apply when that is in force.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Luke is running through a park, where an anti-war protest is taking place. He is trying to get to a football match on time. He is carrying a sports bag. Two police officers stop him and ask to search him and his bag.

Explain to Luke whether the police have the power to stop and search him in this situation. [9]

Mark levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

Explain to Luke that:

- The police can only stop and search him if they have reasonable suspicion that he is carrying stolen goods or prohibited articles. The fact that he is running through the park with a bag may be enough depending on whether that makes the police think that he has such things in his bag.
  - Identify that the park is a public place.
  - If there is a Criminal Justice and Public Order Act s60 order in place because of the protest, the police would not need reasonable suspicion to stop and search Luke.
  - The fact they think Luke may be involved in the protest would not be reason enough unless there is a s60 order in place.
  - The code of practice states there must be an objective basis for the suspicion.
  - Luke's behaviour is probably what they would use as reasonable suspicion.
- Credit reference to searching under the Sporting Events Act.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

### Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**



- 7 (a) Describe the different appeal routes available to the defence from both the Magistrates' Court and the Crown Court. [18]

Mark levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

### Assessment Objective 1

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

#### Appeals to the Crown Court

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

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

- On a point of law.
- May be either directly from the Magistrates' Court or from an appeal to the Crown Court.
- Only available for an appeal against conviction.
- Court may confirm, vary or reverse the decision or send the case back to the Magistrates' Court for them to apply the interpretation of the law.

Demonstrate knowledge of the appeal routes for the defence from the Crown Court

#### Appeals to the Court of Appeal

- Appeal against conviction and/or sentence.
- Leave required from a Court of Appeal judge (only 30% get leave).
- Only ground for appeal is that conviction was unsafe.
- Can allow appeal and quash conviction or vary to conviction of a lesser offence. Can decrease sentence but not increase it.
- Can order a retrial.

#### Further appeals to the House of Lords

The defence have the right to appeal from the Divisional Court or the Court of Appeal to the House of Lords, it must involve a point of law of public importance and permission must be given to appeal.

Very few cases are appealed to the House of Lords.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Brian has been convicted in the Crown Court of the theft of a laptop computer worth £2000 and sentenced to 2 years imprisonment. He wishes to appeal against the conviction, because a new witness has come forward. He also wishes to appeal against the sentence which he considers too harsh.

Advise Brian in this situation.

[9]

Mark levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

Identify that Brian can ask for leave to appeal to the Court of Appeal.

- The evidence of the new witness may be a reason to grant leave to appeal as the court could regard the original conviction unsafe. Only 30% get leave so he may not succeed.
- The reason the witness was not at the original trial would be a factor. As would their evidence.
- If he gets leave to appeal the court could quash the conviction, order a retrial or reject the appeal.
- The Court of Appeal may also consider whether Brian's sentence was too harsh. They can only reduce the sentence or leave it the same.

### Assessment Objective 3

Marks are awarded holistically at the end of the question.

### Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

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

**Total Marks [30]**

### AS GCE Law Levels of Assessment

There are **four** levels of assessment of AOs 1 and 2 in the AS units. Level 4 is the highest level that can reasonably be expected from a candidate at the end of the first year of study of an Advanced GCE course. Similarly, there are **three** levels of assessment of AO3 in the AS units.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate 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.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate 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.	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.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate 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.	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.
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 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.

## G142: Sources of Law

### 1 Exercise on European Union Law.

- a) **Source A** at lines 7–10 refers to the European Court of Justice.

Describe the role and composition of the European Court of Justice. [12]

Mark levels	AO1
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

#### Assessment Objective 1

- Describe the role of the ECJ – ensuring the uniform application of EU law throughout the Union – article 220;
- Describe the two roles- hearing direct actions against member states and other institutions and also references under Article 234;
- Describe how actions against Member States are normally brought by the Commission e.g. *Commission of the European Communities v UK: Re Tachographs (1979)*;
- Describe how the ECJ operates referrals from Member State courts;
- Describe how the ECJ are not bound by their own past decisions;
- Describe how the ECJ tend to adopt a purposive approach in interpreting legislation.

#### Assessment Objective 3

Marks will be awarded holistically at the end of this question.

- b) Using Source B, consider whether any of the following have a claim against their employers for a failure to comply with a directive.
- (i) Bert is a midwife working for a private hospital; [5]
- (ii) Winston is an accountant working for a company which was owned by the Government twenty years ago; [5]
- (iii) Letitia is a dog warden working for a local council; [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 private hospital is a private employer and that directives do not have horizontal effect, therefore Bert cannot take action against his employer. Recognise the possibility of suing the Member State for compensation. Use any relevant case to illustrate.
- (ii) Recognise that the private company may be regarded as an 'arm of the state'. Recognise that the state controlled the business twenty years ago therefore it is no longer connected to the state. Use any relevant case in illustration.
- (iii) Recognise that the Local Authority is to be regarded as an 'arm of the state' and it would be possible to use the concept of vertical effect to enforce rights conferred for an unimplemented directive. Use the Source to illustrate.

#### Assessment Objective 3

Marks will be awarded holistically at the end of this question.

c) With reference to Source A and Source B

- (i) Using the sources and other examples, describe directives and how they become law in Member States. [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 that Article 249 of the Treaty of Rome gives the EU the power to issue directives;
- Explain that directives are binding on Member States but it is left to the Member State to use their own laws to implement the directives and that such laws have to be implemented within a set time limit set by the European Commission;
- Explain that the usual method for implementing directives in the UK is through delegated legislation;
- Explain direct effect;
- Give examples of implementation of directives.

**Assessment Objective 3**

Marks will be awarded holistically at the end of this question.

- (ii) 'Directives can never have horizontal direct effect.'  
Discuss the problems which are caused by this.

[12]

Mark levels	AO2
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

#### Assessment Objective 2

- Discuss the unfairness of the concept of horizontal and vertical effect in that they give rights to individuals in some cases and not others.
- Discuss how a remedy may depend on the issue of who is the employer – state or private.
- Discuss the problems of identifying what is an 'arm of the state';
- Discuss how the ECJ has liberally interpreted 'arm of the state';
- Discuss the limitations of the *Francovich v Italian Republic* principles.

#### Assessment Objective 3

Marks will be awarded holistically at the end of this question.

#### Assessment Objective 3

Marks are awarded holistically for the whole question.

[6]

Mark levels	AO3
Level 3	5-6
Level 2	3-4
Level 1	1-2

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

**Total marks [60]**

## 2 Exercise on Delegated Legislation.

(a) **Source A** refers to statutory instruments.Describe and illustrate statutory instruments and two other types of delegated legislation. [12]

Mark levels	AO1
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

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

Describe the character of a statutory instrument:

- Describe that they are generally introduced by Ministers of Government departments under powers given in Enabling Acts.
- Describe that they are introduced by an either 'affirmative or negative resolution' procedure.
- Describe the use of statutory instruments – over 3,000 are brought into force each year.
- Give any examples eg Lord Chancellor's powers regarding legal aid schemes.

Describe the character of a byelaw:

- Describe that they are made by local authorities to cover local issues or by public corporations.
- Use relevant examples of a byelaw.

Describe the character of an Order in Council:

- Describe the nature of an Order of Council – they are drafted by the government department and approved by the Queen and Privy Council.
- Describe the power is granted by the Emergency Powers Act 1920 and is generally used in times of emergency, particularly war and when Parliament is not sitting.
- Give any example of an Order of Council.

**Assessment Objective 3**

Marks will be awarded holistically at the end of this question.



- (b) Discuss whether the delegated legislation could be successfully challenged in the courts, in the following situations.
- (i) A Local Authority creates a byelaw banning singing near houses. It is designed to stop carol singers. [5]
- (ii) A Minister has been given power to make delegated legislation on legal funding. He introduces regulations concerning health care. [5]
- (iii) A Minister brings a statutory instrument into force without consulting all the parties specified in the Enabling Act. [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

In the case of (i): recognise that the local authority are acting unreasonably. Consider the effect of the decision of *Associated Provincial Picture Houses v. Wednesbury Corporation* (1948).

In the case of (ii): recognise that the statutory instrument goes beyond the power in the Enabling Act. Consider substantive ultra vires e.g. *R v Secretary of State for Social Security, ex p Joint Council for the Welfare of Immigrants* (1996).

In the case of (iii): recognise that the duty to consult was laid down in the enabling Act and it therefore must be followed. It may be possible to challenge on the grounds of procedural ultra vires e.g. *Aylesbury Mushrooms* (1972).

### Assessment Objective 3

Marks will be awarded holistically at the end of this question.

(c) (i) Describe the need for 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**

- Explain that Parliament has limited time to make legislation;
- Explain the lack of technical or specialist expertise of MPs;
- Explain the benefits from local knowledge rather than a centralised view of what might be appropriate;
- Explain that delegated legislation can be passed quickly to deal with emergencies;
- Explain that delegated legislation allows greater flexibility to amend or revoke than an Act of Parliament.

- (ii) Discuss the disadvantages of delegated legislation. [12]

Mark levels	AO2
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

Points of discussion may include:

- Recognise that it is based on an undemocratic procedure – a necessary evil?
- Recognise that there is a lack of debate and lack of publicity;
- Show awareness that Parliamentary scrutiny of delegated legislation is limited;
- Discuss the problem of sub-delegation;
- Discuss the limitations of judicial review;
- Discuss the problems of volume – 3,000 SIs alone.

### Assessment Objective 3

Marks will be awarded holistically at the end of this question.

### Assessment Objective 3

Marks are awarded holistically for the whole question.

[6]

Mark levels	AO3
Level 3	5-6
Level 2	3-4
Level 1	1-2

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

**Total marks [60]**

# G143: Criminal Law

- 1 'Strict liability offences promote high standards of behaviour, protect the public and guard against dangerous activities. They are not only necessary but perfectly justifiable in a complex modern society.'

Consider the validity of this statement using relevant cases to illustrate your answer.

[50]

	AO1	AO2
Level 5	21 – 25 marks	17 – 20 marks
Level 4	16 – 20 marks	13 – 16 marks
Level 3	11 – 15 marks	9 – 12 marks
Level 2	6 – 10 marks	5 – 8 marks
Level 1	0 – 5 marks	0 – 4 marks

AO1+AO2 Mark	AO3 Mark
37-45	5
28-36	4
19-27	3
10-18	2
1-9	1

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 *Gammon v A-G for Hong Kong*;

Emphasise the common law presumption of *mens rea* eg *Sweet v Parsley*; *Prince*; *B v DPP*;

Identify the statutory nature of strict liability offences;

Explain the significance of statutory interpretation in this context;

Recognise the summary nature of most strict liability offences;

Provide examples of strict liability offences – road traffic, licensing, food safety, pollution etc;

Elaborate the examples by reference to appropriate cases e.g. *Callow v Tillstone*; *Storkwain*; *Cundy v Le Cocq*; *Sherras v De Rutzen*, *Alphacell*, *Smedleys v Breed*, *James & Son v Smee etc*;

Refer to the distinction between 'absolute' and 'strict' liability;

Give examples of 'no-negligence'/'due diligence' defences.

### Assessment Objective 2 (20 marks)

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*, with potential bad publicity and ruin for small businesses

Consider whether there is too much 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;

Consider some of the social benefits claimed or injustices caused eg the regulatory nature or administrative convenience or the possible injustice of imposition of liability

without fault eg 'spiking' of drinks or 'planting' of drugs eg *Warner, Gammon, Storkwain, Lim Chin Aik* etc;

Consider some of the following justifications:-

- protection of society from harmful acts or omissions
- promotion of high standards of behaviour on the roads, food production, protection against pollution, high standards of health & safety etc.
- the 'quasi-criminal' nature of strict liability offences creates little stigma
- regulatory nature, promotes high standards of care in socially important activities/practical effectiveness i.e. 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 argument that some companies may ignore taking precautions that may be more expensive than the fines they face – 'profit from risk'

**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 whether the common law governing the offence of murder is satisfactory or is in need of reform by Parliament.

(Do not consider causation issues in answering this question)

[50]

	AO1	AO2
Level 5	21 – 25 marks	17 – 20 marks
Level 4	16 – 20 marks	13 – 16 marks
Level 3	11 – 15 marks	9 – 12 marks
Level 2	6 – 10 marks	5 – 8 marks
Level 1	0 – 5 marks	0 – 4 marks

AO1+AO2 Mark	AO3 Mark
37-45	5
28-36	4
19-27	3
10-18	2
1-9	1

Potential answers **MAY**:

**Assessment Objective 1 (25 marks)**

Define the offence of murder and explain the elements of the *actus reus*

eg 'unlawful killing'; 'reasonable creature in being' – *A-G's Ref (no 3 of 1994) 1997 HL*

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

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

Explain the developments that have occurred explaining the concept of oblique intent and cite relevant cases

eg *Moloney*; *Hancock & Shankland*; *Nedrick*; *Walker & Hayles*; *Woollin*

Distinguish motive, *Steane*

Define 'express malice' and 'implied malice'

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

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

Make relevant reference to the special & partial defence of provocation in the context of reform

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

Refer to the Law Commission's 2005 Consultation Paper

**Assessment Objective 2 (20 marks)**

Discuss whether a killing may be lawful eg self defence

Discuss whether a foetus is not a 'reasonable creature in being' and comment on the morality of that stance

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

Discuss the distinction between intention and foresight of consequences – *Moloney*

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

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

Discuss the need to distinguish between murder and manslaughter by reference to the gravity of the offence in terms of blameworthy states of mind and the sentence that attaches ie the mandatory life sentence for murder is often unfair *Cocker*; *Martin*

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

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

Discuss the Law Commission's Consultation Paper No 177 proposing a system of degrees of homicide similar to the system in the USA

Discuss, for example, the proposed three tier structure for homicide and proposed changes to a classification of first and second degree murder

Discuss the proposed codification of intention which suggests putting the 'virtual certainty' test in *Woollin* into statutory form

Discuss the restrictive effect of the mandatory death sentence and the way that the new proposals would offer judges flexibility in respect of sentencing were they to be implemented

Discuss the euthanasia debate and the decision in *Pretty*

### **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 'The law relating to the defence of insanity is outdated and unsatisfactory. Reform is long overdue in the interests of both justice and common sense.'

Evaluate the accuracy of this statement.

[50]

	AO1	AO2
Level 5	21 – 25 marks	17 – 20 marks
Level 4	16 – 20 marks	13 – 16 marks
Level 3	11 – 15 marks	9 – 12 marks
Level 2	6 – 10 marks	5 – 8 marks
Level 1	0 – 5 marks	0 – 4 marks

AO1+AO2 Mark	AO3 Mark
37-45	5
28-36	4
19-27	3
10-18	2
1-9	1

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Define the essential elements of the defence of insanity; the *McNaghten* Rules; Explain that 'insanity' is a purely legal definition which has been broadened to cover the operation of the mind in all its aspects – *Sullivan*; and *Bratty v A-G for NI* etc the policy of controlling dangerous offenders

Recognise DR is also a special and partial defence to a charge of murder only BUT insanity is a general defence to all crimes, identifying that 'abnormality of mind' means what the jury would term 'abnormal' – *Byrne* – S.2 Homicide Act 1957

Recognise that insanity may be raised by the prosecution or judge as well as the defence Refer to the relationship between insanity and automatism and the danger of people who suffer from diabetes and epilepsy, falling with the terms of the definition of insanity; *Quick*; *Hennessey*; *Sullivan* etc

Recognise the powers of disposition given to the court by the Criminal Procedure Insanity Act 1964 as amended by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and the Domestic Violence, Crime and Victims Act 2004, upon a finding of 'not guilty owing to insanity' noting that on a murder charge hospitalisation will ensue.

#### Assessment Objective 2 (20 marks)

Evaluate the definition of insanity and criticise the antiquity and operation of the plea of insanity despite the mitigating effect of the 1991 Act

Evaluate the reluctance of courts to recognise automatism as a complete defence if it could mean releasing potentially dangerous people back into society and comment upon the social stigma that can attach to an epileptic etc from a finding of 'not guilty owing to insanity' *Quick*; *Hennessey*; *Sullivan* etc

Evaluate the unavailability of insanity to the psychopath, with the availability of a plea of DR to a psychopath charged with murder; - *Byrne*

Evaluate the relative frequency of pleas of DR compared with the rarity of insanity pleas

Evaluate the problems posed for jurors faced with technical psychiatric terminology;

Evaluate the argument that the defences are effectively established or rebutted by medical experts rather than being decided upon by jurors – doctors should not be delivering opinions on legal or moral responsibility which are essentially jury issues;



Evaluate the potential for jury confusion & misapplication owing to emotional considerations, sympathy or crude 'gut reaction' eg Peter Sutcliffe – the 'Yorkshire Ripper' where psychiatrists were unanimous in agreeing he was a paranoid schizophrenic yet he was convicted of murder;  
Evaluate proposals for reform eg Butler Committee 1975 and Law Commission Draft Criminal Code

**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 Alex and Barry are on the pavement arguing about a debt. Alex, who has been drinking excessively, suddenly lashes out at Barry with his fist, breaking Barry's nose. Barry runs into the road where he is struck by a motorcycle. Barry suffers a large wound to his leg.

Barry is bleeding heavily from a severed artery in his leg and is rushed to hospital. Barry refuses to have a blood transfusion because of his religious beliefs even though it would probably save his life. He dies later that day from loss of blood.

Discuss the potential criminal liability of Alex for the above incidents.

[50]

	AO1	AO2
Level 5	21 – 25 marks	17 – 20 marks
Level 4	16 – 20 marks	13 – 16 marks
Level 3	11 – 15 marks	9 – 12 marks
Level 2	6 – 10 marks	5 – 8 marks
Level 1	0 – 5 marks	0 – 4 marks

AO1+AO2 Mark	AO3 Mark
37-45	5
28-36	4
19-27	3
10-18	2
1-9	1

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Define common law assault – *R v St George*; *Stephens v Myers* etc

Define common law battery – *Cole V Turner*; *Collins v Wilcock* etc

Define assault occasioning actual bodily harm – S.47 Offences Against the Person Act 1861

Define malicious/intentional wounding – S.20/S.18 Offences Against the Person Act 1861 – *Eisenhower*

Define: unlawful and dangerous act manslaughter – *Franklin*; *Church*; *Newbury & Jones Mitchell* etc

Credit reference to consideration of the less likely charges:

- gross negligence manslaughter – *Adamako*; *Wacker*; *Misra & Srivastava* etc
- reckless manslaughter – *Lidar*;
- murder

Refer to causation and *novus actus interveniens* principles – *White*; *Pagett*; *Kimsey*; *Roberts*; *Corbett*; *Hayward*; *Blaue* etc

Define the principles relating to the defence of intoxication - *Beard*; *Majewski*

#### Assessment Objective 2 (20 marks)

Discuss Alex's liability for assault and battery/S.47 OAP 1861

Discuss Alex's liability for malicious/intentional wounding

Discuss Alex's potential liability for murder, dependent upon whether or not he intended to cause grievous bodily harm

Discuss Alex's liability for the manslaughter of Barry (murder very unlikely as a sustainable charge) – any type of manslaughter is creditworthy but unlawful act manslaughter is probably the likeliest – the assault is clearly an unlawful and dangerous act since the

*Church* test only requires that the sober and reasonable person (jury) would recognise that Alex's punch would subject the victim to **some** harm, not necessarily serious harm

Apply the principles of causation:

- Alex's misconduct is a factual cause of Barry's death – *White*
- Alex's misconduct is still an operative cause of death – *Smith*
- Barry's actions were 'reasonably foreseeable' – *Pagett; Marjoram*
- Alex must take Barry 'as he finds him' – *Blaue*

Apply the *Majewski* principles and reason that even though Alex is intoxicated it would be no defence to a common assault/S.47/S.20 charge as they are all offences of basic intent, as is manslaughter.

Recognise that intoxication would form a potential 'fall back' defence were he to be charged with intentional wounding/gbh/murder in connection with the wound to his leg

### **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.

- 5 Sanjit, while playing a football match, tackles Aaron fairly although Aaron's shin is bruised in the challenge. Seconds later Aaron deliberately head butts Sanjit and knocks him unconscious for a minute. The referee sends Aaron off and Sanjit has to leave the pitch for treatment and is replaced by a substitute.

In the changing room, Sanjit, now fully recovered, decides to get his own back on Aaron. He takes a leather jacket belonging to Aaron. Aaron comes through the doorway and sees what is happening. He tries to stop Sanjit who pushes Aaron to the floor. Sanjit then runs off with the jacket.

Discuss the potential criminal liability of Aaron and Sanjit for the above incidents.

[50]

	AO1	AO2
Level 5	21 – 25 marks	17 – 20 marks
Level 4	16 – 20 marks	13 – 16 marks
Level 3	11 – 15 marks	9 – 12 marks
Level 2	6 – 10 marks	5 – 8 marks
Level 1	0 – 5 marks	0 – 4 marks

AO1+AO2 Mark	AO3 Mark
37-45	5
28-36	4
19-27	3
10-18	2
1-9	1

Potential answers **MAY**:

**Assessment Objective 1 (25 marks)**

Define common law assault – *R v St George; Stephens v Myers* etc

Define common law battery – *Cole v Turner; Collins v Wilcock* etc

Define assault occasioning actual bodily harm – S.47 Offences Against the Person Act 1861

Define maliciously /intentionally inflicting/causing grievous bodily harm – S.20/S.18 Offences Against The Person Act 1861

Explain the defence of consent in the context of physical contact sports – *Billinghurst; Barnes*

Define theft – S.1 Theft Act 1968

Define robbery – S.8 Theft Act 1968

**Assessment Objective 2 (20 marks)**

Discuss the potential battery/assault occasioning actual bodily harm by Sanjit when he tackles Aaron but reason that he may use the defence of implied consent in a physical contact sport since the tackle is 'fair' – *Billinghurst*

Discuss the head butt by Aaron – could amount to a S.18 grievous bodily harm with intent offence and the defence of consent will not be available as the conduct is outside the laws of the game – *Barnes*

Discuss whether the taking of the jacket is a simple theft and assault and battery or a robbery, has the force been used 'in order to steal?' – Ss.1 & 8 Theft Act 1968; *Dawson; Hale*

**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.

- 6 While shopping Susan places some items of food in the wire basket which is provided. She also hides a bottle of perfume in her coat pocket. She then takes a label off an expensive CD, switches it with the label from a reduced price CD and places the expensive one in the basket. She goes to the checkout and only pays for the items in the basket.

Outside the shop Susan sees a bike which was there when she went in and which she remembers seeing there for several days. She rides home on it alongside a caravan park. She notices a personal CD player on a table inside one of the caravans. She goes inside and takes the CD player. She leaves the bike at the end of her road and goes home.

Discuss Susan's potential criminal liability for the above incidents.

[50]

	AO1	AO2
Level 5	21 – 25 marks	17 – 20 marks
Level 4	16 – 20 marks	13 – 16 marks
Level 3	11 – 15 marks	9 – 12 marks
Level 2	6 – 10 marks	5 – 8 marks
Level 1	0 – 5 marks	0 – 4 marks

AO1+AO2 Mark	AO3 Mark
37-45	5
28-36	4
19-27	3
10-18	2
1-9	1

Potential answers **MAY**:

#### Assessment Objective 1 (25 marks)

Define theft, Theft Act 1968

Refer to appropriation S.3 and *McPherson; Morris; Gomez; Hinks*; etc as regards the items in the shop and show knowledge and understanding of the assumption of rights of the owner

Refer to S.2 (1) (c) Theft Act with regard to dishonesty and *Small*

Explain S.6 (1) Theft Act with regard to 'borrowing' of the bike

Define burglary S.9 (1) (a) Theft Act 1969

Explain the term 'inhabited vessel' by reference to the S.9 (4) Theft Act 1968

#### Assessment Objective 2 (20 marks)

Discuss the placing of the perfume in the coat pocket as a dishonest appropriation  
*McPherson*

Discuss the switching of the labels accompanied by a dishonest intention to be an appropriation and completed theft at that point since Susan has assumed 'one of the rights of the owner' by switching the price labels – *Morris*

Credit reference to a potential reasoned argument for a S.9 (1)(a)/(b) burglary for the incidents in the shop

Discuss the point that when Susan takes the bike she may lack an intention to permanently deprive in the literal sense but that she is likely to be caught by S.6 (1) as it probably amounts to 'a person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if her intention is to treat the thing as her own to dispose of regardless of the other's rights' when she abandons it at the end of her road

Discuss the point that her only defence might be that she honestly believed the true owner could not be found by taking reasonable steps but this is unlikely to be believed in the circumstances – *Small*

Discuss whether the entering of the caravan is a burglary S.9 (1) (a) Theft Act as well as theft and credit reference to a S.9 (1) (b) burglary offence

Discuss whether a caravan, which can be an 'inhabited vehicle' S.9 (4), is capable of being a 'building' within S.9 and reasoning that she 'enters' it with the intention to steal

**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.

- 7 **Matt is in debt. He enters a shop intending to threaten the shop assistant with a gun in order to force him to hand over money. Inside the shop, Matt changes his mind, without getting the gun out of his pocket, when he sees CCTV cameras pointing at the counter. In frustration, as he is leaving, he pushes another customer, Andrea, to the floor.**

Evaluate the accuracy of each of the four statements A, B, C, and D individually, as they apply to the facts in the above scenario.

**Statement A: Matt is not liable for burglary because he does not steal anything from the shop.**

**Statement B: Matt is liable for attempted robbery when he enters the shop.**

**Statement C: Matt is liable for robbery when he pushes Andrea to the floor.**

**Statement D: Matt is not liable for a battery against Andrea because it was not part of his original plan. [20]**

	<b>AO2</b>
<b>Level 5</b>	<b>17 – 20 marks</b>
<b>Level 4</b>	<b>13 – 16 marks</b>
<b>Level 3</b>	<b>9 – 12 marks</b>
<b>Level 2</b>	<b>5 – 8 marks</b>
<b>Level 1</b>	<b>0 – 4 marks</b>

Potential answers **MAY**:

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

**Statement A: Matt is not liable for burglary because he does not steal anything from the shop.**

- Reason that burglary may be committed when the accused enters a building or a part of a building with the intention to steal
- Reason that Matt does enter the shop intending to steal
- Reason that Matt is therefore a trespasser rather than a lawful invitee
- Conclude that a completed burglary has occurred contrary to S.9 (1)(a) Theft Act 1968 upon entry
- Reason that, therefore, the statement is inaccurate

**Statement B: Matt is liable for attempted robbery when he enters the shop.**

- Reason that an attempt may be charged where the intended substantive offence is not completed
- Reason, either, that he may not have done an act that is 'more than merely preparatory to the commission of the intended substantive offence' or that he has not yet embarked upon the crime proper'
- Reason that Matt has the intention to commit a robbery
- Conclude that he therefore may or may not be guilty of attempted robbery
- Reason that, therefore, the statement may or may not be accurate.

**Statement C: Matt is liable for robbery when he pushes Andrea to the floor.**

- Reason that robbery involves the use of force in order to steal
- Reason that Matt had used force
- Reason that there has been no theft
- Conclude that Matt is not liable for robbery here
- Reason that, therefore, the statement is inaccurate.

**Statement D: Matt is not liable for a battery against Andrea because it was not part of his original plan.**

- Reason that a battery involves the use of force against the victim
- Reason that his push on Andrea is intentional or at least reckless and does not require any planning
- Reason that the actus reus and mens rea of battery are present irrespective of whether or not it was part of his original plan
- Conclude that Matt is guilty of battery
- Therefore the statement is inaccurate.



- 8 Holly lives with Ian. Ian frequently hits Holly. He threatens that if she tries to leave him she will “pay”. One evening Holly and Ian argue and Ian calls her “a worthless slave”. Ian goes to bed. Holly watched television for two hours and drinks a bottle of vodka. On her way to the bedroom Holly takes a knife from the kitchen and, seeing Ian asleep, stabs him in the chest killing him instantly.

Evaluate the accuracy of each of the four statements A, B, C, and D individually, as they apply to the facts in the above scenario.

**Statement A:** Holly cannot plead provocation as a defence to a charge of murder because there is no evidence that she has been provoked.

**Statement B:** Holly still cannot successfully plead provocation as a defence because her loss of self control was not ‘immediate’.

**Statement C:** Holly will be successful in reducing her potential conviction for murder to voluntary manslaughter because she lost her self-control.

**Statement D:** Holly will be successful in reducing her potential conviction from murder to manslaughter by pleading intoxication as a defence. [20]

	AO2
Level 5	17 – 20 marks
Level 4	13 – 16 marks
Level 3	9 – 12 marks
Level 2	5 – 8 marks
Level 1	0 – 4 marks

Potential answers **MAY**:

**Assessment Objective 2 (20 marks)**

**Statement A:** Holly cannot plead provocation as a defence to a charge of murder because there is no evidence that she has been provoked.

- Reason that there must be evidence of provocation in order to raise the defence to a charge of murder
- Reason that provocation may include a very wide range of conduct including acts or words or both and may arise from a variety of sources and need not even be aimed at the defendant
- Reason that Ian has often hit Holly and that evening Ian calls her a worthless slave
- Reason that there is evidence of cumulative provocation even though the last provocative words are relatively trivial
- Conclude that she may be able to show evidence of provocation and is entitled to raise the defence.
- Reason that, therefore, the statement is inaccurate.

**Statement B: Holly still cannot successfully plead provocation as a defence because her loss of self control was not 'immediate'.**

- Reason that there must be a 'sudden and temporary' loss of self-control for the defence to be successful
- Identify the fact that Holly has waited for at least two hours before she strikes the fatal blow and this could undermine her claim that her loss of control is sudden and temporary
- Refer to 'battered woman syndrome' cases and reason that previous similar cases have been unsuccessful because there has been evidence of a 'cooling off period'
- Recognise that the loss of self control need not be 'immediate' provided that it is 'sudden' although the longer the time lag the less likely the defence is to succeed
- Conclude that provided her reaction is 'sudden' a provocation defence may nevertheless be available and the statement is inaccurate.

**Statement C: Holly will be successful in reducing her potential conviction for murder to voluntary manslaughter because she lost her self-control.**

- Reason that loss of self control must be sudden and a gap between the last act of provocation and the actual killing may make the defence of provocation unavailable
- Reason that Holly has waited for two hours and then taken the knife from the kitchen so the act is likely to be seen as calculated rather than through a loss of self-control
- Conclude that Holly is unlikely to successfully plead provocation.
- Reason that Holly may be able to rely on the defence of diminished responsibility providing she can prove she is suffering from an abnormality of the mind
- Reason that there is evidence to support "abnormality of mind"
- Conclude that Holly may successfully plead diminished responsibility and therefore the statement may be accurate.  
(N.B. Candidates may attain Level 5 by discussion of either defence)

**Statement D: Holly will be successful in reducing her potential conviction from murder to manslaughter by pleading intoxication as a defence.**

- Reason that there is evidence of intoxication as Holly has consumed a bottle of vodka
- Reason that intoxication may reduce a murder conviction to manslaughter since it may effectively allow a partial defence to a specific intent offence applying the 'fall back' position if the intoxication has prevented the formation of an intention to kill
- Reason that if Holly formed the intent to kill before becoming intoxicated then the defence will not be available – 'Dutch Courage'
- Conclude that Holly may have the defence of intoxication but it would appear unlikely as the evidence suggests she still formed the intention to do at least serious harm.

### AS GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the AS units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objectives 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate 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.	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.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate 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.	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.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate 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.	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.
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 limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

# G144: Criminal Law Special Study

- 1 Discuss the significance of the case of *Gotts* [Source 4 page 3 Special Study Materials] to the development of the law on duress by threats. [12]

Mark levels	AO2
Level 5	11-12
Level 4	9-10
Level 3	7-8
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

## Assessment Objective 2 [12]

Discuss the fact that the offence for which *Gotts* was charged and convicted was attempted murder;

Discuss the fact that the defence claimed was duress by threats;

Discuss the fact the traditional position in *DPP for Northern Ireland v Lynch* that the defence would be available to a charge of murder (subject of course to fulfilling the later *Graham 2* part test);

Discuss the fact that *Howe* overruled *Lynch* and *in obiter* suggested that neither should the defence be available to a charge of attempted murder;

Discuss the fact that *Gotts* confirmed this; Duress not a defence to attempted murder

Discuss the reasoning given by Lord Jauncey:

- that it would have been better if the defence had not developed and that the plea instead should go towards mitigation
- the climate of violence and terrorism prevalent at the time
- that the sanctity of human life and its protection is of a paramount importance
- that there is no justification for extending to an attempted murderer a defence not available in law to a murderer.

Credit also any reference to the anomalies recognised by Lord Jauncey in the case. E.g. S18/Attempted murder contrast.

Refer to any relevant case

Discuss any other relevant point.

- 2 In Source 8 [page 6 lines 1–3 Special Study Materials] Lord Justice Kennedy states that “*The strength of the argument that a person ought to be permitted to breach the letter of the criminal law in order to prevent a greater evil to himself or others has long been recognised, but has, in English law, not given to a general defence of necessity....*”

Discuss how the courts have limited development of the defences of duress of circumstances and necessity in the light of the above statement. [30]

Mark levels		AO1	AO2
Level 5	25-30	14-16	13-14
Level 4	19-24	11-13	10-12
Level 3	13-18	8-10	7-9
Level 2	7-12	5-7	4-6
Level 1	1-5	1-4	1-3

Potential answers **MAY**:

**Assessment Objective 1** [16]

Explain the basis of the defence of duress – only available where the defendant has been subjected to threats of immediate violence and a reasonable person would respond in the same way as the defendant did *Graham*;  
 Identify that the defence traditionally was only available in the case of threats;  
 Define duress of circumstances – defendant is excused where the threat derives from the circumstances in which (s)he finds him/herself *Conway*;  
 Explain that the jury should ask themselves whether or not the defendant was driven wholly by force of circumstances *Willer*;  
 Identify the circumstances in which the defence most often arises ie motoring offences *Conway, Willer, Martin* – but see also *Pommell* which recognises general application;  
 Explain the basic nature of necessity – the defendant wishes to be excused from criminal liability on the basis that his/her actions were justified in order to avoid a greater evil;  
 Explain that the defence was originally unavailable as a result of the decision in *R v Dudley & Stephens* and later by *Kitson*;  
 Explain how CA in *Re A (Conjoined Twins)* determined that doctors should be able to choose between two evils to justify their actions to separate the twins;  
 Explain that the defence is only available in rare circumstances – refer also to the reasoning of CA in *Shayler* – rejected by the House of Lords;  
 Explain how courts have refused use of the defence in relation to cannabis use *Quayle, Altham*  
 Use any other relevant cases.

**Assessment Objective 2****[14]**

Discuss the restrictive nature of the defence of duress;

Discuss the recent development of a defence of duress arising from circumstances rather than from threats eg *Willer, Conway, Martin*;

Distinguish the circumstances in *Martin* from other uses of the defence;

Discuss the point made by Clarkson & Keating that *Martin* would have more accurately been described as necessity;

Discuss the development of the defence to a wider application in *Pommell*;

Discuss the fact that the defence developed out of the lack of availability of a defence of necessity;

Discuss the unfairness of *Kitson* and the argument that there should be the availability of a defence of some sort in such circumstances;

Discuss the unclear nature of the decision in *Dudley & Stephens* but comment on the moral blameworthiness of the defendants;

Discuss in detail the conditions for the defence of necessity to operate adopted by Brooke LJ in CA in *Re A*

- the act is needed to avoid inevitable an irreparable evil;
- should do no more than is reasonably necessary to achieve the desired purpose;
- the evil inflicted must not be disproportionate to the evil avoided.

Consider that the defence will operate on a case by case basis;

Consider also whether in fact blame is irrelevant to the defence;

Discuss the difficulties that may arise from allowing such a defence to operate;

Discuss the different application of the defence to duress of threats;

Credit any reference to CA in *Shayler* that duress of circumstances and necessity are the same thing – but comment that this was rejected by HL;

Identify that duress and duress of circumstances are only available where the defendant or someone who he is responsible for are in danger but that this does not apply to necessity *Re A*;

Reach any sensible conclusion.

- 3 Stella, Tina and Ursulla are all prostitutes who pay money to Ralph, their pimp. Ralph has a criminal record for violent assaults.

Discuss whether any of the women would have a defence of duress available to them in relation to each of the following criminal charges.

- a) Ralph sends Stella a text message one night saying that unless she pays Ralph £2,000 the following day Ralph will kill her. Stella steals money from an off-licence having threatened the shop assistant with a knife. [10]
- b) Ralph threatens Tina that he will tell Tina's husband that she is a prostitute and will kill Tina's pet dog unless she steals money from her husband. Tina steals money from her husband. [10]
- c) Ralph threatens that he will kill Ursula's children unless Ursula kills Violet. Ursula puts poison in Violet's drink but Violet does not like the smell of it and throws the drink away. [10]

[30]

Mark levels		AO1	AO2	a) b) 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

Potential answers **MAY**:

#### Assessment Objective 1

[10]

Define duress by threats using the *Graham* test – threat of death or injury to self or family and a reasonable sober person would respond in the same manner;  
 Identify the importance of the nexus between threat and offence *Cole*;  
 Identify the rules on voluntary association with persons of known violent tendencies *Shepherd, Sharp, Hasan*;  
 Identify the unavailability of the defence where there is a safe route of escape *Hudson & Taylor* or where the threat is not imminent *Abdul Hussain*;  
 Recognise the unavailability of the defence where the threat is other than death or injury to self or family *Valderrama-Vega*;  
 Use any other relevant cases in illustration.

Use any other relevant cases in illustration when applying the law to the problems.

#### Assessment Objective 2

[20]

In the case of a):

- Apply the *Graham* 2 part test;
- Identify that the threat is actually of a violent nature *Howe* and a reasonable person might respond as Stella did;
- Consider, however, that the threat has no connection with the crime – Stella could have come by the money without the robbery and was not directed to rob the post office *Cole*
- Consider also that there is a possibility of escape – the threat is not to be carried out until the next day *Hudson & Taylor* and *Abdul Hussain*

In the case of b):

- Apply the *Graham 2* part test;
- Identify the application of *Valderrama-Vega* – the first threat is not one of violence but of revealing secrets
- Identify that the second threat is not one of violence to herself or her family
- Identify that a reasonable person would not have acted as Tina did;

In the case of c):

- Apply the *Graham 2* part test;
- Identify that the threat is actually of a violent nature and aimed at Ursula's family *Howe* and a reasonable person might respond as Ursula did
- Identify also that Ursula is directed to the specific crime
- Identify, however, that the defence is unavailable to an offence of attempted murder *Gotts*;

In the case of all three credit any reference to the association with people known for their violent tendencies eg *Sharp, Shepherd, Fitzpatrick, Ali, Heath, Hasan*.

### Assessment Objective 3

Mark levels	AO3
Level 4	7-8
Level 3	5-6
Level 2	3-4
Level 1	1-2

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

Reward grammar, spelling and punctuation.



## G145: Law of Contract

- 1 'The courts were right to leave substantial reform of the rule of privity of contract to Parliament.'

Discuss the exceptions to the rule of privity at common law and the reforms made by statute, in the light of the above statement. [50]

Mark levels	AO1	AO2	AO3
Level 5	21 – 25	17 - 20	
Level 4	16 – 20	13 – 16	5
Level 3	11 – 15	9 – 12	4
Level 2	6 – 10	5 – 8	3
Level 1	0 - 5	0 – 4	1-2

Potential answers **MAY**:

### Assessment Objective 1 [25]

Explain the rules of privity; that a contract can only be enforced by and against the parties to the contract, *Tweddle v Atkinson*, *Dunlop v Selfridge*.

Candidates may explain that the rule comes from the need for the parties to have given consideration to the agreement in order to enforce it.

Explain the exceptions developed by the courts:

The trust device; where an implied trust was used to avoid the rules of privity, *Les Affreteurs Reunis v Walford*

Restrictive covenants; where restrictions on the use of land can be passed to subsequent purchasers, *Tulk v Moxhay*.

Collateral contracts; where a new contract was imposed by the court between a person making a representation and the person who acted on that representation, *Shanklin Pier v Detel Products*.

Special cases, where the courts have decided that one person may sue to recover losses suffered by another party, *Jackson v Horizon Holidays*, *Woodar v Wimpey*, *Linden Sludge v Lenesta*

Credit can also be given for mentioning other ways that the rule of agency may be avoided at common law: assignment, agency, suing under the law of negligence.

Explain statutory exceptions:

Married Women's Property Act and Road Traffic Act; where someone not a party to the original contract may enforce an insurance policy.

Contract (Rights of Third Parties) Act allowing a party who was intended to benefit from a contract, which they were not a party to, to enforce the contract in their own right.

***Due to the wide ranging material that could be discussed when answering this question, candidates should be credited for depth or breadth.***

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

Discuss the injustice that can be caused by the doctrine of privity; defeating the express intention of the parties.

Discuss the artificiality of some of the common law exceptions such as collateral contracts, and the potential uncertainty this can cause in the law.

Discuss the HOL disapproval of the trust device – only to be used where there is express intention to create a trust.

Discuss the retrospective nature of common law reforms to the law, that the courts are changing the law in relation to a set of facts that have already occurred.

Discuss the dissatisfaction of the HOL with the doctrine of privity, but their unwillingness to overturn it, (statements in *Woodar v Wimpey*).

Discuss the fact that the 1999 legislation was prospective in nature, giving a date for when it would be effective, and thus avoiding retrospective effect.

Discuss the limitation of the 1999 act; that it can still be excluded by the parties and that the contract must clearly intend to give the third party an enforceable right.

Credit must be given for mentioning previous proposals to Parliament to reform the doctrine, which were never enacted, such as the Law Revision committee in 1937. This is not needed for full marks however.

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

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 'The desire to achieve a just outcome in a particular case has often led to change and development of the law on consideration, particularly in the area of enforcing a second promise to pay for an existing contractual or public duty.'

Discuss the circumstances when a second promise to pay for an existing duty will be enforceable, in the light of the above statement. [50]

Mark levels	AO1	AO2	AO3
Level 5	21 – 25	17 - 20	
Level 4	16 – 20	13 – 16	5
Level 3	11 – 15	9 – 12	4
Level 2	6 – 10	5 – 8	3
Level 1	0 - 5	0 – 4	1-2

Potential answers **MAY**:

**Assessment Objective 1** [25]

Explain that where the existing contract obligation is owed to the same party a subsequent promise will not normally be enforceable, *Stilk v Myrick*.

Explain that when the promise is doing substantially more than the original obligation this will count as good consideration. *Hartley v Ponsonby*.

Explain that where the promisor avoids a specific detriment or gains a specific benefit by making a second promise, performance by the promise will be seen as good consideration for the further promise, *Williams v Roffey*.

Explain that where the existing contractual obligation is owed to a third party a promise by a new part to pay for that same obligation will normally be enforceable, *Shadwell v Shadwell*, *Pao On v Lau Yiu Long*.

Explain the nature of public duties; where the general law imposes a duty rather than a private contract.

Explain that performance of this public duty is not normally seen as good consideration, *Collins v Godefroy*.

Explain that performance going beyond this duty may be seen as good consideration, *Glasbrook v Glamorgan*, *Harris v Sheffield United Football Club*, *Ward v Byham*.

**Assessment Objective 2** [20]

Discuss the possible underlying reasons that the court may have had for making the decision in the cases outline in AO1:

- The decision in *Stilk v Myrick* having regard for the interests of shipping at the time.
- The decisions in *Williams v Roffey* and *Pau On v Lau Yin Long* reflecting the reluctance of the court to allow a decision taken in the best interests of the business at the time to be subsequently denied on the basis of lack of consideration from the other party.
- The decision in *Collins v Godefroy* reflecting the reluctance of the courts to undermine a general duty on people to carry out legal obligations.
- The willingness of the courts to find something of value, however tenuous, where they feel that a promise should be enforced, *Ward v Byham*.

Credit should be given for any comments on the implications for the development of the law of consideration:

- The unpredictability of the decision in *Williams v Roffey*, that it would have been difficult to predict that the longstanding rule in *Stilk v Myrick* would have been distinguished in this case.
- The nature of developing an area of contract law through landmark decisions of the courts, which have retrospective effect.

**Assessment Objective 3**

**[5]**

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 'Just as there are good reasons to limit contract terms that restrain trade, there are often good reasons to allow them as well.'

Consider the circumstances when a term to restrain trade will be allowed by the courts, in light of the above statement. [50]

Mark levels	AO1	AO2	AO3
Level 5	21 – 25	17 - 20	
Level 4	16 – 20	13 – 16	5
Level 3	11 – 15	9 – 12	4
Level 2	6 – 10	5 – 8	3
Level 1	0 - 5	0 – 4	1-2

Potential answers **MAY**:

**Assessment Objective 1** [25]

Explain the nature of a term in restraint of trade, a term by which one party agrees to limit or restrict his ability to carry on his trade, business or profession.

Explain the general prohibition on terms to restrain trade, *British Reinforced Concrete v Schleff*.

Explain the criteria for allowing such terms;

- Reasonable interest to protect such as business investment, *Nordenfeld*, or specialist knowledge *Forster v Suggett*, or client details *Hanover Insurance v Schapiro*.
- That the scope is reasonable in respect of time, *Home Counties Diaries v Skilton*.
- That the scope is reasonable in respect of distance, *Fitch v Dewes*
- That the scope is reasonable in terms of what is included, *Mont v Mills*.

Explain the effect of term being found to be unreasonably in restraint of trade; it will be unenforceable although in some cases it may be blue-pencilled to have an offending part removed, *Goldsoll v Goldman*.

**Assessment Objective 2** [20]

Consider the reasons for not allowing terms in restraint of trade in general; that it can be unfair to the individual who is denied a chance to earn a living, and that it denies society access to that individual's skills and services.

Consider the reasons for allowing terms in restraint of trade where there is legitimate business interest to protect.

- That the buyer of a business will have given consideration for the right not to have the seller set up in immediate competition.
- That an employer has the right to protect their client base and secret processes from ex employees who gained the information through their employment, but that this does not cover general skills and training received.
- That one party may have invested money in developing a commercial enterprise, such as the contract between a musician and their recording company.
- That a solus agreement may be justified because of the investment in the business made by the other party, such as contracts between a petrol company and garage.

Consider the courts approach of proportionality, where a term has been renegotiated in favour of the restricted party the courts are more likely to uphold it, *Panayiotou v Sony Music Internation*.

**Assessment Objective 3**

**[5]**

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 Richard owns a furniture factory. One of his suppliers is Dan who has just written to Richard to offer him a delivery of teak wood. Richard writes back immediately to accept the offer. The day after posting the letter he hears that Dan has died in an accident.

Another supplier is Shelly who emails Richard to offer to sell him a batch of oak wood. Richard decides to buy the wood and writes a letter to Shelly to accept; he posts the letter at 9.00am the next morning. At 11.00am the same morning Shelly phones Richard to say she is no longer able to supply the oak.

Richard is disappointed at this but remembers that Sukie, another supplier, wrote to him four months previously to offer him some oak wood as well. He has now written a letter to Sukie to accept her offer.

Advise Richard whether he has a binding contract with Dan, Shelly or Sukie. [50]

Mark levels	AO1	AO2	AO3
Level 5	21 – 25	17 - 20	
Level 4	16 – 20	13 – 16	5
Level 3	11 – 15	9 – 12	4
Level 2	6 – 10	5 – 8	3
Level 1	0 - 5	0 – 4	1-2

Potential answers **MAY**:

**Assessment Objective 1** [25]

#### Dan

Explain that death of the offeror terminates an offer if it requires some element of personal performance or where the offeree knows about the death, *Bradbury v Morgan*.

Explain that a posted letter of acceptance will normally take effect on posting *Adams v Lindsell*.

#### Shelly

Explain the situations where postal rule will not apply, including the post to accept an offer sent by instant means of communication, *Quenderduaine v Cole*.

Explain that communication of revocation of an offer must be before acceptance in order to be effective, *Byrne v Van Tienhoven*.

#### Sukie

Explain that an offer comes to an end through lapse of time, *Ramsgate Hotel v Montefiore*.

**Assessment Objective 2** [20]

#### Dan

Apply the rules to show that there is possibly a binding contract here. This would be so unless Richard knew of the death before the letter of acceptance took effect, which was probably on posting.

#### Shelly

Apply the rules to show that the letter of acceptance would take effect when it arrives and that the revocation by phone would be effective as it comes before that time.

#### Sukie

Apply the rules to show that the offer would have lapsed within a reasonable time and that 4 months is probably too long.

Credit any discussion of whether the outcome in these cases is satisfactory; for example are the rules on offer and acceptance clear enough to make the outcome in these cases clear and predictable?

**Assessment Objective 3**

**[5]**

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 Bella owns a garage which sells sports cars. Omar visits the garage and is interested in a Ferrari car, which both he and Bella believe was once owned by a famous racing driver. Although the price is high for this particular car he decides it is worth it because of its history. He buys the car but is disappointed to find out some time later that the car was not in fact owned by the famous driver and is worth a lot less than he paid for it.

Josh visits the garage and says he would like to buy a Porsche car on credit. Bella arranges for a finance company to give Josh a finance deal after he produces a passport for identification. It turns out the passport was forged. Josh has since sold the car to Bob, a third party, for cash.

Advise Bella whether she has to give Omar back his money, and advise Bob whether he will be able to keep the Porsche car. [50]

Mark levels	AO1	AO2	AO3
Level 5	21 – 25	17 - 20	
Level 4	16 – 20	13 – 16	5
Level 3	11 – 15	9 – 12	4
Level 2	6 – 10	5 – 8	3
Level 1	0 - 5	0 – 4	1-2

Potential answers **MAY**:

#### Assessment Objective 1

[25]

Explain the effect of the court finding an actionable mistake; that the contract can be made void as if there never was a contract (as opposed to being voidable).

Explain the general principles where a contract can be made void, as explained by *Associated Japanese Banks v Credit Du Nord*

- The mistake meant that the contract matter was fundamentally different to what the parties believed.
- The mistake was due to exceptional circumstances and not the fault of either party.

#### Bella

Explain the rules whereby a contract can be made void by common mistake; that the contract matter was essentially different to what the parties believed it to be, and that a contract will not be void merely for a difference in the market of value of the goods.

Candidates may discuss cases such as *Bell v Lever Brothers*, *Leaf v International Galleries*. Explain that these rules have recently been confirmed in the case *Great Peace Shipping v Tsavlis Salvage*.

Credit any relevant reference to misrepresentation. Credit any relevant reference to incorporation of terms.

#### Bob

Explain the rules whereby a contract can be made void for unilateral mistake; that the mistake must be one of identity and that the parties must not have contracted in a face to face situation. Candidates may discuss cases such as *Cundy v Lindsay*, *Kings Norton Metal v Edridge Merrett*, *Phillips v Brook*, *Lewis v Avery*, *Shogun Finance v Hudson*.

**Assessment Objective 2****[20]****Bella**

Apply the rules to show that the mistake here was not one of a fundamental nature and the courts are unlikely to make the contract void.

Discuss the effect of the decision in *Great Peace Shipping*, that the law of mistake in equity, and rescission on terms, is no longer applicable where a contract is not void at common law.

Credit any relevant discussion of misrepresentation. Credit any discussion about whether it was a term of the contract that the car had been owned by the racing driver.

**Bob**

Apply the rules to show that the title will have passed to Josh, and so to the new buyer Bob, unless Bella's contract with Josh is void.

Candidates **may** answer the question on the basis that the contract was made between Bella and Josh, in which case it is unlikely to be made void as a face to face contract, following *Phillips v Brooks* et al. In such a case the car would not have to be returned by Bob as Josh would have been able to pass good title.

**Alternatively** candidates may decide that the car was probably sold from Bella to the finance company and then onto Josh. In such a case the mistake would be made by the finance company who were not face to face with Josh and so the contract would be made void, following *Shogun Finance v Hudson*. In these circumstances Bob would have to return the car as Josh would not have been able to pass good title.

Credit any discussion of whether the outcome in these cases is satisfactory; for example is the law on mistake in contract overly restrictive, and if the decision in Josh's case follows *Shogun Finance* would this lead to an injustice for the eventual cash buyer of the car?

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

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 Danny is a decorator who also does maintenance jobs for people. He has a contract with Lydia to perform various jobs on her house. He has to paint three bedrooms. For this work they have agreed a price for each room. He also has to repair a large garden shed. Lydia has said this work must be done by 1<sup>st</sup> June when she is having a garden party. Finally he has to repair and paint all her garden fences.

Danny completes two of the bedrooms but forgets to do any work at all on the third. He arrives at the house on 30<sup>th</sup> May to repair the shed but Lydia will not let him in to do the work as she is getting the garden ready for the party. He has repaired and painted all of the fences except for one loose panel that needs two extra nails to fix it in firmly.

Advise Lydia whether she has any contractual obligation to pay any money to Danny. [50]

Mark levels	AO1	AO2	AO3
Level 5	21 – 25	17 - 20	
Level 4	16 – 20	13 – 16	5
Level 3	11 – 15	9 – 12	4
Level 2	6 – 10	5 – 8	3
Level 1	0 - 5	0 – 4	1-2

Potential answers **MAY**:

**Assessment Objective 1** [25]

Explain the rules of performance of a contract, that payment cannot be claimed for unless performance is both complete and exact, *Re Moore and Landauer, Cutter v Powell*.

Explain the exceptions to the rule:

- That a contract may be severable (or divisible) into different obligations, each of which may be seen as a different obligation, *Taylor v Webb*.
- That the contract may have been substantially performed, and so a claim may be made for the contract price minus an amount for fixing whatever work needs to be done, *Hoening v Isaacs, Bolton v Mahadeva*.
- That there may have been voluntary acceptance of the partial performance, *Sumpter v Hedges*.
- Explain the rules on tender of performance; that where a party has offered to perform a contract within the time specified for performance this will discharge their contractual obligations and allow them to claim the contract price from the other side, even if performance was declined, *Startup v Macdonald*.

**Assessment Objective 2** [20]

### The bedrooms

Apply the rules on complete performance and severability to show that although normally all 3 bedrooms must have been finished, a court may find that the contract is severable and each bedroom can be seen as an individual obligation. If this is the case Lydia must pay for the 2 completed rooms.

### The fence

Apply the rules on substantial performance to show that a small amount left undone may be seen as a trivial amount, or a non-repudiatory breach of contract, and so payment may still be claimed minus an allowance for the work not finished.

**The shed**

Apply the rules on tender of performance to show that if Danny came to do the work within the given time period he has discharged his obligations and Lydia is now likely to be liable to him in breach of contract.

Credit any discussion of whether the outcome in these cases is satisfactory; would it be just to make Lydia pay for any of the work done to the fence or the bedrooms when she has not got what she expected from Danny as a whole?

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

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 Janet owns a house which she rents to university students for £700 per month. During the last month of the term the students are finding it difficult to pay the rent and so Janet promises to reduce the rent to £500 to help them for that month. They are still unable to pay so the mother of one of the student offers £400 to settle the rent for that month. One of the students alternatively offers to do some repairs in exchange for half the rent.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

[20]

Mark levels	AO2
Level 5	17 - 20
Level 4	13 – 16
Level 3	9 – 12
Level 2	5 – 8
Level 1	1 – 4

Potential answers **MAY**:

**Statement A:** If the students had been able to pay £500 in response to Janet's promise, that would have been good consideration for the whole rent that month.

- Reason that part payment from an original party to settle a debt is not good consideration for the entire debt once it becomes due.
- Reason that the rent of £700 was already due.
- Reason that no other consideration had been agreed to take the place of the shortfall.
- Conclude that Janet would be entitled to sue for the balance of the rent.

**Statement B:** If the students had been able to pay £500, Janet would have been prevented from claiming the extra £200 under the doctrine of promissory estoppel.

- Reason that this is a situation where estoppel might apply, as there has been a promise not to enforce part of a contractual obligation.
- Reason that the key ingredients of estoppel are all in place; there is a contract between Janet and the students, she makes a promise not to enforce a part of the debt and they rely on that promise by paying the amount requested.
- Reason that none of the limitations to the doctrine of estoppel apply here (such as the party seeking to use estoppel not having acted dishonestly themselves).
- Conclude that Janet may be estopped from claiming back the balance of the rent.

**Statement C: If Janet accepts the £400 a month from the mother she can still sue the students for the remaining £300.**

- Reason that an exception to the rule that part payment not being good consideration for the whole debt is where the part payment is accepted from a third party.
- Reason that the mother would be a third party to the contract here.
- Conclude that if Janet accepted the £400 on the basis that this is to settle the entire debt, that would prevent any further claims from the students.

**Statement D: If Janet accepts half the rent and the repairs, it does not matter how much the repairs are actually worth.**

- Reason that where someone accepts part payment and some other goods or services, the other goods or services will be deemed as sufficient consideration for the balance of the debt.
- Reason that the exact value of the services will not be relevant.
- Conclude that part payment and the services will be good consideration for the whole debt if agreed to by Janet.

- 8 Rafay is considering buying a car from Leela. Leela tells him that the car has been serviced regularly. Leela has only owned the car for five months and is relying on what she was told by the person who sold her the car. Rafay tells Leela that he wants the car so that he can tow his new caravan. Rafay buys the car. However, it breaks down within the first week. He takes it to a mechanic who discovers that the car has never been serviced. When Rafay tries to tow his caravan, three months later, he finds the car is not powerful enough.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario. [20]

Mark levels	AO2
Level 5	17 - 20
Level 4	13 – 16
Level 3	9 – 12
Level 2	5 – 8
Level 1	1 – 4

Potential answers **MAY**:

**Statement A: Leela is not liable under misrepresentation for the statements about the car being serviced as she has been misled herself.**

- Reason that it does not matter whether she knew the truth although this does affect the kind of misrepresentation Rafay can claim.
- Reason that Leela is liable under misrepresentation if the statement is not true and it induces Rafay into the contract.
- Reason that if Leela had reasonable grounds to believe her statement to be true then it will be an innocent misrepresentation.
- Conclude that Leela is probably liable to Rafay in misrepresentation.

**Statement B: Leela is liable for misrepresentation for not telling Rafay that the car is unsuitable to tow a caravan.**

- Reason that Leela does not appear to have made any statements to Rafay about the caravan.
- Reason that she is not required to tell him that it cannot tow a caravan as this is not the type of contract where full disclosure is required.
- Conclude that Leela is not liable to Rafay for not telling him that the car is unsuitable.

**Statement C: Rafay will be able to rescind the contract.**

- Reason that in general the misrepresentation about the servicing would give Rafay the right to rescind the contract.
- Reason that a lapse of time will prevent a claim for rescission.
- Reason that using the car once he has knowledge of the facts that would allow him to rescind may amount to affirmation of the contract.
- Conclude that he has probably lost the right to rescind the contract.

**Statement D: The statement that the car has been serviced has also become a term of Leela's contract with Rafay and he can sue for breach of contract.**

- Reason that the statement about the servicing has become a term if it would be reasonable for him to rely on Leela's skill and judgement and if he placed importance on the term.
- Reason that in this case the statement about the servicing seems to have been quite important and he does not obviously have any greater level of skill or knowledge than her.
- Conclude that the statement may well have become a term of the contract.



## G146: Law of Contract Special Study

- 1 Discuss the significance of the case of *Thomas v Thomas* [Source 1 page 2 Special Study Materials] to the development of the law on consideration. [12]

Mark levels	AO1
Level 5	11-12
Level 4	9-10
Level 3	7-8
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

[12]

Briefly identify the issue: executors agreed with a testator to allow his wife to remain in his property for her lifetime, the executors had then charged a nominal annual ground rent of £1 as a result of which they were unable to then dispossess her;

Identify the elements of the definition of consideration given by Pattenon J in the case:

- something of value in the eye of the law
- which moves from the claimant
- and which may be of some benefit and detriment to the claimant.

Discuss also the point made by Pattenon in the case that 'pious respect for the wishes of the testator' could not amount to consideration;

Discuss the fact that it was the ground rent, however nominal, which was accepted as consideration;

Discuss the significance of the case to the development of the law on consideration – consideration does not need to be adequate although it must be sufficient in the eyes of the law;

Contrast with any cases on sufficiency of consideration eg *Chappell v Nestle*, *White v Bluett*, *Ward v Byham* to show development.

- 2 In Source 6 [page 5 lines 1-4 Special Study Materials] the author states that “*In many contractual situations, it makes perfectly good sense for a party to promise an extra reward in return for the other party performing what he is already obliged to do. Provided that the promise is given freely, it is irrational for the law to obstruct the enforcement of the promise by insisting on the classical requirement of exchange...*”

Discuss how the courts have developed rules on consideration in the light of the above statement. [30]

Mark levels		AO1	AO2
Level 5	25-30	14-16	13-14
Level 4	19-24	11-13	10-12
Level 3	13-18	8-10	7-9
Level 2	7-12	5-7	4-6
Level 1	1-6	1-4	1-3

Potential answers **MAY**:

#### Assessment Objective 1

[16]

Identify the original definition of consideration – some benefit moving from one party and some detriment suffered by the other party *Currie v Misa*;  
 Identify the modern definition from *Dunlop v Selfridge* and based on exchange – ‘an act of forbearance, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable’;  
 Explain that consideration need not be adequate (according to the ordinary dictionary definition of the word) *Thomas v Thomas*;  
 Explain that the consideration must be sufficient (a legal term meaning real, tangible and of value) *White v Bluett*;  
 Explain the basic rule that performance of an existing contractual duty cannot be consideration for a fresh agreement *Stilk v Myrick*;  
 Explain that the rule applies also to public duties also *Collins v Godefroy*;  
 Explain the reasoning for this rule – that nothing real, tangible or value is added to the second agreement;  
 Identify the basic exception to the rule – where something additional is given eg *Hartley v Ponsonby* in the case of a contractual duty or *Glassbrook Bros v Glamorgan County Council* in the case of a public duty;  
 Credit any reference to the reasoning in *Pao On v Lau Yiu Long* or *The Eurymedon*;  
 Explain the rule on gaining an extra commercial benefit amounting to consideration in *Williams v Roffey Bros & Nichols Contractors Ltd*;  
 Use any relevant cases in illustration of the argument.

#### Assessment Objective 2

[14]

Discuss the fact that original definitions of consideration focused on a benefit/detriment relationship, which was itself inadequate;  
 Comment on the broader character of the modern definition;  
 Comment on the fact that the consideration need not be adequate – in other words the courts have nothing to do with policing the quality of the bargain only whether a bargain actually exists or not;  
 Discuss the reasons behind the basic rule in *Stilk v Myrick* – that merely performing an existing contractual obligation is actually providing no consideration;  
 Discuss the fairness of the application of the original principle to the facts in *Stilk v Myrick*;  
 Consider the link with economic duress in a modern context;

Discuss the fact that the rule in *Hartley* is in effect based on exchange a new price (something extra done) for a new promise – there is no requirements for adequacy;  
Discuss the fairness and logic of the exception in *Hartley v Ponsonby*, and whether there is any essential difference with *Stilk v Myrick* other than degree;  
Discuss the bending of the principle in the Privy Council cases of *Pao On v Lau Yiu Long* and *The Eurymedon* and the justifications given;  
Consider the problems caused by consideration and offer and acceptance by Lord Wilberforce in *The Eurymedon*;  
Consider the very 'intangible' character of the extra benefit identified as consideration in *Williams v Roffey* and whether this has anything to do with exchange;  
Discuss whether the extra benefit amounts to anything that can be considered real or tangible, and whether the value attached to completing the work on time actually amounted to anything extra done;  
Discuss the justifications give by the judges of ensuring commercial efficiency and whether this actually has anything to do with exchange;  
Discuss the potential problems caused by the judgement;  
Discuss the fact that the judges were not prepared to extend the principle to part payment of debts in *Re Selectmove*.

- 3 Examine whether or not good consideration could be identified in each of the following situations.
- (a) Ross, a professional golfer, has been driving for several hours to get to a tournament. Ross is very thirsty and can find no shops open. He stops by a young boy, Stephen, who is drinking a bottle of cola. Ross asks for a drink and when Stephen asks 'What's it worth?', Ross agrees to pay £50 for the whole bottle. Ross drinks the cola and then refuses to give Stephen any money. [10]
- (b) Tim is desperate to become a professional cricketer. He asks Uriah, who plays for a local cricket club, if Uriah will help him to get to trial with his club. Uriah arranges a trial for Tim, who is then appointed as an apprentice. Tim is so pleased that he then promises to pay Uriah £100 from his first month's wages but Tim never does so. [10]
- (c) Vijay, a football fan, meets the Wanderers' player Xaviera outside the football ground. Vijay asks for Xaviera's autograph. Xaviera says he will only sign the autograph for Vijay if Vijay brings him luck by cheering for him during the game so that Xaviera scores. Xaviera does score twice but he still refuses to sign an autograph for Vijay. [10]
- [30]

Mark levels		AO1	AO2	a) b) 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

Potential answers **MAY**:

**Assessment Objective 1** [10]

Define consideration *Dunlop v Selfridge*;

Explain that consideration need not be adequate (dictionary meaning of word) *Thomas v Thomas*;

Explain that on the other hand it must be sufficient (legal meaning of word) – therefore it must be real, tangible and have economic value *Chappell v Nestle*;

Explain the rule on past consideration *Re McArdle, Roscorla v Thomas*;

Explain the basic exceptions to the rule where there is a request with an implied promise to pay *Lampleigh v Braithwait* and where expertise is sought *Re Casey's Patent*;

Explain that consideration must not be too vague *Guthing v Lynn, Ward v Byham, White v Bluett*;

Use any relevant cases in illustration when applying the law to the problems.

**Assessment Objective 2** [20]

In the case of a):

- Identify that good consideration is needed for the agreement to be enforceable
- Discuss the obvious difference in value between the cola and the sum of money
- Consider that consideration need not be adequate *Thomas v Thomas*, but must be sufficient (real, tangible and of value) *Chappell v Nestle* – and that there is a genuine value here however inadequate.

In the case of b):

- Recognise that any consideration here is past as in *Re McArdle*;
- Discuss the application of the exception to the past consideration rule in *Lampleigh v Braithwait*;
- Consider whether there is good consideration because the activity followed a request for the service;
- Consider also whether there were as an implied promise to pay because of Uriah's professional contacts as in *Re Casey's Patent*.

In the case of c):

- Identify that the agreement will only be enforceable if both parties have provided consideration under it – something real, tangible and of value;
- Discuss the nature of the agreement – it is vague on its terms – there could be obvious commercial value in the autograph but being lucky is too vague for good consideration *Guthing v Lynn*;
- Discuss with *Ward v Byham* or *White v Bluett* – the latter is more likely to be appropriate.

**Assessment Objective 3**

**[8]**

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

Mark levels	AO3
Level 4	7-8
Level 3	5-6
Level 2	3-4
Level 1	1-2

# G147: Law of Torts

- 1 'The law of negligence focuses on compensation for victims and this is a crucial concept in a modern legal system.'

Evaluate this statement in relation to the concepts of causation and remoteness of damage. [50]

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

Potential answers **MAY**:

**Assessment Objective 1** [25]

Explain causation – the need to prove damage was caused by a breach of duty.

Explain the two types – fact and law

Explain the 'but-for' test – that the damage would not have occurred without the fault – *Cork v Kirby Maclean, Barnett v Chelsea and Kensington HMC*

Explain the need to establish liability when there are several causes – *Hotson v East Berks AHA*

- a pre-existing condition
- several concurrent causes – *Wilsher v Essex AHA*
- materially increasing the risk of harm – *McGhee v NCB*
- consecutive causes – *Performance Cars v Willoughby, Baker v Willoughby, Jobling v Associated Dairies*
- cause materially contributing to the risk of harm – *Fairchild v Glenhaven Funeral Services, Baker v Corus*

Explain a 'novus actus interveniens' – the chain of causation is broken by a new intervening act and becomes the true cause if the damage and relieves the defendant of liability

Explain how the chain can be broken

- act of the claimant – *McKew v Holland and Hannen and Cubitts, Wieland v Cyril Lord carpets*
- act of nature – *Carslogie Steamship v Royal Norwegian Government*
- act by a third party – *Knightley v Johns*

Explain remoteness of damage – need to limit harm for which the defendant can be liable – *Re Polemis, The Wagon Mound (No 1)*

Explain the test is one of 'reasonably foreseeability' – the type rather than the extent of damage which must be foreseen – *Bradford v Robinson Rentals*

Explain the law can be broad when dealing with personal injury but narrow when the damage is to property – *Jolley v Sutton LBC, Doughty v Turner Manufacturing, The Wagon Mound (No 2)*

Explain the use of the 'thin skull' rule – the defendant must take the claimant as they find him – *Smith v Leech Brain Ltd*

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

Evaluation of any of the following points –

- Causation linked to foreseeability helps accurate and fair compensation
- The advantages and disadvantages of the 'but for' test
- The problems of proving causation and contradictory case law
- The difficulties and potential injustice when there are multiple causes
- Recent developments and the effects of policy and judicial discretion
- Do the rules on breaking the chain of causation work?
- Are the rules on remoteness simply a means of restricting liability?
- Apparent decision to be very restrictive in certain potential controversial and expensive areas eg secondary victims in nervous shock.

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

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 offers protection from harm, encourages deterrence on the part of defendants and compensates victims who suffer injury. [50]

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

Potential answers **MAY**:

### Assessment Objective 1

[25]

Identify the three torts of assault, battery and false imprisonment

Define assault – the defendant directly and intentional causes the claimant to apprehend an imminent battery

Explain that trespass to the person is actionable per se

Explain the key elements of assault –

- Need for threatening behaviour – *Read v Coker*
- Need for a real and imminent threat – *Thomas v NUM*
- Need for the claimant to feel threatened – *Stephens v Myers*
- Acknowledge that words can negative assault and traditionally in civil law needed to be accompanied by action, unlike in criminal law – *Turberville v Savage, Read v Coker*
- Defences may apply such as consent and self defence.

Define battery – direct and intentional application of force

Explain the key elements of battery –

- Breadth of definition of the word ‘direct’ – *Scott v Shepherd, Nash v Sheen*
- Application of force cannot be negligent or careless – *Letang v Cooper*
- Hostile can have a variety of meanings – *Cole v Turner, Wilson v Pringle, Ref*
- Victim may be fearful but this is not essential as in hospital cases or where a victim is attacked from behind
- Defences may apply such as consent, lawful arrest and self defence.

Define false imprisonment – direct and intentional total bodily restraint

Explain the key elements –

- Restraint must be total – *Bird v Jones*
- Restraint does not need to be physical – *Meering v Graham White Aviation*
- Claimant need not be aware of restraint – *Murray v MOD*
- There may be justification based on a contractual relationship or the reasonable expectation of an employer – *Robinson v Balmain Ferry, Herd v Weardale Steel*
- Defences can apply such as lawful arrest and consent.

### Assessment Objective 2

[20]

Identify that protection exists because these are very commonly used torts, deterrence exists because there is no need to prove damage and compensation is frequently awarded to victims

Discuss the following issues –

- Problems relating to the assessment of damages
- The intervention of relevant words may dilute their deterrent effect
- Those who fear harm in the future may be left unprotected
- A need for a real and imminent threat may mean threatening behaviour is not punished



- In battery there is no need to prove actual harm but it can deter unwanted touching and can compensate when harm is suffered
- The broad definition of the word 'direct' allows for flexibility
- Meaning of the word 'hostile' can be a good discriminator in sport and medical cases
- Problems associated with the issue of consent, especially in sport and medical cases
- Limitation of false imprisonment if it requires total bodily restraint
- Does false imprisonment accurately deter or compensate?
- Consider the influence of policy on all three torts.

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

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 'The development of negligent misstatement in tort reflects the need to hold liable those who use words on which others rely.'

Evaluate the accuracy of the above statement.

[50]

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

Potential answers **MAY**:

#### Assessment Objective 1

[25]

Explain that law originally hostile to accepting liability for economic loss which could be dealt with in the law of contract.

Denning dissent in *Candler v Crane Christmas* signalled a change of view

Basic principles now found in *Hedley Byrne v Heller*

Explain the basic criteria

- A special relationship – *Yianni v Edwin Evans*
- Possession of specialist skill by the advice giver – *Mutual Life v Evatt*
- Reasonable reliance on the defendants skill and judgement – *Smith v Eric Bush*, *Harris v Wyre Forest DC*

Explain potential breadth of liability – *Chaudry v Prabhaker* but identify limits eg social situations – *JEB Fasteners v Marks Bloom*

Explain the current state of the law – *Caparo v Dickman*

Explain the influence of policy – *Goodwill v BPAS*, *Yiannin v Edwin Evans*, *Caparo*

#### Assessment Objective 2

[20]

Evaluation of the following points; not all need to be covered to achieve Level 5.

Candidates may be equally rewarded for the breadth or depth of their evaluation –

- Reluctance by the courts to accept economic loss arising from a negligent misstatement – *Candler v Crane Christmas*
- Impact of Denning dissent led to acceptance of potential liability and creation of new test
- Evaluate expansion once reasonable foreseeability was accepted as the basis for liability and the effect it had on certain professions eg valuers and estate agents.
- Evaluate changing trend towards narrowness in *Caparo* but this may disadvantage claimants
- Law unlikely to become broader and so claimants will still be disadvantaged
- Consider the influence of policy and the floodgates argument.

#### Assessment Objective 3

[5]

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 Simon and his girlfriend, Jane, are at a music festival. They decide to go on the bungee jump, operated by Ben, and Jane persuades Simon to jump first. Ben has been told by his employer that the rope tension must be checked before every jump but Ben straps Simon straight into the harness. Simon jumps and, as the rope is not tight enough, he plummets to the ground and breaks his neck. Jane is next to jump and sees everything. She suffers severe depression as she feels Simon's injury is her fault.

Another festival goer, Claire, captures the whole incident using her mobile phone camera and she suffers post traumatic stress disorder.

Jane calls Simon's mother, Fiona, who drives straight to the hospital where she is told that Simon will never walk again. She is so grief stricken she tries to commit suicide three weeks later and loses her job.

Advise Jane, Claire and Fiona on any action they may have against Ben. [50]

(Do not discuss vicarious liability)

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

Potential answers **MAY**:

#### Assessment Objective 1 [25]

Define nervous shock (psychiatric injury) – covers PTSD and severe depression but not emotions such as grief – *Vernon v Bosley*, *Reilly v Merseyside HA*

Explain different types of victims

- Primary victim – a person present at the scene and at risk of injury – *Dulieu v White*
- Secondary victim – a person who witnesses a single shocking event causing a risk of injury to a related or close but not related primary victim – *Hambrook v Stokes*, *Dooley v Cammell Laird*

Explain the rules for claims by secondary victims – *Alcock v CC South Yorks Police*

- Close tie of love and affection to the person injured – *Hambrook v Stokes*
- Sufficient proximity in time and space to the event or its immediate aftermath  
*McLoughlin v O'Brien*
- Injury sustained as a result of a single shocking event – *Sion v Hampstead*

Explain the limitations on claims by 'bystanders' even if they suffer psychiatric harm – *McFarlane v EE Caledonia*

Explain restrictive interpretation given to 'immediate aftermath as applied in *Alcock*

#### Assessment Objective 2 [20]

In the case of Jane -

- Identify Jane as a primary victim - she was present at the scene and was the next person due to jump
- Alternatively identify Jane as a secondary victim assuming she meets the *Alcock* criteria
- She has proximity in time and space and witnesses the event and its aftermath with her own unaided senses

- She feels guilt as she persuaded her boyfriend to jump first
- As her depression is severe this is probably a recognisable medical condition.

In the case of Claire -

- Identify her a secondary victim
- Claim could also fail if she watched Simon fall through her mobile phone
- She appears to satisfy the Alcock test in terms of proximity and what she witnesses
- However as a bystander she has no link to the victim so her claim fails even though her suffering from PTSD falls within nervous shock
- Only basis of claim for Claire would be if she was very close to the jump and could have been hurt when Simon fell.

In the case of Fiona -

- Identify Fiona as a secondary victim
- As Simon's mother Fiona passes the test of close tie of love and affection
- Since Fiona drives straight to the hospital this is within 'immediate aftermath'
- Grief and attempted suicide likely to be psychiatric injury
- Possible loss to be compensated due to her inability to work.

### **Assessment Objective 3**

**[5]**

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 Craig works as a chauffeur and drives Rick, his famous rock-star boss, anywhere he want to go in Rick's sports car. As Rick is abroad on tour a lot of the time, Craig pays his own national insurance and income tax.

When Rick is away, Craig works part-time at Westchester School driving the rugby team minibus. At a match, the captain, Felix, is injured and Craig takes him to Westchester Hospital. Craig waits outside and has a cigarette. When Felix appears Craig carelessly tosses his cigarette towards a litter bin where it falls on newspapers, starting a fire causing £1,000 of damage.

Next day Craig is driving Rick's car to the airport to collect Rick and he takes Felix as a treat. Craig is driving at 80 mph when he loses control of the car and crashes. Felix needs stitches to a cut on his forehead.

Advise Rick and Westchester School whether they may be held vicariously liable for Craig's negligence. [50]

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

Potential answers **MAY**:

#### Assessment Objective 1

[25]

Define vicarious liability – imposes liability on someone other than the person who commits the tort, normally an employer

Basic elements to be proved –

- Person must be an employee of the defendant
- Must be acting within the course of their employment when the tort occurs
- Must have committed a tort

Explain the tests of employment –

- Control – *Mersey Docks v Coggins and Griffiths*
- Integration – *Stevenson, Jordan and Harrison v Macdonald and Evans*
- Economic reality – *Ready Mixed Concrete*

Explain when an act may be identified as being within employment –

- Authorised acts – *Poland v Parr*
- Acting in an unauthorised manner – *Limpus v London Omnibus*
- Acting in a careless manner – *Century Insurance v NI Transport Board*
- Where the employer benefits from the tort – *Rose v Plenty*
- Cases involving paid travelling time – *Smith v Stages*

Explain when an act may not be within employment –

- Activities outside scope of employment – *Beard v London General Omnibus*
- 'Frolic of one's own' – *Hilton v Thomas Burton*
- Giving unauthorised lifts – *Twine v Beans Express*

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

Identify area of vicarious liability

Identify if Craig is an employee –

- Choose most appropriate test – economic reality
- Craig pays his own tax and national insurance but uses his employer's transport and he is tied to his employer by his hours of work.

Identify that likely Craig will be viewed as an employee.

Liability in respect of Westchester Hospital –

- Identify careless behaviour with the cigarette
- Not in the correct area for smoking
- Was he in the course of his employment?
- Probably was in course of employment unless disobeying instructions about where to smoke.

Liability in respect of Felix –

- Identify that Craig has committed a crime by driving so fast
- Identify whether this is in the course of his employment for Rick or Westchester school
- Taking Felix in the car is probably going on a frolic of his own.

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

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 At Hilton Park there are three businesses by a river. Julia runs a shop where she dyes wool and knits sweaters. Next door David runs a firework company and he stores gunpowder on the premises. On the other side of Julia's shop, Pete has a picture framing business and fish farm.

One night David goes home, accidentally leaving a window open. Later, during a violent thunderstorm, a bolt of lightning goes through the window and ignites a keg of gunpowder. The explosion blows out the windows in Julia's shop and rain ruins a display of newly knitted sweaters.

A week later, Julia's eight year old son takes some dye off a shelf and tips it into the river, killing Pete's fish. The next day a sharp frost bursts the pipes in Julia's shop. Pete's shop is flooded and a picture worth £200 is ruined.

Discuss the liability of David to Julia and Julia to Pete in the tort of *Rylands v Fletcher*.

[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]

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

Explain the elements needed for liability –

- Bringing on and accumulating – *Rylands*, *Ellison v MOD*, *Giles v Walker*
- Thing likely to cause mischief if it escapes – *Musgorve v Pandelis*, *Shiffman v The Order of the Hospital of St John of Jerusalem*
- Non-natural use – *Cambridge Water case*, *Rickards v Lothian*, *Perry v Kendrick's Transport*
- Escape – *Read v Lyons*, *British Celanese*
- Harm must be foreseeable - *Transco*

#### Assessment Objective 2

[20]

In the case of David's liability to Julia –

- Bringing of gunpowder onto land and accumulation of a thing likely to do mischief if it escapes
- Can Julia make a claim as sweaters actually damaged by rain?
- Was David's use of premises non-natural ie commercial
- Was the harm foreseeable?
- Possible defence of consent based on knowledge of other businesses.

In the case of Julia's liability to Pete –

- Bringing of dye onto land and accumulation could be of a thing likely to do mischief if it escapes
- Will Pete be able to claim for act of a child – was the harm reasonably foreseeable?
- Was this a non-natural use?
- Freezing of pipes – could this be an Act of God?
- Possible defence of consent based on knowledge of other businesses.

**Assessment Objective 3**

**[5]**

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 Brian buys a cottage to modernise. Jackie, a yoga teacher, lives next door. The noise of Brian's drill late at night keeps Jackie awake. She retaliates by playing loud music early in the morning when she knows Brian is still asleep. When Jackie is out Brian goes into her garden and cuts down an overhanging apple tree because fallen fruit makes his path slippery. As ladies arrive for yoga classes, Brian often stands in his garden in his underwear and shouts obscenities which scare them.

Evaluate the accuracy of each of the four statements A, B, C, and D individually, as they apply to the facts in the above scenario. (20)

Mark levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

### Assessment Objective 2

**Statement A: Jackie cannot be liable for the tort of nuisance when she plays loud music as Brian kept her awake first.**

- Identify basic requirements relating to locality, continuous nature and claimant's sensitivity
- Reason that malice can make legitimate activity unreasonable and if deliberate malice can be nuisance
- An act of revenge is normally a nuisance
- Conclude that the statement is inaccurate.

**Statement B: Brian cannot be liable to Jackie in nuisance as he has not caused any physical damage when he stands in his garden in his underwear.**

- Reason that lowering the tone of a neighbourhood is not normally a nuisance
- Reason whether there is damage which could create liability
- Consider if liability possible under the Protection from Harassment Act 1997
- Conclude that the statement is inaccurate.

**Statement C: Brian does not commit a nuisance when he goes into Jackie's garden to cut down the overhanging tree.**

- Reason that Brian has entered Jackie's garden without permission
- Reason that Brian's act is not part of a continuing course of conduct
- Reason that Brian had caused damage but simply cutting down an overhanging branch is not normally nuisance
- Conclude that the statement is accurate.

**Statement D: Brian can be liable in nuisance to the ladies taking yoga classes.**

- Reason that the shouting of obscenities may constitute assault and thus be unlawful and unreasonable
- Reason as nuisance as it happens in a residential area
- Reason that if personal injury is involved claimant must have a proprietary interest
- Conclude that the statement is inaccurate.

- 8 Terry goes swimming at a beach. He ignores a small sign handwritten by the lifeguard, Clive, saying, "Beware – jellyfish!" However, Clive forgets to fly a red flag to forbid swimming. Daisy, a holidaymaker, has read the sign and seen Terry swimming but does nothing. Terry is stung by a jellyfish and asks Clive for medical treatment. Clive gives Terry some cream to rub on the sting. Next day, Terry's leg has to be amputated in hospital as he suffers a massive and completely unexpected allergic reaction to the cream.

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario. [20]

Mark levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

### Assessment Objective 2

**Statement A: Daisy is liable in negligence to Terry when he is stung by the jellyfish.**

- Reason that Daisy is an innocent bystander and not covered by the principle of a 'neighbour'
- Reason that she has no relationship with Terry
- Reason that the UK has no Good Samaritan law
- Conclude that the statement is inaccurate.

**Statement B: Clive is liable in negligence to Terry when he is stung by the jellyfish.**

- Reason that Clive has a contractual duty to care so there is a special relationship
- Clive can only be liable if he has failed to do something he is contractually obliged to do eg fly a flag
- Clive has made a sign but this is only small and handwritten
- Conclude that the statement is accurate.

**Statement C: Clive is liable in negligence to Terry when his leg is amputated.**

- Reason that potential duty of care between Clive and the harm suffered by Terry
- Was Clive negligent in not asking Terry if he had any allergies?
- Harm must be reasonably foreseeable, so identify that as this is a completely unexpected reaction the harm is not foreseeable
- Conclude that the statement is not accurate.

**Statement D: Clive will be able to rely on the defence of contributory negligence to reduce any damages.**

- Reason that duty owed by Clive to Terry
- Reason that situation would not have arisen had Clive flown the flag
- However, Terry did read the sign and chose to ignore it
- Conclude that the statement is accurate

## G148: Law of Torts Special Study

- 1 Discuss the significance of the case of *Dulieu v White* [Source 8 page 4 lines 9 – 11 Special Study Materials] to the development of the law on nervous shock. [12]

Mark levels	AO1
Level 5	11-12
Level 4	9-10
Level 3	7-8
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

### Assessment Objective 2

[12]

Identify the issue: a woman had suffered psychiatric damage when put in danger by an escaped horse;

Identify the traditional position of the courts in relation to claims for nervous shock (psychiatric damage) – claimants could not succeed for claims other than for foreseeable physical injury *Victoria Railway Commissioners v Coultas*;

Discuss the significance of the case:

- Was the first successful case for a claim for nervous shock;
- Introduced the 'Kennedy test' and set the initial criteria for claiming;

Discuss the reasoning given for a claim to succeed:

- liability is only to a person present at the scene of a single traumatic event and who suffers injury or fears for their own safety;
- but only where the claimant suffers a recognised psychiatric injury;
- and harm is foreseeable – needs only foresight of some injury – does not have to be physical harm – and no reason to separate out physical and psychiatric harm;

Recognise that this in fact defines primary victims and the test limits claims only to primary victims;

Link with any relevant case eg, *Page v Smith*, *White v Chief Constable of South Yorkshire*.

- 2 In Source 4 [page 3 Special Study Materials] Wilberforce LJ states that “*There remains... a real need for the law to place some limit on the extent of admissible claims. It is necessary to consider the three elements inherent in any claim: the class of persons whose claims should be recognised; the proximity of such persons to the accident; and the means by which the shock is caused.*”

Discuss how the courts have developed limits on claims for nervous shock in the light of the above statement. [30]

Mark levels		AO1	AO2
Level 5	25-30	14-16	13-14
Level 4	19-24	11-13	10-12
Level 3	13-18	8-10	7-9
Level 2	7-12	5-7	4-6
Level 1	1-6	1-4	1-3

Potential answers **MAY**:

**Assessment Objective 1** [16]

Define nervous shock – a recognised psychiatric injury caused by a single traumatic event *Calascione v Dixon*;

Define primary victim:

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

Define secondary victim and the *Alcock* criteria:

- A person with a close tie of love and affection to the person injured in the accident;
- With sufficient proximity in time and space to the event or its immediate aftermath *McLoughlin v O'Brian*;
- Who also saw or heard the accident or its immediate aftermath with their own unaided senses *Alcock*;

Identify those who cannot claim:

- People not suffering a recognisable injury *Reilly v Merseyside HA*;
- People not within the area of impact *King v Phillips*;
- People not within the area of shock *Bourhill v Young*;
- Bystanders *McFarlane v EE Caledonia*;
- People without close ties to a primary victim *Duncan v British Coal*;
- People falling outside of the event or its immediate aftermath *McLoughlin v O'Brian*;
- People who are told of the event rather than witnessing it *Alcock*;
- Slow burn victims *Sion v Hampstead*;

Use any relevant cases.

**Assessment Objective 2** [14]

Identify that the question primarily concerns the controls on secondary victims;

Consider that the origins of liability were with primary victims *Dulieu v White*;

Comment on the breadth of liability to primary victims – 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;

Discuss any of the limitations imposed on secondary victims eg:

- Narrowness with which the close tie of love and affection is interpreted *Alcock*;
- Fact that close friends or colleagues cannot bring themselves within the definition *Duncan v British Coal*, and *Robertson and Rough v Forth Road Bridge Joint Board* – but see the different approach in *Duncan v Camel Laird Shipbuilders*;

- Limitation on claims by 'bystanders' even though they may suffer psychiatric harm *McFarlane v E E Caledonia*;
- Restrictive definition of 'immediate aftermath' as applied in *Alcock* – (credit any comparison with *N E Glamorgan NHS Trust v Walters*, or with *W v Essex CC*);
- Before *White* professional rescuers were treated more liberally than amateurs – compare *Frost* with *McFarlane v EE Caledonia*;
- Secondary victim must show psychiatric injury would foreseeably have been suffered by a person of reasonable phlegm and fortitude, so 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*;
- No account paid for a shock suffered gradually over time even though appreciation of extent of harm to primary victim may indeed be gradual *Sion v Hampstead*;
- No account paid to excessive grief even though this may be long lasting *Tredget v Bexley*;
- Credit any reference to any relevant ethical principles.

Discuss the justifications for the limitations – policy and the 'floodgates' argument;  
Consider that the Law Commission has proposed a much less restrictive definition.

- 3 Rutger, his wife Siggie, and their young daughter Trudi, are travelling in a taxi driven by Uffah when they are involved in an accidental collision. Because of negligent maintenance by the taxi firm, WayToGo Taxis, both Uffah's and Trudi's safety belts snap. Trudi is thrown from the back of the car and through the windscreen. Trudi suffers massive head and facial injuries and dies from her injuries several weeks after the crash. Uffah is physically unharmed.

Consider the possibility of each of the following succeeding in a claim against WayToGo Taxis.

- (a) Rutger suffers post traumatic stress disorder after he attends Trudi's funeral. (10)
- (b) Siggie suffers from insomnia and is no longer able to travel in cars as a result of what happened to her daughter. (10)
- (c) Uffah is not physically injured. However, after seeing the injuries sustained by Trudi, he suffers a recurrence of clinical depression from which he had previously suffered but from which he had recovered. (10)

[30 marks]

Mark levels		AO1	AO2	a) b) 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

Potential answers **MAY**:

**Assessment Objective 1** [10]

Use any relevant cases in illustration when applying the law to the problems.

**Assessment Objective 2** [20]

In the case of a):

- Identify that Rutger is a secondary victim according to the criteria in *McLoughlin and Alcock* unless he can show that he was at risk – his seat belt did not snap;
- Consider that he satisfies all three *Alcock* criteria ie, close tie of love and affection is presumed (parent and child), proximity in time and space and witnessing or hearing the event with his own unaided senses;
- Explain that Rutger has a recognised psychiatric illness;
- Consider though that Rutger would fail on causation – the injury was caused through the funeral not the traumatic event *Calascione v Dixon*.

In the case of b):

- Identify that Siggie is a secondary victim according to the criteria in *McLoughlin and Alcock* unless she can show that she was at risk – her seat belt did not snap;
- Consider that she satisfies all three *Alcock* criteria ie, close tie of love and affection is presumed (parent and child), proximity in time and space and witnessing or hearing the event with her own unaided senses;
- Identify that Siggie will fail because she does not have a recognised psychiatric injury *Tredget v Bexley Health Authority, Reilly v Merseyside HA*.

In the case of c):

- Identify that within the *Alcock* criteria and following *White* Uffah is a primary victim present at the scene and at risk of injury – his seat belt snapped;
- Consider also that following *Page v Smith* he may claim even though he has a pre-existing condition – as a primary victim he does not need to be of reasonable phlegm and fortitude as a secondary victim would;
- Identify that Uffah has a recognised psychiatric condition *Vernon v Boseley*.

**Assessment Objective 3**

**[8]**

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

Reward grammar, spelling and punctuation.

Mark levels	AO3
Level 4	7-8
Level 3	5-6
Level 2	3-4
Level 1	1-2



# Grade Thresholds

GCE Law H124/H524

June 2008 Examination Series

Unit		Maximum Mark	A	B	C	D	E	U
G141	Raw	120	84	74	64	54	44	0
	UMS	120	96	84	72	60	48	0
G142	Raw	60	46	40	34	28	22	0
	UMS	80	64	56	48	40	32	0
G143	Raw	120	84	75	66	57	48	0
	UMS	120	96	84	72	60	48	0
G144	Raw	80	66	58	51	44	37	0
	UMS	80	64	56	48	40	32	0
G145	Raw	120	84	75	66	58	50	0
	UMS	120	96	84	72	60	48	0
G146	Raw	80	66	58	51	44	37	0
	UMS	80	64	56	48	40	32	0
G147	Raw	120	86	77	68	60	52	0
	UMS	120	96	84	72	60	48	0
G148	Raw	80	66	58	51	44	37	0
	UMS	80	64	56	48	40	32	0

## Specification Aggregation Results

Overall threshold marks in UMS (ie after conversion of raw marks to uniform marks)

	Maximum Mark	A	B	C	D	E	U
H124	200	160	140	120	100	80	0

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

	A	B	C	D	E	U	Total Number of Candidates
H124	13.75	28.71	47.74	66.06	81.95	100	11160

	Maximum Mark	A	B	C	D	E	U
H524	400	320	280	240	200	160	0

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

	A	B	C	D	E	U	Total Number of Candidates
H524	18.72	39.76	63.60	83.16	95.26	100	6372

For a description of how UMS marks are calculated see:

[http://www.ocr.org.uk/learners/ums\\_results.html](http://www.ocr.org.uk/learners/ums_results.html)

Statistics are correct at the time of publication.

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