

**A-level  
LAW  
7162/2**

Paper 2

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**Mark scheme**

June 2023

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Version: 1.0 Final



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Alek has won a claim in negligence against Bhavna in respect of a road accident. He has asked the court for damages. Which of the following would **not** affect the amount of damages he receives?

[1 mark]

**Marks for this question: AO1 = 1**

**C** Bhavna was insured for any losses caused by her negligence.

**02** Carla was at her local bus station when she saw a sign which read: 'Be careful. Floor slippery when wet'. Which of the following statements **best** describes the legal effect of the sign?

[1 mark]

**Marks for this question: AO1 = 1**

**D** The sign is part of the bus company's efforts to fulfil the duty it owes to visitors.

**03** Which of the following is **not** part of the role of a judge during a civil trial?

[1 mark]

**Marks for this question: AO1 = 1**

**C** To decide the sentence.

**04** Which of the following is most likely to use 'lobbying' as a way of influencing Parliament?

[1 mark]

**Marks for this question: AO1 = 1**

**B** Pressure groups.

**05** Which of the following is a source of law involving judges making a new law?

[1 mark]

**Marks for this question: AO1 = 1**

**B** Common law.

**06** Explain **two** features of a conditional fee agreement (no win no fee) in terms of funding a civil case.

**[5 marks]**

**Marks for this question: AO1 = 5**

<b>Levels of response mark scheme 5 marks – AO1 only</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- With a conditional fee agreement there is no guarantee that a solicitor will take the case as the chances of success need to be assessed.
- With a conditional fee agreement if the case is won a success fee will be charged so that the client will not receive the full amount of their damages (unless the defendant is ordered by the court to pay the success fee).
- With a conditional fee agreement it is common to take out legal expenses insurance in the event of the claim not being successful.
- With a conditional fee agreement, no payment will be due if the case is unsuccessful.

Credit any other relevant point(s).

**Note – only one feature explained – max 3 marks for a good answer.**

<b>07</b>	Debra has admitted that she was negligent and that her actions caused Ewan’s injury. Nevertheless, suggest why Debra will probably be able to use the defence of consent (volenti non fit injuria) to avoid liability to Ewan.	<b>[5 marks]</b>
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**Marks for this question: AO1 = 2 and AO2 = 3**

<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the relevant legal rules and principles.
<b>0</b>	Nothing worthy of credit.

**Indicative content**

**AO1**

- Brief explanation of the defence of consent (volenti non fit injuria): the claimant must have actual knowledge of the risk that the defendant may act in a negligent manner and the claimant freely consents to take that risk.
- Brief explanation of the effect of a successful defence of consent: any claim is extinguished.

**AO2**

- Application to suggest that Ewan had actual knowledge of the risk that Debra would not be able to manage the boat properly (he could see that she was incapable of walking in a straight line) and to suggest that he freely consented to the risk (he chose nevertheless to board the boat).
- Application to suggest that, in these circumstances, the defence of consent is made out and that the effect would be to extinguish any claim that Ewan might have arising from the accident.
- Possible brief reference to illustrative case law, for example **Morris v Murray** and **Smith v Baker**.

Credit any other relevant point(s).

<b>08</b>	Taking into account the rules governing negligent misstatement, advise Gita of her rights and remedies against Faruq.	<b>[10 marks]</b>
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**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Indicative content**

**AO1**

- Identification and outline explanation of the possibility of an action in negligence to recover damages for economic loss caused by negligent misstatement albeit on a restricted basis.
- Brief explanation of appropriate supporting case authority for instance **Spartan Steel v Martin**, **Hedley Byrne v Heller** and **Caparo v Dickman**.

## AO2

- Negligent misstatement: application of the rules governing the differing ways in which the courts treat a claim for pure economic loss caused by negligent acts and negligent statements to suggest that Gita has sustained a pure economic loss caused by a statement.
- Negligent misstatement: possible reference to and application of the rules governing the difference between a consequential economic loss and a pure economic loss.
- Negligent misstatement: application of the elements necessary to establish a special relationship between the claimant and defendant such as an expertise on the part of the defendant, a voluntary assumption of responsibility towards a known user and reasonable reliance on the part of the claimant to consider whether Gita and Faruq have such a special relationship in the context of financial advice given during a public lecture.
- Application to argue that it is likely that a special relationship between Gita and Faruq has not been established (for instance it is questionable whether Faruq assumed responsibility to a member of an audience whose identity and financial requirements he was unaware of; for instance whether it was reasonable for Gita to rely on advice given in a public setting and which was not constructed with her requirements in mind).
- Application to suggest that, if Gita is able to establish a special relationship, then she may be entitled to a remedy of compensatory damages against Faruq.

## AO3

- Negligent misstatement: analysis and evaluation of the elements required to establish the special relationship in the context of a public lecture.
- Negligent misstatement: possible analysis and evaluation of the requirements for a claim in negligence for pure economic loss with reference to the restricted nature of the duty of care.
- Negligent misstatement: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Chaudhry v Prabhakar**, **Patchett v SPATA** and **Smith v Bush**.

Credit any other relevant point(s).



<b>09</b>	Examine the meaning and significance of fault. Discuss the extent to which the rules relating to vicarious liability are based on fault.	<b>[15 marks]</b>
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**Marks for this question: AO1 = 5 and AO3 = 10**

<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>13–15</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>10–12</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>7–9</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>4–6</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–3</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>Minimal analysis and evaluation of legal concepts and issues.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Identification of possible bases of fault in civil and possibly criminal law: voluntariness of conduct and causation as fundamental bases; intention, recklessness, negligence and strict liability; defences.
- Outline of the nature of vicarious liability in respect of employers being potentially liable for torts committed by employees in the course of their employment and also, possibly, liability for criminal acts.

**AO3**

- Analysis of fault elements: meaning of terms such as intention (purpose), recklessness (foresight of risk), negligence (failure to reach the standard of the reasonable person) and strict liability (imposition of liability even in the absence of fault).
- Analysis of the significance of fault for instance: a marker of blame; allocates responsibility; justifies the imposition of penalties or damages, indicates that behaviour should be modified in the future.
- Analysis of fault in the context of vicarious liability (1): No requirement for the employer to have done anything wrong in order to be liable and could still be liable despite taking precautions and giving clear instructions to employees (strict liability nature). Possible case law illustration, for instance **Limpus v London General Omnibus, Rose v Plenty, Century Insurance v Northern Ireland Road Transport Board, Mohamud v Morrisons**.
- Analysis of fault in the context of vicarious liability (2): Employer will not be at fault and consequently not liable if can show that the act was unauthorised ie a 'frolic' or that the person committing the tort was an independent contractor. Possible case law illustration, for instance **Beard v London General Omnibus, Hilton v Thomas Burton (Rhodes) Ltd, AG British Virgin Islands v Hartwell, Barclays Bank v Various claimants**.
- Conclusion as to the extent to which liability in the context of vicarious liability is based on fault, based on the analysis and evaluation presented: the concept is largely strict liability based for policy reasons (compensation) but there is sufficient scope within the elements for an employer to potentially avoid liability through lack of fault.

Credit any other relevant point(s).

**Indicative Content Groups (ICGs):**

ICG1: Fault and law

ICG2: Fault and vicarious liability

<b>10</b>	Consider the rights and remedies of Irene against Jake in relation to the noise from the drones <b>and</b> the damage caused by the oil spill.	<b>[30 marks]</b>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–6</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the tort of private nuisance: an action for unreasonable interference with the use or enjoyment of land with a possible remedy of an injunction and/or damages.
- Brief explanation of appropriate supporting case authority for instance **Hunter v Canary Wharf**, **Halsey v Esso** and **St Helens Smelting v Tipping**.
- Identification and outline explanation of the tort contained in the rule in **Rylands v Fletcher**: an action for reasonably foreseeable damage caused by the escape from the defendant's land of a dangerous thing accumulated during the course of a non-natural use of that land with a possible remedy of damages. Brief explanation of the strict liability nature of the rule.
- Brief explanation of appropriate supporting case authority for instance **Rylands v Fletcher**, **Transco v Stockport MBC** and **Cambridge Water v Eastern Counties Leather**.

**AO2**

- Private nuisance: application of the requirement that Irene must demonstrate an appropriate legal interest in the land affected (presumably she can as she is the owner). Application of the requirement that Jake must either be the creator of the nuisance or the person who authorised it (at the very least, Jake is allowing others to use his land for the purpose of drone racing).
- Private nuisance: application to suggest that Irene may be able to show an unreasonable interference with her use or enjoyment of her land in view of locality, frequency of the activity, intensity of the activity, time of day and malice. Counter arguments may include social utility (the activities are clearly popular, and pursuit of recreational activities is a legitimate public interest).
- Private nuisance: application to consider whether an injunction, a partial injunction or no injunction is the appropriate remedy. Factors might include whether it is possible to assess any financial loss and the interests of many racers against one cottage owner.
- The rule in **Rylands v Fletcher**: application of the requirement that Irene must demonstrate an appropriate legal interest in the land affected.
- The rule in **Rylands v Fletcher**: application to argue that Irene may be able to show the elements required to establish liability in terms of an accumulation, on Jake's land, of a dangerous substance during the course of a non-natural user, an escape of that substance and the escape causing reasonably foreseeable damage.
- The rule in **Rylands v Fletcher**: application to argue a possible defence of act of a stranger in the form of vandalism by an intruder. Credit the view either that the defence is unavailable if the damage was not caused by an intruder and/or the defence is unavailable as Jake may have been negligent in failing to remedy the damage. If Jake is unable to show the defence, he may be strictly liable for the damage caused.
- The rule in **Rylands v Fletcher**: application to suggest that Irene may be entitled to a remedy of compensatory damages.

**AO3**

- Private nuisance: analysis and evaluation of the factors that the courts use to decide whether there is an unreasonable interference with a right to use or enjoy land with reference to issues of locality, frequency of the activity, intensity of the activity, time of day, malice and social utility.

- Private nuisance: analysis and evaluation of the factors that govern the grant of a remedy in terms of an injunction, a partial injunction or damages instead of an injunction.
- Private nuisance: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Tetley v Chitty**, **Barr v Biffa**, **Coventry v Lawrence**, **Murdoch v Glacier Metals**, **Christie v Davey**, **Hollywood Silver Fox Farm v Emmett**, **Dennis v MoD**, **Miller v Jackson** and **Kennaway v Thompson**.
- The rule in **Rylands v Fletcher**: analysis and evaluation of the requirements for liability (accumulation, dangerous substance, non-natural user of the land, escape causing reasonably foreseeable damage).
- The rule in **Rylands v Fletcher**: analysis and application of the relevant fault element (strict liability).
- The rule in **Rylands v Fletcher**: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Rickards v Lothian**, **Read v Lyons** and **Perry v Kendricks**.

Note: Credit any other relevant point(s).

Note: in the case of Irene's claim relating to the oil spill (ICG2), credit an answer that uses general negligence to the extent that it deals with the issues raised by the scenario.

**Indicative Content Groups (ICGs):**

ICG1: Nuisance

ICG2: The Rule in **Rylands v Fletcher**

<b>11</b>	<p>Consider the rights and remedies in negligence of Will against Xavier, <b>and</b> of Zen and Yasmin against Xavier for their psychiatric problems.</p> <p>Law plays a role in society in both allowing and restricting civil claims. There are rules which restrict when a claimant can recover for psychiatric injury in tort. Assess the reasons why these legal restrictions exist.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<p><b>25–30</b></p> <p><b>Band 5</b></p>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<p><b>19–24</b></p> <p><b>Band 4</b></p>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<p><b>13–18</b></p> <p><b>Band 3</b></p>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b> <b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority. There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. There is limited analysis and evaluation of legal concepts and issues. Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b> <b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority. There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. There is minimal analysis and evaluation of legal concepts and issues. Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<p><b>0</b></p>	<p>Nothing worthy of credit.</p>

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Identification and outline explanation of the elements of the tort of negligence: duty, breach and damage, including identification of the test for duty, risk factors in breach and damage including personal injury.
- Brief explanation of appropriate supporting case law, eg **Donoghue v Stevenson**, **Caparo v Dickman**, **Robinson v Chief Constable for West Yorkshire**, **Watt v Hertfordshire CC** and **the Wagon Mound (No 1)**.
- Identification and explanation of the rules for calculating damages with possible reference to aim, method and distinctions between pecuniary/non-pecuniary and special/general damages.
- Identification and brief explanation of psychiatric injury, and of the possibility of an action in negligence to recover damages albeit on a restricted basis.
- Brief explanation of the difference between a primary victim and a secondary victim in the context of psychiatric injury.
- Brief explanation of appropriate supporting case authority for example **Reilly v Merseyside RHA**, **Page v Smith** and **Alcock v Chief Constable for South Yorkshire**.
- The role law plays in society: identification of one or more policy issues influencing the rules which restrict when a claimant can recover for psychiatric injury.

**AO2**

- Application of the rules on duty of care to suggest that Xavier owes a duty of care to Will on the basis that it is reasonably foreseeable that a pedestrian could be affected by a driver's lack of care and that there is physical proximity (same road, same time) and there are no policy reasons for not imposing a duty of care. Alternatively, the established duty situation of driver to pedestrian or the neighbour principle (someone closely affected by actions).
- Application of the rules on breach to suggest that Xavier should be judged by the standard of the reasonable ambulance driver but may have reached the required standard depending on possible social benefit (if the ambulance was responding to an emergency call) compared to other risk factors such as size of risk, potential magnitude of harm and ease of precautions.
- Application of the rules on causation to suggest that Will's injuries are a reasonably foreseeable consequence of being struck by an ambulance.
- Application to suggest that Will would attempt to claim a significant sum in compensatory damages for his pain and suffering, future loss of earnings due to the potential loss of a promising career as a footballer and possible loss of amenity from not being able to play football.
- Application to suggest that Zen and Yasmin will need to show that they have a psychiatric injury in the form of a recognised psychiatric condition.
- Application to suggest that both Zen and Yasmin will be classed as secondary victims as neither were in the zone of danger.
- Application of the rules on recovery for psychiatric injury by a secondary victim to suggest that Yasmin may be able to satisfy the Alcock rules relating to a close tie of love and affection, but that she will need to rely on the idea of 'immediate aftermath' to qualify under the Alcock rules relating to proximity to the accident.
- Application of the rules on recovery for psychiatric injury by a secondary victim to suggest that Zen will be unlikely to satisfy the Alcock rules relating to a close tie of love and affection.
- Application to explain that, in the event of a successful claim, Zen and Yasmin would be entitled to a remedy of compensatory damages.

**AO3**

- Analysis and evaluation of the concept of duty in relation to a road accident in terms of a comparison to established duties, foreseeability and proximity.
- Analysis and evaluation of the standard of care in breach of duty in determining the appropriate standard to be shown by the reasonable person given the seriousness of risk, likelihood of risk, ease of prevention and social benefit.
- Analysis and evaluation of the rules on causation in terms of reasonable foreseeability.
- Analysis and evaluation of the rules on compensatory damages in respect of claims for future losses.
- Negligence: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Bolton v Stone**, **Paris v Stepney BC**, **Latimer v AEC** and **Hughes v Lord Advocate**.
- Analysis and evaluation of the requirements for a claimant to qualify as a primary victim on the ground that they were in the 'zone of danger'.
- Analysis and evaluation of the requirements for a claimant to qualify as a secondary victim in terms of the Alcock rules (including 'immediate aftermath') and the rules relating to sudden shock.
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **McLoughlin v O'Brian**, **Galli-Atkinson v Seghal**, **Sion v Hampstead HA** and **Walters v North Glamorgan NHS Trust**.
- The role law plays in society: assessment of the reasons for the rules which restrict when a claimant can recover for psychiatric injury; analysis or evaluation for instance of one or more of the following: floodgates, the difficulty of diagnosing such injuries, the difficulty of deciding compensation for such injuries. (Credit any arguments in which criticism of the rules emerge.)



Credit any other relevant point(s).

**Indicative Content Groups (ICGs):**

ICG1: Negligence leading to physical loss

ICG2: Negligence leading to psychiatric injury

ICG3: Assessing why claims for psychiatric injury are restricted

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>