



A-level
LAW
7162/2

Paper 2

Mark scheme

June 2020

Version: 1.0 Final Mark Scheme

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.

Further copies of this mark scheme are available from aqa.org.uk

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 In a case involving private nuisance, for which of the following can the claimant **not** seek a remedy?

[1 mark]

Marks for this question: AO1 = 1

C Personal injury.

02 If an action in negligence is brought against a child, which of the following does the claimant normally have to prove is **true** at the time of the incident?

[1 mark]

Marks for this question: AO1 = 1

D The standard of behaviour of the child was lower than that of the reasonable child of the same age.

03 A pressure group may try to influence Parliament and persuade it to pass certain laws. Which of the following statements about pressure groups is **false**?

[1 mark]

Marks for this question: AO1 = 1

B Pressure groups always put forward candidates for election to Parliament in order to promote their ideas.

04 Which of the following best describes a decision made by a tribunal?

The decision is

[1 mark]

Marks for this question: AO1 = 1

A binding on the parties and can be appealed.

05 Which of the following courts does **not** hear appeals in tort cases?

[1 mark]

Marks for this question: AO1 = 1

A The Chancery Division of the High Court.

06 Explain **two** aspects of the work of the Law Commission in reforming the law. Give an example of an area of law that the Law Commission has looked at.

[5 marks]

Marks for this question: AO1 = 5

Levels of response mark scheme 5 marks – AO1 only	
Mark range	Description
4–5 Band 3	Knowledge is good and demonstrates a good understanding of the English legal system.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the English legal system.
0	Nothing worthy of credit.

Indicative content

AO1

- Keeping the law under review: by section 3(1) of the Law Commission Act 1965, the LC has a duty to propose reform, development and simplification of the law.
- Proposals for consolidation: combining several statutes dealing with a particular area of law into a single Act of Parliament.
- Proposals for codification: reviewing/reforming the law to produce a single code governing all aspects of a particular area of law.
- Proposals for the repeal of obsolete statutes.
- Selection of a topic for consideration: the LC may select an area of law to examine and should then ask for approval from the Lord Chancellor. (Alternatively, the Lord Chancellor may refer a particular area of law to the LC).
- The function of research whereby the LC researches the chosen area of law, considering existing rules of law in the area of both statutory and common law.
- Publication by the LC of a consultation paper (description of the current law, description of issues with the current law, comparison of English law with the law of countries with similar legal systems, outline of possible reforms).
- Publication by the LC of a final report (explanation of research, final proposal for reform, proposal for a draft bill). The report is sent to the Lord Chancellor.
- Examples of the work of the LC, for instance the Corporate Manslaughter and Corporate Homicide Act 2007, the Coroners and Justice Act 2009, the Criminal Justice and Courts Act 2015 and the Consumer Rights Act 2015.

Note: the answer requires:

- aspect 1
- aspect 2
- example

all 3 = max 5

any 2 = max 4

aspect 1 = max 3

example only = max 2

Credit any other relevant point(s).

07 Suggest why the people using the field as a shortcut could be considered as trespassers for the purposes of any claim in occupiers' liability.

[5 marks]

Marks for this question: AO1 = 2 and AO2 = 3

Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)	
Mark range	Description
4–5 Band 3	Good outline explanation of relevant 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.
2–3 Band 2	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.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the relevant legal rules and principles.
0	Nothing worthy of credit.

Indicative content

AO1

- Identification of the meaning of the term 'trespasser': the lack of permission, express or implied, to enter the land.
- Possible comparison between a trespasser and a lawful visitor; possible reference to the relevant legislation.

AO2

- Application to argue that the people did not have express or implied permission to enter the land for instance as invitees, as licensees or under a statutory power to enter.
- Application to argue that, although people were entering the land regularly, there was no ground on which to imply permission as their presence was objected to in the form of the fence, the locked gate and the notices forbidding entry.
- Reference to and analysis of relevant case law illustrating trespass, for example **Addie v Dumbreck**, **Herrington v BRB**, **Tomlinson v Congleton BC**, **Keown v Coventry NHS Trust**, **Donoghue v Folkestone Properties** and **Lowery v Walker**.

Credit any other relevant point(s).

08	Advise Leroy as to his rights and remedies against Kev under the Rule in <i>Rylands v Fletcher</i> .	[10 marks]
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Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3

Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)	
Mark range	Description
7–10 Band 3	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.
3–6 Band 2	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 legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
1–2 Band 1	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.
0	Nothing worthy of credit.

Indicative content

AO1

- 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.
- Brief explanation of appropriate supporting case authority for instance **Rylands v Fletcher**, **Transco v Stockport MBC** and **Cambridge Water v Eastern Counties Leather**.

AO2

- Application of the requirement that Leroy must demonstrate an appropriate legal interest in the land affected.
- Application to argue that Leroy may be able to show the elements required to establish liability in terms of an accumulation, on Kev’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.
- Application to argue a possible defence of act of God (an unforeseeable event that cannot be guarded against) given the nature of the storm.
- Application to suggest that Leroy may be entitled to a remedy of compensatory damages.

AO3

- Analysis and evaluation of the requirements for liability (accumulation, dangerous substance, non-natural user of the land, escape causing reasonably foreseeable damage).
- Analysis and application of the relevant fault element (strict liability).
- 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 **Nichols v Marsland**.

Credit any other relevant point(s).

09 Examine what is meant by fault as a basis for liability in English law. Discuss to what extent liability to lawful visitors, under the Occupiers' Liability Act 1957, is based on fault.
[15 marks]

Marks for this question: AO1 = 5 and AO3 = 10

Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)	
Mark range	Description
13–15 Band 5	<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>
10–12 Band 4	<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>
7–9 Band 3	<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>
4–6 Band 2	<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>
1–3 Band 1	<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. No chain of reasoning is attempted.</p>
0	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 duty imposed by the 1957 Act on occupiers to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited by the occupiers to be there.

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 OLA 1957 (1): standard of behaviour is the negligence standard of the reasonable person. The standard is objective and can impose fault even where the defendant is doing their best (eg an inexperienced person or occupier of premises). However, the standard does not require that the occupier offer a guarantee of safety; the occupier only need act as the reasonable person would have done in terms of risk factors such as likelihood of risk, ease of precautions and seriousness of possible damage. Fault is varied under s2(3) in respect of children and visitors where the risk is within the visitor’s specialism. Possible case law illustration for instance **Phipps v Rochester Corporation** and **Roles v Nathan**.
- Analysis of fault in the context of OLA 1957 (1): defences offer a way to eliminate or reduce liability in circumstances where fault is reduced or absent. Defences where the claimant is partly to blame, for instance contributory negligence. Defences where a third party is partly to blame, for instance s2(4)(b). Possible case law illustration for instance **Haseldine v Daw**, **Woodward v Mayor of Hastings** and **Geary v JD Wetherspoons**.
- Conclusion as to the extent to which liability under the OLA 1957 is based on fault, based on the analysis and evaluation presented: the defendant is judged objectively, but the standard to be shown can vary, and liability partly depends on the fault of others.

Credit any other relevant point(s).

Indicative Content Groups (ICGs)

ICG1: Fault and English law

ICG2: Fault and the OLA 1957

10	Consider the rights and remedies of Neal, Orella and Peggy against Mel.	[30 marks]
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Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)	
Mark range	Description
25–30 Band 5	<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>
19–24 Band 4	<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>
13–18 Band 3	<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>
7–12 Band 2	<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>
1–6 Band 1	<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>
0	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 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 and property damage.
- Brief explanation of appropriate supporting case law, eg **Donoghue v Stevenson**, **Robinson v Chief Constable for West Yorkshire**, **Nettleship v Weston** and **the Wagon Mound (No 1)** .
- Identification and explanation of the defence of contributory negligence. Brief explanation that the defence will apply where the claimant partly contributed to the accident or to their loss because their own behaviour fell below that of the reasonable person. Possible identification of the defence of consent with a brief explanation that the defence may apply if the claimant consented to the risk of the defendant acting negligently.
- 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**.

AO2

- Application of the rules on duty of care to suggest that Mel owes a duty of care to Neal on the ground that it is reasonably foreseeable that a boat passenger would be affected by Mel's failure to drive the boat competently.
- Application of the rules on breach to suggest that Mel should be judged by the standard of the reasonable experienced boat driver (not a learner) and that Mel did not reach the standard of the reasonable person in terms of seriousness of risk, likelihood of risk and ease of prevention.
- Application of the rules on causation to suggest that Neal being thrown into the water was a reasonably foreseeable consequence of Mel losing control of the boat, and that Neal can recover damages both for his physical injuries and for the lung damage (thin skull rule).
- Application to argue that Mel may be able to use the defence of contributory negligence in terms of whether Neal's behaviour was below that of the reasonable person in sitting on the side of the boat and having drunk alcohol. Possible application to argue that Neal freely, and with knowledge, consented to the risk that Mel would act negligently.
- Application to suggest that Neal may be entitled to a remedy of compensatory damages against Mel, but that the existence of a defence may reduce or eliminate his claim.
- Application to suggest that Orella and Peggy will need to show that they have a psychiatric injury in the form of a recognised psychiatric condition.
- Application to suggest that Orella may qualify as a primary victim in that she was in the 'zone of danger' as it was reasonably foreseeable that she could have been physically injured.
- Application of the rules to Peggy to demonstrate that, as a bystander, she is a secondary victim.
- Application of the rules on recovery for psychiatric injury by a secondary victim to suggest that Peggy 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 to explain that, in the event of a successful claim, Orella and Peggy would be entitled to a remedy of compensatory damages.

AO3

- Analysis and evaluation of the concept of duty in relation to a speedboat 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 and ease of prevention.
- Analysis and evaluation of the rules on causation in terms of reasonable foreseeability and the thin skull rule.
- Analysis and evaluation of the existence of liability with reference to contributory negligence (whether Neal acted as the reasonable person would have done in terms of factors such as likelihood of injury, seriousness of injury risked and precautions he could have taken). Possible analysis and evaluation of the defence of consent (whether Neal consented to the risk of Mel acting negligently).
- 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**, **Smith v Leech Brain**, **Froom v Butcher**, **Brannon v Airtours**, **Morris v Murray**.
- Analysis and application of the requirements for a claim in negligence for psychiatric injury: a duty of care normally only exists to someone who is a primary or a secondary victim.
- 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**.

Credit any other relevant point(s).

Indicative Content Groups (ICGs)

ICG1: Negligence leading to physical loss

ICG2: Negligence leading to psychiatric injury

11 Consider the rights and remedies of Sam against Tina **and** against UserArt Ltd in relation to the vase.

Law plays a role in society in both allowing and restricting civil claims. There are rules which restrict when a claimant can recover for pure economic loss in tort. Assess the reasons why these restrictions on recovery for pure economic loss exist.

[30 marks]

Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)	
Mark range	Description
<p>25–30</p> <p>Band 5</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>19–24</p> <p>Band 4</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>13–18</p> <p>Band 3</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>7–12 Band 2</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>1–6 Band 1</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>0</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 economic loss and of the possibility of an action in negligence to recover damages for a 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**.
- Identification and outline explanation of an action in vicarious liability against an employer for the negligence of an employee committed during the course of employment.
- Brief explanation of appropriate supporting case authority for instance **Ready Mix Concrete v Minister of Pensions**, **Century Insurance v NI Road Transport Board** and **Lister v Hesley Hall**.
- The role law plays in society: brief explanation of the rules governing recovery for pure economic loss - pure economic loss cannot normally be recovered if caused by a negligent act; pure economic loss can be recovered if caused by a negligent misstatement as long as there is a special relationship between the claimant and the defendant.

AO2

- Negligent misstatement: application of the rules governing the difference between a consequential economic loss and a pure economic loss to suggest that Sam has sustained a pure economic loss.
- 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 Sam has sustained a pure economic loss caused by a statement.
- 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 Sam and Tina have such a special relationship in the context of an event at a golf club.
- Vicarious liability: application of the rules determining whether a worker is an independent contractor or an employee to consider the status of Tina, for instance the control test, the integration test and the multiple test.
- Vicarious liability: application of the rules determining whether a tort was committed in the course of employment to consider the status of Tina's statement with reference to, for instance, authorised acts and the 'so closely connected' test.
- Application to suggest that Sam may be entitled to a range of compensatory damages against Tina and UserArt.

AO3

- Negligent misstatement: 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: analysis and evaluation of the elements required to establish the special relationship in the context of a social event.
- 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**.
- Vicarious liability: analysis and evaluation of the requirements for a worker to be considered an employee (for example level of control, connection to the employer's business, mutuality of obligation).
- Vicarious liability: analysis and evaluation of the requirements to establish that an employee was acting in the course of employment (for instance the difference between an unauthorised act and an authorised act carried out in an unauthorised manner, disobeying a direct instruction, whether an act was so closely connected to the employment that it is fair and just to hold the employer liable).
- Vicarious liability: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Various Claimants v Catholic CWS**, **Limpus v London General Omnibus** and **Rose v Plenty**.
- The role law plays in society: evaluation of the rules governing the recovery of pure economic loss and the role that these rules play in society; for instance, one or more of the following: the 'floodgates' argument in relation to both negligent acts and negligent misstatements, the desire not to allow claimants to circumvent contract law, the difficulty of insuring against such losses, the 'unfairness' of allowing a claimant who has lost through no fault of their own to go uncompensated, a contrast with rules governing physical losses. Illustrative case law for example **Spartan Steel v Martin**, **White v Jones**, **Hedley Byrne v Heller**, and **Caparo v Dickman**.

Credit any other relevant point(s).

Indicative Content Groups (ICGs)

ICG1: Negligent misstatement

ICG2: Vicarious liability

ICG3: Law and society/pure economic loss

Assessment Objectives Grid

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

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
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
Total	75	25	100
Total %	75	25	100