



GCE AS MARKING SCHEME

SUMMER 2022

**AS
LAW – UNIT 2
2150U20-1**

INTRODUCTION

This marking scheme was used by WJEC for the 2022 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

It is hoped that this information will be of assistance to centres but it is recognised at the same time that, without the benefit of participation in the examiners' conference, teachers may have different views on certain matters of detail or interpretation.

WJEC regrets that it cannot enter into any discussion or correspondence about this marking scheme.

GCE LAW

UNIT 2 - THE LAW OF TORT

SUMMER 2022 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Unit 2

The questions assess all three assessment objectives - AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology, and the ability to analyse and evaluate legal rules, principles, concepts and issues.

The structure of the mark scheme

The mark scheme for each question has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1, AO2 and AO3.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content.

Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner.

Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

1. Explain what is meant by breach of duty of care in the tort of negligence. [8]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining how the law decides what is meant by a breach of duty of care, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying a breach of duty of care. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply to give a general answer on all elements of negligence.

The response might consider issues such as:

- Breach of duty of care as second element of negligence.
- The objective standard of care and the reasonable person – **Blyth v Birmingham Waterworks**.
- Special characteristics:
 - Professionals (**Bolam v Friern Barnet Hospital Management Committee (1957)**), (**Montgomery v Lanarkshire Health Board (2015)**)
 - Learners are judged at the standard of the competent, more experienced person (**Nettleship v Weston (1971)**)
 - Children and young people - For this group the standard is that of a reasonable person of the defendant's age at the time of the accident. (**Mullin v Richards (1998)**)
- Risk factors:
 - Has the claimant any special characteristics which should be taken into account? (**Paris v Stepney Borough Council (1951)**). Professional persons (**Bolam**).
 - Size of the risk. (**Bolton v Stone (1951)**), (**Hayley v LEB (1965)**).
 - Have all appropriate precautions been taken? The cost and practicality of preventing risk. (**Latimer v AEC Ltd (1953)**).
 - Were the risks known about at the time of the accident? (**Roe v Minister of Health (1954)**).
 - Public benefit of taking the risk? (**Day v High Performance Sports (2003)**), (**Watt v Hertfordshire County Council (1954)**).
 - Credit for any other relevant citation.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6-8	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the principle of breach of duty of care.
2	3-5	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to the principle of breach of duty of care.
1	1-2	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to the principle of breach of duty of care.
	0	Response not creditworthy or not attempted.

2. Explain the law on occupiers' liability to adults and children under the Occupiers Liability Act 1957. [8]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the law on occupiers' liability under the Occupiers Liability Act 1957, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the law on occupiers' liability and demonstrate an awareness of the difference between occupiers' liability and negligence. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and consider the 1957 Act specifically. Comparisons may be drawn with the 1984 Act.

The response might consider issues such as:

- **The Occupiers' Liability Act 1957** provides that an occupier of premises owes a duty of care to lawful visitors, and if that duty is breached and the visitor is injured he is entitled to receive compensation.
- Definition of occupier - may be, but do not have to be, the owner or tenant of the premises. There is in fact no statutory definition of 'occupier'. The test for deciding whether a person is the occupier is found in case law – Wheat v E Lacon and Co Ltd (1966), Harris v Birkenhead Corporation (1976), Bailey v Armes (1999).
- Definition of 'premises' - There is no full statutory definition of premises except in s 1(3)(a) of the 1957 Act where there is reference to a person having occupation or control of any 'fixed or moveable structure, including any vessel, vehicle and aircraft'
- Includes houses, offices, buildings and land, premises has also been held to include: a ship in dry dock, a vehicle, a lift, etc
- Adult lawful visitors include: invitees, licensees, contractual permission, statutory right of entry. An adult lawful visitor is owed a 'common duty of care' (s.2(2) – Laverton v Kiapasha Takeaway Supreme (2002), Dean and Chapter of Rochester Cathedral v Debell (2016)).
- Lawful visitors may become trespassers if they exceed their permission (1984 Act then applies).
- Occupiers' liability to children - The occupier will owe children coming onto the premises the common duty of care, but there is an additional special duty owed to child visitors. 'Allurements'. **Under s 2(3) of the Occupiers' Liability Act 1957** the occupier 'must be prepared for children to be less careful than adults (and as a result) the premises must be reasonably safe for a child of that age'. Glasgow Corporation v Taylor (1992), Phipps v Rochester Corporation (1955).
- Defences to a claim by a lawful visitor - contributory negligence, consent (volenti).
- Exclusion clauses – s.2(1).

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6-8	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the law on occupiers' liability to adults and children under the Occupiers Liability Act 1957.
2	3-5	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to the law on occupiers' liability to adults and children under the Occupiers Liability Act 1957.
1	1-2	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to the law on occupiers' liability to adults and children under the Occupiers Liability Act 1957.
	0	Response not creditworthy or not attempted.

3. Explain the law on psychiatric harm in relation to primary and secondary victims. [8]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the law on psychiatric harm in relation to primary and secondary victims, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the law on psychiatric harm in relation to primary and secondary victims. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on negligence.

The response might consider issues such as:

- A primary victim is where the claimant is involved, immediately in time, as a participant, e.g. a person who feared for their own safety, injured rescuers or an involuntary participant. They would be present at scene and usually (but not always) have suffered physical injury. It does not matter if the victim is more susceptible to shock.
- A secondary victim is where the claimant has suffered some type of psychiatric injury. To be classified as a secondary victim there must be a proximity in terms of relationship with a primary victim and the secondary victim must have witnessed the accident with his/her own unaided senses.
- Candidates may evaluate relevant case law such as *Hambrook v Stokes Bros*; *McCloughlin v O'Brien*; *Page v Smith*; *Alcock v Chief Constable of South Yorkshire Police*.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6-8	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the law on psychiatric harm in relation to primary and secondary victims.
2	3-5	<ul style="list-style-type: none"> • Good knowledge and understanding of the legal rules and principles relating to the law on psychiatric harm in relation to primary and secondary victims.
1	1-2	<ul style="list-style-type: none"> • Basic knowledge and understanding of the legal rules and principles relating to the law on psychiatric harm in relation to primary and secondary victims.
	0	Response not creditworthy or not attempted.

4. Rebecca was driving along a busy street in Newport. As the traffic was moving quite slowly, she was looking through her phone at her recent messages. She knocked the phone out of her hands and reached across the car to try to find it. While she was distracted, she failed to notice that Marie had stepped out onto a pedestrian crossing and Rebecca's car hit Marie, breaking her leg and running over the shopping she had just bought. Marie required surgery and had to take five months off work because of her injuries. Her doctors are concerned that she may need a further operation in future and that she may suffer ongoing pain. Her shopping, which included several expensive gifts, was badly damaged.

Advise Marie as to whether Rebecca is liable in the law of negligence for her injuries.

[18]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In assessing the extent to which Rebecca is liable for Marie's injuries, candidates are expected to apply legal rules and principles to the scenario in order to present a legal argument using appropriate legal terminology.

The response might consider issues such as:

- For Marie to succeed in an action in negligence against Rebecca, it must first be established that Rebecca owed Marie a duty of care. The basis of whether or not a duty of care is owed is determined on a three-part test as laid out in **Caparo Industries PLC v Dickman**.
- Rebecca does not owe a duty to the whole world but only to those persons that could be reasonably foreseen to be affected by her actions or omissions as determined in **Donoghue v Stevenson**. It could reasonably be foreseen that Rebecca's distracted driving could lead to other persons being affected.
- If it is established that a degree of foreseeability exists, then the proximity of the parties involved must be considered. Proximity is determined on the basis of the relationship of the parties involved. There is a clear proximity of relationship between Rebecca and other road users including pedestrians such as Marie.
- The courts will also consider whether it is reasonable to impose a duty of care on Rebecca on the basis of fairness or policy. It is both fair and in the interests of public policy to impose a duty of care on drivers and would not result in the floodgates being opened.
- Marie has suffered damage as a result of Rebecca's breach of duty of care. Objective test but consider potential special characteristics of the defendant. Application of relevant breach factors.
- Causation – 'but for' test.
- There was no evidence of novus actus interveniens that could negate Rebecca's liability for the bump and responsibility for the injuries suffered by Marie and damage to shopping.
- Remoteness of damage – egg-shell skull rule.
- Credit for any other relevant citation.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	14-18	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to the situation involving Marie and Rebecca. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.
3	9-13	<ul style="list-style-type: none"> • Good application of legal rules and principles to the situation involving Marie and Rebecca. • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.
2	5-8	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to the situation involving the Marie and Rebecca. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.
1	1-4	<ul style="list-style-type: none"> • Basic application of legal rules and principles to the situation involving Marie and Rebecca. • Basic presentation of a legal argument, using minimal legal terminology relating to the elements of the tort of negligence.
	0	Response not creditworthy or not attempted.

5. Analyse and evaluate how an award of damages is assessed in the law of tort. [18]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to primary and secondary victims in tort. Candidates will offer an analysis and evaluation of primary and secondary victims. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding the differences between the two.

The response might consider issues such as:

- A claimant who successfully proves his case in negligence will be entitled to a remedy. Damages are one form of remedy.
- Damages aim to place the claimant, where possible, in the same position as if the tort had never happened. Not always possible for serious, life changing injuries.
- Damages can be divided into general and special damages:
 - Special damages – These comprise quantifiable financial losses up to the date of trial and are assessed separately from other awards because the exact amount to be claimed is known at the time of the trial. The major types of damages are as follows:
 - Loss of earnings.
 - Medical Expenses.
 - Expenses to cover special facilities.
 - General damages – This term covers all losses that are not capable of exact quantification and they are further divided into pecuniary and non -pecuniary damages.
 - Pecuniary damages – The major type of pecuniary damages is future loss of earnings. The courts calculate this amount using the multiplicand (a sum to represent the claimant’s annual net lost earnings) and the multiplier (a notional figure that represents a number of years for which the claimant was likely to have worked). These are multiplied together in order to calculate the future losses.
 - Non-pecuniary damages – pain and suffering, loss of amenity, damages for the injury itself.
- Discussion of other remedies where damages will not suffice.
- Mitigation of loss, contributory negligence.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	14-18	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the assessment of an award of damages in the law of tort. • Excellent evaluation of the law surrounding the assessment of an award of damages in the law of tort, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
3	9-13	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the assessment of an award of damages in the law of tort. • Good evaluation of the law surrounding the assessment of an award of damages in the law of tort, including a valid judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates reasonably accurate grammar, punctuation and spelling.
2	4-8	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to the assessment of an award of damages in the law of tort. • Satisfactory evaluation of the law surrounding the assessment of an award of damages in the law of tort, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1-4	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the assessment of an award of damages in the law of tort. • Basic evaluation of the purpose of the law surrounding the assessment of an award of damages in the law of tort. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.