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 Assessment Writer.

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
LAW02

Assessment Objectives One and Two

General Marking Guidance

You should remember that your marking standards should reflect the levels of performance of students, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.

Positive Marking

You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as students penalise themselves in terms of the time they have spent.

Mark Range

You should use the whole mark range available in the mark scheme. Where the student’s response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the student’s answer does not deserve credit, then no marks should be given.

Citation of Authority

Students will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.
### Assessment Objective Three

**QUALITY OF WRITTEN COMMUNICATION (QoWC)**

<table>
<thead>
<tr>
<th>Marks</th>
<th>Description</th>
</tr>
</thead>
</table>
| 2 marks | The work is characterised by some or all of the following:  
- clear expression of ideas  
- a good range of specialist terms  
- few errors in grammar, punctuation and spelling  
- errors do not detract from the clarity of the material. |
| 1 mark | The work is characterised by:  
- reasonable expression of ideas  
- the use of some specialist terms  
- errors of grammar, punctuation and spelling  
- errors detract from the clarity of the material. |
| 0 marks | The work is characterised by:  
- poor expression of ideas  
- limited use of specialist terms  
- errors and poor grammar, punctuation and spelling  
- errors obscure the clarity of the material. |
**The level of understanding in AS Law – LAW02**

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year-old, so the level of understanding required by these criteria will be that of the notional 17-year-old.

<table>
<thead>
<tr>
<th>Sound</th>
<th>The material will be generally accurate and contain material relevant to the Potential Content.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The material will be supported by generally relevant authority and/or examples.</td>
</tr>
<tr>
<td></td>
<td>It will generally deal with the Potential Content in a manner required by the question.</td>
</tr>
</tbody>
</table>

As a consequence, the essential features of the Potential Content are dealt with competently and coherently.

<table>
<thead>
<tr>
<th>Clear</th>
<th>The material is broadly accurate and relevant to the Potential Content.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The material will be supported by some use of relevant authority and/or examples.</td>
</tr>
<tr>
<td></td>
<td>The material will broadly deal with the Potential Content in a manner required by the question.</td>
</tr>
</tbody>
</table>

As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.

<table>
<thead>
<tr>
<th>Some</th>
<th>The material shows some accuracy and relevance to the Potential Content.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The material may occasionally be supported by some relevant authority and/or examples.</td>
</tr>
<tr>
<td></td>
<td>The material will deal with some of the Potential Content in a manner required by the question.</td>
</tr>
</tbody>
</table>

As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.

<table>
<thead>
<tr>
<th>Limited</th>
<th>The material is of limited accuracy and relevance to the Potential Content.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The material will be supported by minimal relevant authority and/or examples.</td>
</tr>
<tr>
<td></td>
<td>The material will deal superficially with the Potential Content in a manner required by the question.</td>
</tr>
</tbody>
</table>

As a consequence, the concepts of the Potential Content will barely be established, as there will be many errors, omissions and/or confusion which almost completely undermine the essential elements of the potential content.
Explain the meaning of the coincidence (contemporaneity) rule.  [7 marks]

Potential content

(A)  
- Explanation of the meaning of the coincidence/contemporaneity rule – actus reus and mens rea must happen at the same time, place and person
- Explanation of ways the rule has been extended eg continuing acts/superimposed mens rea/later actus reus etc
- Cases and/or examples in support – eg Fagan v MPC; Thabo Meli; Church.

Note: Possible reference to the Dutch Courage rule and the case of Gallagher

Mark bands

7 – 6  The student deals with (A) as follows: sound.
5 – 4  The student deals with (A) as follows: clear.
3     The student deals with (A) as follows: some.
2 – 1  The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0     The answer contains no relevant information.

A sound answer is likely to include:

- An explanation of the meaning of the contemporaneity rule
- Brief explanation and illustration of case law eg:
  - continuing actus reus with subsequent superimposed mens rea such as Fagan explained and illustrated
  - continuing mens rea through connected acts such as Thabo Meli or Church explained and illustrated.

[AO1 = 4; AO2 = 3]
Briefly explain the meaning of a crime of ‘strict liability’ and briefly explain the reasons for having such offences. [8 marks]

Potential content

(A) Brief explanation of the meaning of offences of strict liability:

- offences requiring no mens rea with respect to some/all of the actus reus
- possible reference to both statutory and common law offences
- possible discussion of absolute liability
- cases and/or examples in support, eg Harrow LBC v Shah, Blake, Smedleys v Breed, Alphacell v Woodward.

Brief explanation of the reasons for offences of strict liability:

- regulatory offences designed to protect public interest
- easier to prove
- saving court time
- promotes better-run businesses
- generally only relatively minor offences, and usually only punishable with a fine.

*Note: Max 5 if either ‘reasons for’ or ‘meaning of’ omitted*

Mark bands

8 – 7 The student deals with (A) as follows: sound.

6 – 5 The student deals with (A) as follows: clear.

4 – 3 The student deals with (A) as follows: some.

2 – 1 The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

Brief explanation of the meaning of strict liability:

- absence of a requirement of mens rea (relating to some element or possibly all elements of the actus reus) in the definition of the offence
- this will be supported by at least one example that is briefly explained to show the offence requires an actus reus only.

A range of reasons for strict liability will then be set out, each with an example. This might include:

- the reason of protecting the public from unfit food under the **Food and Drugs Act 1955** as seen in the case of **Smedleys v Breed**; the facts of the case are then outlined to show the operation of strict liability
With regard to the attack on Alex, Dan has been informed that he is likely to be charged with an offence under s18 Offences Against the Person Act 1861.

Explain the actus reus and mens rea of causing grievous bodily harm under s18 and discuss whether Dan is likely to be found guilty of this offence.

[10 marks + 2 marks for AO3]

Potential content

(A) • Explanation of causing grievous bodily harm with intent under s18 Offences Against the Person Act 1861 (definition of actus reus and mens rea + authority)
• Discussion and application of actus reus of causing gbh – really serious harm (evidenced by multiple bruises, internal injuries and broken bones and perhaps confirmed by long hospital stay) + cases such as Smith
• Discussion and application of mens rea being intention, ie direct or oblique intention as to causing gbh (evidenced by beating her with a baseball bat) + cases such as Belfon
• Possible reference to other cases/examples in support such as Bollom, Mowatt, Brown and Stratton.

Note – no application to Dan and Alex – max 5 marks

Note – max 5 marks for s20 gbh

Mark bands

10 – 8 The student deals with (A) as follows: sound.
7 – 5 The student deals with (A) as follows: clear.
4 – 3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0 The answer contains no relevant information.

AO3

2 marks The work is characterised by some or all of the following:
• clear expression of ideas
• a good range of specialist terms
• few errors in grammar, punctuation and spelling
• errors do not detract from the clarity of the material.
1 mark

The work is characterised by:

- reasonable expression of ideas
- the use of some specialist terms
- errors of grammar, punctuation and spelling
- errors detract from the clarity of the material.

0 marks

The work is characterised by:

- poor expression of ideas
- limited use of specialist terms
- errors and poor grammar, punctuation and spelling
- errors obscure the clarity of the material.

A sound answer is likely to include:

- an explanation of the actus reus and mens rea of s18 OAPA with cases to support the requirements of the offence
- application to the facts showing the actus reus of gbh
- application to Dan showing intention for gbh
- conclusion that the offence is likely to have been committed.

\[ \text{AO1} = 3; \text{AO2} = 7; \text{AO3} = 2 \]

Discuss whether Dan is likely to be found guilty of wounding under s20 Offences Against the Person Act 1861 for the injuries caused to Viv.

\[ 8 \text{ marks} \]

Potential content

(A) Explanation of the law and discussion of the application of the actus reus and mens rea of wounding under \textbf{Section 20 of the Offences Against the Person Act 1861}.

- Discussion and application of actus reus of wounding (evidenced by breaking both layers of the skin/external bleeding), supported by authority such as \textit{Eisenhower}
- Identification of wounding because of ‘cuts that caused severe blood loss’
- Discussion and application of mens rea of wounding being malicious, ie recklessness or intention as to some harm, supported by authority such as \textit{Savage}.

\textit{Note} – discussion/application of only s20 GBH – max 3 marks

\textit{Note} – no application to Dan and Viv – max 3 marks

Mark bands

8 – 7 The student deals with (A) as follows: sound.

6 – 5 The student deals with (A) as follows: clear.

4 – 3 The student deals with (A) as follows: some.

2 – 1 The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation

0 The answer contains no relevant information.
A sound answer is likely to include:

- a discussion of the actus reus and mens rea of the offence of malicious wounding Section 20 of the Offences Against the Person Act 1861 with cases to support the requirements of the offence
- an application to the facts showing the wounding (deep cuts and severe blood loss) + maliciousness (intentionally or recklessly inflicting some harm)
- conclusion of offence of wounding very likely to have been committed.

\[ AO_1 = 3; AO_2 = 5 \]

Dan might be charged with the offence of assault with respect to his initial confrontation with Alex. Outline the pre-trial procedure which would be followed if Dan was charged with assault.

\[ 5 \text{ marks} \]

Potential content

(A)  
- Identification that assault is a summary offence
- First appearance at Magistrates Court
- Duty solicitor or own solicitor or Dan represents himself
- Plea
- Legal Representation application (if appropriate)
- Date set for trial or sentencing following guilty plea
- Bail
- Trial (if not guilty plea) and sentencing (if pleads guilty or found guilty) to be at Magistrates Court.

Mark bands

5  The student deals with (A) as follows: sound.
4  The student deals with (A) as follows: clear.
3  The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0  The answer contains no relevant information.

A sound answer is likely to include:

- Identification that assault is a summary offence
- accurate outline of pre-trial procedure for summary offences.

\[ AO_1 = 3; AO_2 = 2 \]
Briefly explain what is meant by aggravating and mitigating factors in sentencing.

If Dan were to be sentenced for an offence against both Alex and Viv, outline how the court would decide on his sentence with respect to each victim.

[7 marks]

Potential content

(A) • Brief explanation of aggravating factors and their effect on sentence
• Brief explanation of mitigating factors and their effect on sentence
• Recognition of maximum penalty available/linked to trial venue
• Possible recognition of the ‘seriousness’ criteria (CJA 1991)
• Application to Dan and Alex – aggravating factors: use of weapon(s) (attack with baseball bat), repeated hitting of victim, possible vigilante attack; mitigating factor – bereavement; possible early guilty plea
• Application to Dan and Viv – aggravating factors: victim attempting to prevent serious attack, severe blood loss; mitigating factors, bereavement – wounds were unintended consequences, possible early guilty plea
• Possible reference to aims of sentencing

Note – no application to Dan – max 3 marks
Note – application to only one of Alex and Viv – max 5 marks

Mark bands

7 – 6 The student deals with (A) as follows: sound.
5 – 4 The student deals with (A) as follows: clear.
3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0 The answer contains no relevant information.

A sound answer is likely to include:

• Brief explanation of aggravating and mitigating factors
• An indication of the maximum penalty for these offences
• Outline application to offence against Alex
• Outline application to offence against Viv.

[AO1 = 5; AO2 = 2]
A claimant must prove that a duty of care is owed using the three-part test set out in the case of Caparo v Dickman. Two parts of this test are as follows:

- that loss to someone in the claimant’s position was a reasonably foreseeable consequence of the defendant’s conduct
- that it must be fair, just and reasonable to impose a duty of care.

Briefly explain these two parts of the test. [7 marks]

Potential content

Brief explanation, with cases, of the two parts of the Caparo three-part test:

(A) Is loss to someone in the claimant’s position a reasonably foreseeable consequence of the defendant’s conduct?
   Explained through cases such as Kent v Griffiths, Jolley v Sutton LBC.

(B) Is it fair, just and reasonable to impose a duty of care?
   Reference to arguments such as public policy/’floodgates’ principle
   Explained through cases such as Hill v Chief Constable of West Yorkshire, Mitchell v Glasgow City Council.

Mark bands

7  The student deals with (A) and (B) as follows: one sound, one clear.
6 – 5  The student deals with (A) and (B) as follows:
     Max 6: one sound, one some or two clear
     Max 5: one sound or one clear, one some

4  The student deals with (A) and (B) as follows:
   Two some, or one clear

3  The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)

2 – 1  The answers consist of brief, fragmented comments or examples so that no coherent explanation emerges
       or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0  The answer contains no relevant information.

A sound answer is likely to include:

Brief explanation of the two parts of the test together with exemplification by relevant cases.

[AO1 = 4; AO2 = 3]
Breach of duty involves the defendant failing to reach the standard of care of a reasonable man. Risk factors affect whether that standard has been breached.

Briefly explain the following two risk factors:

- the magnitude (size) of the risk
- whether all practical precautions have been taken.

Potential content

(A) Brief explanation with cases of the meaning of the first risk factor and the effect that has on the standard of care, the magnitude (size) of the risk – the reasonable man does not take care against minute risks, but does against big risks – explained through a case such as Bolton v Stone.

(B) Brief explanation with cases of the meaning of the second risk factor and the effect that has on the standard of care; practical precautions – taking reasonable but not excessive precautions – explained through a case such as Latimer v AEC.

Mark bands

7 The student deals with (A) and (B) as follows: one sound, one clear.

6 – 5 The student deals with (A) and (B) as follows:
Max 6: one sound, one some or two clear
Max 5: one sound or one clear, one some

4 The student deals with (A) and (B) as follows:
Two some, or one clear

3 The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)

2 – 1 The answers consist of brief, fragmented comments or examples so that no coherent explanation emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

Brief explanation of both of the two risk factors together with exemplification by relevant cases.

[AO1 = 4; AO2 = 3]
Briefly explain the rules on causation, including remoteness of damage, in negligence. Discuss how they apply to Jani’s possible claim against Fizzi.

[10 marks + 2 marks for AO3]

Potential content

(A) Brief explanation and application of these rules. This may include:

- Brief explanation of factual causation – but for the defendant's breach of duty, the consequence would not have occurred, eg Barnett v Chelsea & Kensington Hospital Board
- Brief explanation of the meaning of remoteness of damage – reasonable foreseeability test, eg The Wagon Mound
- Brief explanation of the effect that the kind of damage/method of damage has on remoteness, eg Doughty v Turner Manufacturing, Hughes v Lord Advocate, Bradford v Robinson Rentals
- Brief explanation of the effect of the thin skull rule, eg Smith v Leech Brain
- Application to Jani’s claim against Fizzi.

Note – If no application – max 6

Mark bands

10 – 8 The student deals with (A) as follows: sound.
7 – 5 The student deals with (A) as follows: clear.
4 – 3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation
   Or
   mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

AO3

2 marks The work is characterised by some or all of the following:
- clear expression of ideas
- a good range of specialist terms
- few errors in grammar, punctuation and spelling
- errors do not detract from the clarity of the material.

1 mark The work is characterised by:
- reasonable expression of ideas
- the use of some specialist terms
- errors of grammar, punctuation and spelling
- errors detract from the clarity of the material.
Discuss whether or not Fizzi owed a duty of care to Jani.

[8 marks]

Potential content

(A) Discussion, with cases, of whether a duty of care is owed, using the Caparo three-part test:

- would a reasonable person in the defendant’s position have foreseen that the claimant might be injured or suffer damage to his property? As there is an illegal drug is it reasonably foreseeable that someone might react badly to the drug/drink combination and not necessarily to the drink alone? It is an untested product.
- is there proximity by space, time or relationship between claimant and defendant? Relationship is between manufacturer and consumer as in Donoghue v Stevenson
- is it fair, just and reasonable to impose a duty of care? Arguably not fair, just and reasonable as it may be against public policy to allow a claimant to succeed in a negligence claim against a background of the use of an illegal drug, or maybe fair, just and reasonable because Fizzi had not mentioned the untested sweetener, Nosug. Accept any reasoned conclusion.

Mark bands

8 – 7 The student deals with (A) as follows: sound.
6 – 5 The student deals with (A) as follows: clear.
4 – 3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation

Or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:
Jani decides to sue Fizzi for negligence. Outline the procedure which would be followed before a trial takes place. [5 marks]

Potential content

(A) Outline procedure, applied to Jani and Fizzi. This could include:

- negotiation of claim or other possible methods of dispute resolution
- pre-action protocol
- claim form
- response to claim by defendant
- case management
- disclosure of documents
- specialist medical reports
- track
- venue.

Note – An answer dealing with tracks only – max 1 mark

Mark bands

5  The student deals with (A) as follows: sound.
4  The student deals with (A) as follows: clear.
3  The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation
   Or
   mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0  The answer contains no relevant information.

A sound answer is likely to include:

Outline procedure set out in a logical order. The answer may not include all points listed but will show a logical progression and not just concentrate on tracks. [AO1 = 3; AO2 = 2]
Assume that Fizzi was found liable in negligence. Explain how the court would calculate an award of damages to Jani. [8 marks]

Potential content

(A) Explanation of the calculation of damages:

- General and special damages; pecuniary and non-pecuniary
- Heads of damage (damage to property + expenses incurred, loss of future earnings, loss of amenity, pain and suffering, ‘tariff’ award based on the injury itself)
- Mitigation
- Structure of awards (lump sum or structured settlement)
- Possible reference to authority, eg Jefford v Gee.

Application to Jani:

- General damages – personal injury + pain and suffering + loss of amenity
- Special damages stated for any pre-trial losses and expenses
- Special damage payable as lump sum
- General damages likely to be paid as structured settlement.

Note – account should be taken of depth and breadth, ie a strong application can be balanced by a weaker framework explanation or vice versa

Note – max 5 marks if no application to Jani

Mark bands

8 – 7 The student deals with (A) as follows: sound.
6 – 5 The student deals with (A) as follows: clear.
4 – 3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0 The answer contains no relevant information.

A sound answer is likely to include:

- An explanation of the structure of damages focussing on the distinctions between special and general damages. Application (related to the heads of damage applicable to Jani) may allow the structure to emerge
- The idea of lump sum and structured settlement could be explored in the context of known losses and likely size of general damages.

[A01 = 4; A02 = 4]
Explain the meaning of intention to create legal relations. [7 marks]

Potential content

(A) • Explanation of intention to create legal relations – a basic requirement of a valid contract
• Rebuttable presumption in relation to commercial situations – explained through cases such as Rose & Frank v Crompton Bros; Jones v Vernons Pools; Esso Petroleum v Commissioners of Customs and Excise
• Rebuttable presumption in relation to social/domestic situations – explained through cases such as Balfour v Balfour; Merritt v Merritt; Simpkins v Pays.

Note – Max 5 marks if only commercial or social/domestic explained

Mark bands

7 – 6 The student deals with (A) as follows: sound.
5 – 4 The student deals with (A) as follows: clear.
3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation
   Or
   mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0 The answer contains no relevant information.

A sound answer is likely to include:

• an indication that intention to create legal relations is a requirement of a valid contract
• an explanation of intention to create legal relations in commercial situations showing the rebuttable presumption in operation and it being rebutted by reference to decided cases
• an explanation of intention to create legal relations in domestic situations showing the rebuttable presumption in operation and it being rebutted by reference to decided cases.

[AO1 = 5; AO2 = 2]
Explain what is meant by consideration in the law of contract. [7 marks]

Potential content

(A) Explanation of consideration

- something of value given by each party to a contract to the other – eg Currie v Misa, Chapple v Nestle, Thomas v Thomas, White v Bluett
- must move from promisee, eg Tweddle v Atkinson
- can be executed or executory
- must not be past consideration – something already done at time of making contract so does not provide some new act or forbearance – eg Re Mc Ardle, Lampleigh v Braithwaite.

Mark bands

7 – 6 The student deals with (A) as follows: sound.
5 – 4 The student deals with (A) as follows: clear.
3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation
Or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0 The answer contains no relevant information.

A sound answer is likely to include:

- a definition of consideration, explaining the meaning with cases or examples
- an explanation of at least two of the key rules of consideration, eg distinction between good consideration and past consideration, with cases or examples.

[AO1 = 5; AO2 = 2]
In relation to contract law, discuss each of the stages in the negotiations between Megacans and Fizzi. Consider if and when a contract was formed between them.

[10 marks + 2 marks for AO3]

Potential content

(A) Consideration/discussion of the stages in the negotiations between Megacans and Fizzi

- Information in the advertisement is probably an invitation to treat
- Megacans’ emailed reply can be seen as an offer or merely a reply to a request for information
- Fizzi’s reply is a request for information – seeking an offer for a different product (three-colour printing rather than two-colour)
- Email from Megacans on Tuesday is an offer in relation to three-colour printing
- Email from Fizzi on Wednesday morning is an acceptance of Megacans' three-colour offer
- Email from Megacans on Wednesday is an attempted revocation of the three-colour offer
- Application of Electronic commerce (EC Directive) Regulations 2002 (common law position re instantaneous means of communication ie must be received before it is effective)
- Fizzi’s email arrived Wednesday am and so could be accessed then
- Megacans’ email arrived Wednesday pm and so could be accessed then
- Fizzi’s acceptance effective before Megacans’ attempted revocation, therefore contract exists when Fizzi’s email can be accessed on Wednesday morning
- Conclusion based on arguments made
- Reference to relevant cases to support arguments.

Note – credit alternative application provided the conclusion is tenable

Mark bands

10 – 8 The student deals with (A) as follows: sound.

7 – 5 The student deals with (A) as follows: clear.

4 – 3 The student deals with (A) as follows: some.

2 – 1 The student demonstrates limited capacity for explanation

Or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

AO3

2 marks The work is characterised by some or all of the following:

- clear expression of ideas
- a good range of specialist terms
- few errors in grammar, punctuation and spelling
- errors do not detract from the clarity of the material.
1 mark
The work is characterised by:
• reasonable expression of ideas
• the use of some specialist terms
• errors of grammar, punctuation and spelling
• errors detract from the clarity of the material.

0 marks
The work is characterised by:
• poor expression of ideas
• limited use of specialist terms
• errors and poor grammar, punctuation and spelling
• errors obscure the clarity of the material.

A sound answer is likely to include:

• a correct discussion of each stage in negotiations stating the legal effect, if any, of each event and/or statements of the parties
• an accurate conclusion, based on that analysis
• relevant authority to support the analysis above.

[AO1 = 0; AO2 = 10; AO3 = 2]

Outline the difference between actual breach and anticipatory breach.

Assume the court decided that there was a contract between Megacans and Fizzi. Briefly explain whether there was a breach of contract between Megacans and Fizzi and briefly explain whether the breach was an actual breach or an anticipatory breach.

[8 marks]

Potential content

(A) Outline explanation and brief application of actual and anticipatory breach of contract

• Outline explanation of actual breach and anticipatory breach, showing the distinction between actual breach and anticipatory breach
• both are forms of breach, but anticipatory breach takes place before the date due for performance of the contract – explained through cases such as Hochster v De La Tour; Poussard v Spiers, White and Carter Councils v McGregor, SK Shipping (S) Pte Ltd v Petroexport Ltd
• claimant can start action as soon as anticipatory breach occurs – does not have to wait to see if performance takes place
• claimant is not required to accept anticipatory breach and can continue with performance
• actual breach – the breach is established and a right of action follows.

Application to the scenario:

• Megacans would be in actual breach of contract because it failed to deliver any cans as per the order from Fizzi.

Note – no application to scenario – max 5 marks
Mark bands

8 – 7 The student deals with (A) as follows: sound.
6 – 5 The student deals with (A) as follows: clear.
4 – 3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0 The answer contains no relevant information.

A sound answer is likely to include:

- An outline explanation of the difference between actual and anticipatory breach explained through the cases
- Application to the breach.

[AO1 = 5; AO2 = 3]

Fizzi decides to sue Megacans for breach of contract.
Outline the procedure which would be followed before a trial takes place.

[5 marks]

Potential content

(A) Outline procedure. This could include:

- negotiation of claim or other possible methods of dispute resolution
- pre action protocol
- claim form
- response to claim by defendant
- case management
- disclosure of documents
- track
- venue.

*Note – max 1 mark for tracks only*

Mark bands

5 The student deals with (A) as follows: sound.
4 The student deals with (A) as follows: clear.
3 The student deals with (A) as follows: some.
2 – 1 The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
18

Assume that Megacans was found liable for breach of contract.

Explain how the court would calculate an award of damages to Fizzi. [8 marks]

Potential content

(A) Explanation of the way in which the court calculates an award of damages

- the two-stage test in Hadley v Baxendale, Victoria Laundry v Newmann, The Heron II
- mitigation of loss – eg purchasing the cans elsewhere.

Application to Fizzi’s potential claim

- difference between contract price and market price at date of breach
- Mitigation of loss by acting swiftly in the market for any associated losses.

Note – no application to the contract between the Megacans and Fizzi – max 5 marks

Mark bands

8 – 7 The student deals with (A) as follows: sound.

6 – 5 The student deals with (A) as follows: clear.

4 – 3 The student deals with (A) as follows: some.

2 – 1 The student demonstrates limited capacity for explanation

Or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

A sound answer is likely to include:

- an explanation of the ways in which damages are calculated in contract claims, shown through the leading cases which are explained using their facts
- an explanation of the concept of mitigation of loss
- an application of the principles to the facts of the case
- an accurate conclusion. [AO1 = 4; AO2 = 4]
ASSESSMENT GRID 2018
(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW02)

<table>
<thead>
<tr>
<th>Section A:</th>
<th>AO1</th>
<th>AO2</th>
<th>AO3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Question 01</td>
<td>4</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Question 02</td>
<td>5</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Question 03</td>
<td>3</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Question 04</td>
<td>3</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Question 05</td>
<td>3</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Question 06</td>
<td>5</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Totals Section A</td>
<td>23</td>
<td>22</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section B:</th>
<th>AO1</th>
<th>AO2</th>
<th>AO3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Question 07</td>
<td>4</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Question 08</td>
<td>4</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Question 09</td>
<td>3</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Question 10</td>
<td>4</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Question 11</td>
<td>3</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Question 12</td>
<td>4</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Totals Section B</td>
<td>22</td>
<td>23</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section C:</th>
<th>AO1</th>
<th>AO2</th>
<th>AO3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Question 13</td>
<td>5</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Question 14</td>
<td>5</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Question 15</td>
<td>0</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Question 16</td>
<td>5</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Question 17</td>
<td>3</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Question 18</td>
<td>4</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Totals Section C</td>
<td>22</td>
<td>23</td>
<td>2</td>
</tr>
</tbody>
</table>