

**A-level
LAW
7162/2**

Paper 2

Mark scheme

June 2021

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.

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Level of response marking instructions

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

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

Step 1 Determine a level

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

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

Step 2 Determine a mark

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

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

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

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

01 Which of the following is **not** a requirement for a successful claim under the rule in Rylands v Fletcher?

[1 mark]

Marks for this question: AO1 = 1

C The defendant's standard of behaviour fell below that of the reasonable person.

02 In a claim for psychiatric injury brought by a primary victim, which of the following does **not** need to be proved?

[1 mark]

Marks for this question: AO1 = 1

D The injury would only have been suffered by a person of reasonable fortitude (reasonable courage).

03 Which type of judge normally hears appeals in the Civil Division of the Court of Appeal?

[1 mark]

Marks for this question: AO1 = 1

D Lord Justice of Appeal

04 In the House of Commons, a bill will have a second reading. Which statement best describes a second reading?

[1 mark]

Marks for this question: AO1 = 1

A A debate on the main principles of the bill, followed by a vote

05 Select the **false** statement. The concept of parliamentary supremacy (parliamentary sovereignty) states that Parliament has the power to:

[1 mark]

Marks for this question: AO1 = 1

C enact a statute which cannot be repealed.

06	Explain three aspects of the role of a mediator.	[5 marks]
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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. Where appropriate a good example of a case to illustrate suggested reasons.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
0	Nothing worthy of credit.

Indicative content

AO1

- The role of a mediator (mediation) is a form of alternative dispute resolution where the dispute can be settled ‘out of court’.
- A mediator is neutral between the two parties to a dispute.
- The mediator moves between the parties to find a compromise to their dispute.
- A mediator will seek to understand the parties’ positions in order to find common ground.
- A mediator can convey offers between the parties.

Credit any other relevant point(s).

Answers which explain two aspects: maximum 4 marks

Answers which explain one aspect: maximum 2 marks

Use of examples, for instance mediation in family cases and mediation in major commercial disputes, will enhance an answer within the relevant band.

07	In these circumstances, suggest why any claim made by Leah in respect of her psychiatric injury would be unlikely to succeed in court.	[5 marks]
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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 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 legal rules and principles.
0	Nothing worthy of credit.

Indicative content

AO1

- Brief explanation of the difference between a primary victim and a secondary victim in the context of psychiatric injury.
- Brief explanation of the restrictions on a claim made by a secondary victim.

AO2

- Application to suggest that Leah was a secondary victim as she was told of the accident rather than being a participant in the accident.
- Application to argue that Leah does not meet the criteria required for a successful claim by a secondary victim in terms of a sufficient tie of love and affection and in terms of witnessing the accident itself or the immediate aftermath.
- Possible brief reference to illustrative case law, for example **Alcock v Chief Constable for South Yorkshire** and **Page v Smith**.

Maximum marks can be awarded where an answer deals only with the issue of a sufficient tie of love and affection or deals only with the failure to witness the accident or its immediate aftermath. If an answer deals with both, this broader approach can be awarded full marks even though the level of detail is less.

Credit any other relevant point(s).

08	Taking into account the rules on negligent misstatement, advise Nick of his rights against Ona.	[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 relevant 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.
0	Nothing worthy of credit.

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**.

AO2

- Possible application of the rules governing the difference between a consequential economic loss and a pure economic loss to suggest that Nick has sustained a pure economic loss.
- 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 Nick 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 Nick and Ona have such a special relationship in the context of the former reading a newsletter written by the latter.

AO3

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

Credit any other relevant point(s).

09	Examine the role which fault plays in deciding liability in law. Discuss the extent to which liability for private nuisance depends on fault.	[15 marks]
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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.</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
5	10	15

Indicative content**AO1**

- Identification of the significance of fault and the role it plays in deciding liability in civil law and possibly criminal law. Identification of the meaning and nature of fault in terms of intention, recklessness, negligence and strict liability.
- Possible identification of aspects of fault such as whether the defendant was acting voluntarily and whether the defendant is able to raise a defence against the claimant.
- Outline of the basic requirements of the tort of private nuisance: an unlawful indirect interference with a person's use or enjoyment of their land resulting in loss of amenity and/or physical damage and the notion of reasonable use based on factors such as locality, duration, intensity, malice and sensitivity of the claimant.

AO3 candidates may discuss a range of factors, with appropriate supporting case authority. Examples include the following:

- analysis of fault to establish its meaning and nature in deciding liability in terms of 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)
- possible analysis of the role of fault in the court process, for instance its contribution to the assessment of the severity of any criminal punishment or the extent of any civil remedy and its function in allocating responsibility between the parties in terms of defences
- possible analysis of the role of fault in society, for instance in justifying the imposition of penalties or damages and in indicating how behaviour should be modified in the future
- analysis of fault in the context of nuisance (1): absence of any requirement for negligence and the standard of the reasonable person in assessing the defendant's actions (the assessment being based on "give and take" between neighbours and the idea of unlawful interference); possible reference to general fault on the part of the defendant in not having regard for neighbours; possible reference to defences available to a claim in private nuisance and to remoteness of damage. Possible case law illustration, for instance **Miller v Jackson** and **Sturges v Bridgeman**
- analysis of fault in the context of nuisance (2): requirement of fault (intentional or deliberate annoyance) in the context of the malice factor. Possible case law illustration, for instance **Hollywood Silver Fox Farm v Emmett** and **Christie v Davey**
- conclusion as to the extent to which liability in private nuisance is based on fault, based on the analysis and evaluation presented: the defendant is principally judged by the standard of unlawful interference, which is not fault based, but there are elements of fault such as the malice factor.

Credit any other relevant point(s).

ICG1: fault and law

ICG2: fault and the tort of private nuisance

10	Taking into account the law of occupiers' liability, consider the rights and remedies of Ravi against Paul and of Saffi against Paul.	[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**

- Explanation of the provisions of the Occupiers' Liability Act 1957: premises, occupier, visitor and dangers due to the state of the premises or to things done or omitted to be done on them. Remedy of damages.
- Explanation 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 or permitted by the occupiers to be there.
- Identification and explanation of the provision contained in s 2(3)(b) OLA 1957: the degree of care to be shown towards a person in the exercise of his calling.
- Identification and explanation of the defence of contributory negligence: s2(3) OLA 1957.
- Identification of the basic elements relevant to the existence of a duty under the Occupiers' Liability Act 1984: occupier, premises, conditions necessary for a duty to arise under s1(3) of the Act. Remedy of damages.
- Explanation of the duty imposed by the 1984 Act on occupiers to take such care as is reasonable in all the circumstances of the case to see that the unlawful visitor does not suffer injury on the premises by reason of the danger concerned.
- Identification and explanation of the defence of consent: s1(6) OLA 1984.

AO2

- Application to argue that the window ledge was premises for the purposes of the 1957 Act, that Ravi was a visitor, that Paul was the occupier and that there was a danger due to the state of the premises (a rotten window ledge that might collapse and injure someone).
- Application to suggest that in those circumstances Paul owed a duty of care to Ravi.
- Application to assess whether Paul broke his duty of care by failing to ensure that a visitor would be reasonably safe given s 2(3)(b) OLA 1957 and given that Ravi was in the exercise of his calling. (Paul gave a warning but it was not specific, Ravi was acting in the exercise of his calling but a rotten ledge may be outside his specialism if he is not used to outdoor work).
- Application to argue that Paul may be able to use the defence of contributory negligence in terms of whether Ravi's behaviour was below that of the reasonable person in attempting to climb onto a ledge that he could see was damaged (possible reference to Ravi not wearing any sort of safety harness).
- Application to conclude that if Paul does not have a defence, then he is liable to pay compensatory damages to Ravi for his injuries, but that the existence of a defence may reduce or eliminate his liability. Reference to the "thin" skull rule in relation to the footballing injury.
- Application to argue that the trampoline was premises for the purposes of the 1984 Act, that Saffi was an unlawful visitor (given the warnings and the existence of a fence), that Paul was the occupier and that there was a danger due to the state of the premises (broken springs) rather than Saffi's own actions (climbing onto the trampoline).
- Application to consider whether the requirements of s1(3) were satisfied and whether therefore a duty under the 1984 Act existed: (1) whether Paul was aware of the danger (the broken springs) or had reasonable grounds to believe that it existed (Paul knew of the damage); (2) whether Paul knew or had reasonable grounds to believe that another would or might come into the vicinity of the danger (Paul knew that the children played on the trampoline); (3) whether the danger is one against which, in

all the circumstances of the case, Paul may reasonably be expected to offer another some protection (a broken trampoline which could inflict serious injury on a young child).

- Application to consider whether Paul broke the duty of care (if it existed) in terms of factors such as whether Paul took appropriate precautions (he gave a warning that perhaps did not mention the trampoline; he built a fence but did not notice the hole and the trampoline was clearly dangerous) and whether Paul should be expected to protect a person determined to be irresponsible.
- Application to argue that Paul may have a defence of consent if Saffi voluntarily assumed the risk of crawling through the fence and climbing onto the trampoline. Possible argument that Saffi did not know specifically that the trampoline was damaged.
- Application to conclude that if Paul does not have a defence, then he is liable to pay compensatory damages to Saffi for her injuries (but not for her smashed watch), but that the existence of a defence may eliminate his liability.

AO3

- Analysis and evaluation of the existence of liability with reference to s 2(3)(b) and breach of duty.
- Analysis and evaluation of the existence of liability with reference to contributory negligence and the standard of behaviour of the claimant in terms of factors such as likelihood of injury, seriousness of injury risked and precautions he could have taken.
- Reference to and analysis of relevant case law, for example **Wheat v Lacon, Roles v Nathan, Fromm v Butcher, Brannon v Airtours, Bolton v Stone, Paris v Stepney BC.**
- Analysis and evaluation as to the existence of a duty of care under the 1984 Act with reference to matters such as the frequency of trespassers, common humanity and whether the danger was obvious.
- Analysis and evaluation of the breach of any duty of care under the 1984 Act with reference to matters such as, for instance, the obviousness of the danger, the likely age of any trespasser, likelihood of trespass, seriousness of the injury risked, cost and practicality of precautions and warnings.
- Reference to and analysis of relevant case law, for example **Tomlinson v Congleton BC, Keown v Coventry NHS Trust, Donoghue v Folkestone Properties, Platt v Liverpool City Council, Ratcliff v McConnell.**

Note: Credit any other relevant point(s).

Note: Fully credit an application/analysis which arrives at either conclusion (that either Ravi or Saffi's claim may succeed or otherwise).

ICG1: Occupiers' Liability Act 1957

ICG2: Occupiers' Liability Act 1984

11	<p>Consider the rights and remedies of Wes against Vic and against Tania in relation to his injuries.</p> <p>The theory underlying the rules of negligence plays a role in society as it helps courts decide which claims should succeed and which should fail. In the context of a claim in negligence, assess the factors used by the courts when deciding whether a duty of care has been breached and whether therefore a claim can succeed.</p> <p style="text-align: right;">[30 marks]</p>
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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
<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

- Negligence: 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.
- Negligence: brief explanation of appropriate supporting case law, eg **Donoghue v Stevenson**, **Caparo v Dickman**, **Robinson v Chief Constable for West Yorkshire**, **Nettleship v Weston** and **the Wagon Mound (No 1)**.
- Vicarious liability: 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.
- Vicarious liability: 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 factors governing the standard of care in a negligence action. The standard is objective but the reasonable person weighs the level of risk against the cost of precautions.

AO2

- Negligence: application of the rules on duty of care to suggest that Vic owes a duty of care to Wes on the ground that it is reasonably foreseeable that a trailer passenger would be affected by Vic's failure to drive the tractor competently.

- Negligence: application of the rules on breach to suggest that Vic should be judged by the standard of the reasonable experienced tractor driver (not a learner) and that Vic did not reach the standard of the reasonable person in terms of seriousness of risk, likelihood of risk and ease of prevention.
- Negligence: application of the rules on causation to suggest that Wes being thrown from the trailer was a reasonably foreseeable consequence of Vic losing control of the tractor, albeit that the sequence of events was not wholly foreseeable.
- Negligence: application to suggest that Wes may be entitled to a remedy of compensatory damages against Vic.
- Vicarious liability: application of the rules determining whether a worker is an independent contractor or an employee to consider the status of Vic, 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 whether Vic's driving and changing the radio channel were in the course of his employment, with reference to, for instance, authorised acts and the 'so closely connected' test.
- Vicarious liability: Application to suggest that Wes may be entitled to a remedy of compensatory damages against Tania.

AO3

- Negligence: analysis and evaluation of the concept of duty in relation to a tractor and trailer accident in terms of a comparison to established duties, foreseeability and proximity.
- Negligence: 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.
- Negligence: analysis and evaluation of the rules on causation in terms of reasonable foreseeability and the unusual sequence of events.
- 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**, **Hughes v Lord Advocate** and **Bradford v Robinson Rentals**.
- 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). Possible discussion of relationships akin to a relationship of employment.
- 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, 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**, **Barclays Bank v Various Claimants**, **WM Morrison Supermarkets v Various Claimants**, **Limpus v London General Omnibus** and **Rose v Plenty**.
- The role law plays in society: evaluation of the factors governing the objective standard of care in a negligence action and the role that these rules play in society; for instance, one or more of the following: the need to protect victims even if the defendant is inexperienced, the desirability of imposing a higher standard on professionals, the concession given to very young defendants in terms of the standard of care expected, the desirability of a defendant taking swift if risky action in the event of an emergency, the balance that the law strikes between nature of the risk and cost of precaution. Illustrative case law, for example **Nettleship v Weston**, **Bolam v Friern Hospital**, **Mullin v Richards**, **Bolton v Stone**, **Watt v Hertfordshire County Council**, **Paris v Stepney BC** and **Latimer v AEC**.

Credit any other relevant point(s).

ICG1: negligence causing physical loss

ICG2: vicarious liability

ICG3: factors governing when a duty of care has been breached

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