Here is a selection of typical responses for you to consider. Using a past paper, the scenario is set out and is followed by the individual questions, mark scheme and a typical, but rarely perfect, answer. At the end of each Section, there are commentaries on the answers given. These can be used to give examples of answers with strengths and weaknesses identified, so that your students can look for improvements and refine their techniques.

The commentaries rely on the law at the time of the exam (2013). Some aspects may have changed for current students, particularly on civil procedure and track limits, and criminal procedure on powers and role of magistrates.
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Section A: Introduction to Criminal Liability

Scenario 1
Amir saw Carla, a teenager, whom he knew was easily frightened. Amir offered to give Carla a lift home in his car. As Amir sped off down the road, they discussed 'The Prisoner', a television programme, which they both liked. Amir suddenly said, “Now you are my prisoner!” Carla immediately panicked, opened the passenger door and jumped out of the moving car. Carla fell and hurt her wrist. When she got home, her wrist was very sore, so her mother took her to hospital. She was treated by a doctor who put her wrist in a splint incorrectly. As a result, Carla suffered permanent damage to her wrist. This permanent injury would not have happened if she had been properly treated.

0 1 Explain the meaning of the term ‘mens rea’ in criminal law. [8 marks]

Potential Content
(A) Explanation of the meaning of mens rea in general terms (guilty mind).
Recognition that the courts have developed definitions of common states of mind found in criminal liability. These are:
• direct intent (the defendant’s aim, purpose or desire + example, eg Mohan)
• oblique intent (where the consequence is virtually certain, and the defendant goes ahead with his actions knowing that is the case + example, eg Woollin)
• recklessness (the defendant knew there was a risk of the consequence but went ahead with the act anyway + example, eg Cunningham).

NB Three are needed for sound, two for clear and one for some.
Student answer for consideration

Mens rea is Latin for the guilty mind. To convict a defendant the mens rea must be proved on the grounds of intent or recklessness.

Intent can be direct or indirect. Direct intent is where the defendant could see the possible consequence from his or her actions. It can be shown in the case of where a man threw a baby at a wall in anger and the baby died.

Indirect intent is when the defendant did not foresee the consequences of his or her actions. In the case of where the defendant hit his girlfriend who was holding their baby. She dropped the baby who suffered injuries. Here there was indirect intent to harm the baby.

Mens rea can also be proved by recklessness. This can be subjective recklessness and can be shown in the case where the defendant was stealing money from a gas meter and while doing so he leaked a harmful chemical into next door. He was initially convicted of recklessness but on appeal the courts found he did not see a risk involved when doing so, so the conviction was quashed.

The mens rea can also be transferred from one victim to another. This is shown in the case of Mitchell. In this case a man was in a queue. He pushed a man who fell on a woman who died of her injuries. He was convicted as the mens rea was transferred from the man to the woman.
0 2 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; reference to exceptions, eg continuing acts/superimposed mens rea, Dutch courage, initial mens rea/later actus reus, etc. Cases and/or examples in support, eg Fagan v MPC; Thabo Meli; Church; Gallagher.
Student answer for consideration

The coincidence rule means the actus reus and the mens rea must occur at the same time to ensure criminal liability. An extension to the rule is the continuing act where, if the mens rea exists after the initial act, they are liable if the act is continuous. For example, in the case of Fagan, the defendant accidentally ran over the foot, but was held liable as the act was continued after realisation.

Another extension is the series of acts where a series of linked acts can ensure coincidence and liability. In the case of Thabo Meli, the courts held that the coincidence occurred as the beating and the throwing off the cliff were linked acts. Also in the case of Church the courts held that the coincidence was present due to the linked acts of beating up and throwing in the river.
In relation to the criminal liability of Amir:

- outline the law relating to the offence of assault, and briefly discuss whether Amir would be guilty of this offence
- briefly discuss what difference, if any, it would have made if Carla had taken Amir’s statement as a joke and had not panicked or jumped from the car.

[10 marks + 2 marks for AO3]

Potential Content

(A) Outline of the law and application of the actus reus and mens rea of assault. This should include:

- a recognition of the fear/apprehension of unlawful force and the lack of the need for any physical injury, discussion of sensitivity of victim
- discussion of intention or recklessness as to creating the fear/apprehension of immediate unlawful force by making the statement about being a prisoner (knowing that she was easily frightened)
- reference to cases such as Savage, Logdon, Smith v Chief Superintendent of Woking Police Station, Ireland
- alternative application based on a lack of apprehension of immediate unlawful personal violence – recognition that key actus reus element would be missing and therefore no offence.

NB Max 4 if no application; max 8 if alternative not addressed
In the scenario involving Amir and Carla, I would suggest that the relevant area is assault. The actus reus of assault is to cause fear of immediate unlawful force. This can be shown in the case of Ireland where the silent phone calls were causing the recipient to apprehend immediate violence. In case of Amir, he knew Carla was ‘easily frightened’ and therefore acted on this. We know that Carla was frightened after Amir said ‘now you are my prisoner’ as it states that Carla ‘panicked’. Therefore Amir caused Carla to fear an unlawful application of force so the actus reus is sufficient.

Furthermore, the mens rea for assault is the intent to cause fear of immediate unlawful application of force. This can be shown in Logdon where the replica gun caused fear and there was intent as the defendant got it out to scar (sic) the victim. In the case of Amir and Carla, I would suggest that from looking at the case it states that Carla was ‘Easily frightened’ therefore seeing her as a target and was going to do something to make her fear him. Therefore I would say he had the intent to cause fear of unlawful application of force.

If Carla had taken it as a joke then it could be said that the actus reus of assault was sufficient as she did not fear immediate unlawful force but the intent would still remain as Amir intended to frighten her.
Potential Content

(A) Brief explanation of the rules of causation:
- factual causation – “but for” test and explanation, cases/examples to illustrate, eg White
- application to scenario - if Amir had not scared Carla, she would not have got out of the car whilst it was moving and ended up in hospital
- legal causation – significant and operative cause; novus actus interveniens: cases/examples to illustrate, eg victim’s own contribution, eg Roberts, Williams; medical negligence, eg Smith, Jordan, Cheshire; contribution of others, eg Benge, pre-existing medical condition, eg Hayward.

Application to scenario:
- take your victim as you find them – Carla’s sensitivity
- consideration of victim’s own act as a break in the chain – is it a ‘daft’ reaction? (possible reference to Roberts/Williams)
- discussion of whether incorrect use of splint breaks the chain of causation – is such failure palpably wrong? (possible reference to Smith/Jordan)
- conclusion argued by student (either conclusion is arguable on the facts).

NB Max clear if no application
Student answer for consideration

Causation refers to the process of finding out whether the defendant’s act was the cause of the harm. It is split into factual and legal causation.

Factual causation applies the ‘but for’ test. ‘But for’ the defendant’s action would the resulting harm have occurred? In the case of Pagett his actions were the cause of the resulting harm because had it not been for him using his girlfriend as a human shield, she would not have been shot. In the case of White, however, he was not liable for his mother’s death as she died of a heart attack and not the poison. In Amir’s case, had he not scared Carla, she would not have jumped from the car and hurt her wrist.

Legal causation refers to whether the defendant’s act was the operative and substantial cause of the resulting harm. The link of causation can be broken in three ways; the victim’s own act – escapes must be reasonable in proportion to the threat as in Roberts; the act of a third party can break the chain as seen in Jordan and an act of God such as a tornado or tsunami.

In Amir’s case the link of causation is broken by an act of a third party, the doctor who caused the permanent damage not Amir.

Overall. Amir did not cause the permanent damage to Carla’s wrist.
Outline the pre-trial procedure which would be followed if Amir were to be charged with assault (a summary offence).

Potential Content

(A) Outline and application of procedure:
- first appearance at Magistrates Court
- duty solicitor/legal representation
- plea
- pre-trial review
- bail
- trial at Magistrates Court.
Student answer for consideration

Amir's summary offence would be heard at the Magistrates' Court. In his first court appearance Amir could apply for bail and legal aid if needed. He would plead guilty or not guilty. If he pleads guilty there is no trial but he or his solicitor can make a plea in mitigation. This may follow an adjournment to get reports about him. If he pleads not guilty there will be a trial at the Magistrates at a later date.
0 6  Assuming that Amir is convicted of an offence, briefly outline the factors which the court would take into account before Amir is sentenced.

[5 marks]

Potential Content

(A) Outline of the relevant factors, both jurisdictional and personal:
- recognition of maximum penalty available/linked to trial venue
- possible recognition of the ‘seriousness’ criteria (CJA 1991)
- possible reference to other relevant legislation and aims of sentencing
- aggravating factors such as aim of statement, knowledge of vulnerability of victim
- possible mitigating factors such as early plea, cooperation with police, etc
- application to Amir.

NB  Max 3 if no application
Student answer for consideration

If Amir is convicted of assault, the Magistrates have to look at aggravating and mitigating factors.

Firstly mitigating factors for a small offence where there might be custodial or community sentences. These factors include being not pre-meditated, showing remorse, no serious harm to the victim and compensation to the victim. There are also factors relating to the defendant such as good character, no previous convictions, remorse, age and health.

Aggravating factors are more serious and carry a harsher penalty. These are use of a weapon, racial attack, group attack, no remorse, previous convictions, serious injury, doing it whilst on bail etc.
Comment on answer to Question 01

The types of mens rea are identified and the idea of the mens rea being the guilty mind is stated. Of the types, only recklessness is presented with any degree of accuracy. The use of authority is poor. The examples given do not explain how each type was present in the given example. The answer would have been clearer if the principle or test for each type had been accurately stated first, with the example being used to show how the type of mens rea occurred in each case. Transferred malice is not relevant in this question but could have been given credit if it had illustrated a type of mens rea.
This response was awarded 4 marks - Some A.

Comment on answer to Question 02

The principles emerge from the cases. The authorities of Fagan, Thabo Meli and Church are relevant, with the facts stated in a suitably brief manner. How and when the actus reus and mens rea occurred in each case is not completely explained. The answer would have been improved by making the explanation clearly in Fagan and either Thabo Meli or Church.
This response was awarded 6 marks - Sound A.

Comment on answer to Question 03

The definition of assault is reasonably accurate (‘fear’ can be used rather than ‘apprehend’ as the judges have used ‘fear’ and ‘apprehend’ somewhat interchangeably). The actus reus is not fully developed (immediate is not really addressed in terms of the law or in the application). The mens rea is not fully explained or applied - the evidence for intention is sketchy but there is clearly recklessness as Amir must have known there was a risk as Carla is easily frightened. There is some confusion in alternative scenario but at least it is addressed. The first line of the answer is rather pointless but does help focus the answer unlike others who did not read the question and discussed abh.
This response was awarded 7 marks - Clear A plus 2 for AO3.

Comment on answer to Question 04

The response is very good on factual causation, both law and application are dealt with well, but the student might have gone on beyond the hurt wrist to going to the hospital for treatment. The general idea of legal causation is set out, but more development is needed on legal causation to reach sound.
This response was awarded 7 marks - Clear A.

Comment on answer to Question 05

Points covered - but nothing developed. Chronology reasonably accurate, but ignores police bail and/or summons.
This response was awarded 4 marks - Clear A.
Comment on answer to Question 06

Correct idea with examples, but not applied. It is interesting to split factors in terms of the offence and the defendant. Mark scheme limits it to Some 3 as there is no application. This response was awarded 3 marks - Some A.
Section B: Introduction to Tort

**Scenario 2**

Susan, aged 16, had recently started a care course at college and was on her first work experience placement looking after Tim, aged two. Tim demanded to do some painting and, in order to keep him quiet, Susan agreed. She found some old pots of paint in the shed and gave Tim some cotton wool to spread the paint on sheets of paper. Some of the pots had a small label marked 'Danger, Toxic', which Susan did not notice or read. Tim suffered poisoning as a result of handling the paint, but fortunately recovered after a short spell in hospital. A solicitor has estimated Tim's damages might be around £3000 in a simple personal injuries claim.

Negligence requires proof of duty of care, breach of duty, and damage.

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<td>Breach of duty involves the failure to reach the standard of care of the reasonable man, taking into account various risk factors. Briefly explain three risk factors.</td>
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**Potential Content**

(A) Brief explanation with cases and/or examples of the meaning of three risk factors and the effect that has on the standard of care:

- special characteristics of the claimant – if known to the defendant to be more vulnerable, then higher standard expected, eg Paris v Stepney Borough Council
- the size of the risk – the reasonable man does not take care against minute risks, but does against big risks, eg Bolton v Stone
- practical precautions – taking reasonable but not excessive precautions eg Latimer v AEC
- the benefits of taking the risk – emergencies and public utility, eg Watt v Hertfordshire County Council.

**NB 1** Special characteristics of the defendant – the position of professionals and learners may be given one mark credit, although really more appropriate to an explanation of the reasonable man.

**NB 2** Three are needed for sound, two for clear and one for some.
Student answer for consideration

Breach of duty is whether the defendant broke his duty of care or not. The defendant is compared to a reasonable man acting in accordance with his profession or trade as in Wells v Cooper.

There are a number of risk factors set out to establish a breach of duty and the factors either increase or decrease the standard of care required by that reasonable man. First there are the characteristics of the claimant - this is where there must be more care where the situation demands it. In Paris v Stepney a man with one eye was not given protective equipment despite the increased risk of serious injury so had not reached the standard required.

There is also the size of the risk where more care must be taken where there is a greater risk of damage. However the reasonable man does not guard against fantastic possibilities. This can be seen in Bolton v Stone where it was extremely unlikely that a ball would be hit over a high fence so there was no breach. Finally we can look at whether the defendant took all reasonable precautions as in Latimer v AEC where the defendant mopped up a spill and warned of the slippery floor. There was no liability as he had done all in his power to prevent the accident and the reasonable man would not have done more.
0 8 Damage in negligence involves the rules of factual causation and the rules of remoteness of damage. Briefly explain these rules.

Potential Content

(A)

- 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
- Brief explanation of the meaning of remoteness of damage – reasonable foreseeability test, eg The Wagon Mound
- 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
- Explanation of the effect of the thin skull rule, eg Smith v Leech Brain.

NB If no factual causation - max 6. If no legal causation - max 4.
Student answer for consideration

The rule of factual causation in negligence applies the 'but for' test. This test is 'but for' the actions would the resulting harm have occurred? In Barnett v Chelsea and Kensington Hospital the victim would have died anyway - it was not due to the doctor.

The rule of remoteness in damage is 'is the harm reasonably foreseeable'? In the case of The Wagon Mound the damage to the dock was reasonably foreseeable and they were liable for that damage but not to the other boat that was no reasonably foreseeable.

You also do not have to predict the exact damage as in Hughes v Lord Advocate, just damage of that kind as in Bradford v Robinson Rentals.

The thin skull rule is also applied as in the case of Smith v Leech Brain where you take your victim as you find him - in this case with a pre-cancerous condition.
Outline the tests used to decide whether a duty of care is owed and briefly discuss whether or not Susan owed a duty of care to Tim.

**Potential Content**

(A) Outline explanation and application of *Caparo v Dickman* 3-part test, with appropriate conclusion of duty owed:

- it is foreseeable that someone in Tim's position would suffer loss as a result of handling toxic materials, eg *Kent v Griffiths*
- they are proximate in time and space, eg *Bourhill v Young*
- there is no reason to exclude liability as there is no public policy reason for this on the grounds of extending categories of liability or protecting public services, eg *Hill v Chief Constable of West Yorkshire, Mitchell v Glasgow City Council*.

**NB** Three are needed for sound, two for clear and one for some.
Max 4 if no application
Student answer for consideration

A duty of care is simply where care must be given to a person. The latest test to establish a duty of care is Caparo v Dickman. This is a three part test and all parts must be shown. The three parts are foreseeability, proximity and fair just and reasonable. First is foreseeability - whether the harm is a foreseeable consequence of the defendant’s act. This was shown in Hayley v LEB. I would suggest that giving Tim, a two year old, a substance that said ‘Toxic, danger’ would cause poisoning. I think it is foreseeable.

Second, there is proximity, this is closeness between the defendant and the claimant through space, time or relationship. In McLoughlin v O’Brien time was sufficient as she saw the untreated wounds of her family. In the case of Susan, I think that she is there in space and time and gave Tim the toxic paint when the poisoning happened. Proximity in space and time is sufficient.

Lastly it is fair just and reasonable as she was on a care course and was on work experience. Therefore her position gives her this aspect for Tim not being an exempted party.

Overall as all three parts are present, she owes a duty to Tim.
### Potential Content

**Assuming that Susan did owe a duty of care to Tim, discuss whether she was in breach of that duty of care.**

[8 marks]

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#### (A)
- Discussion and application with appropriate conclusion of breach of duty.
  - The reasonable man – effect of age on the standard expected, eg **Mullins v Richards**: the reasonable babysitter and lack of experience issue, eg **Nettleship v Weston**
  - risk factors include vulnerable claimant – two-year-old more vulnerable so risk and standard higher
  - size of the risk – known danger from container warning so standard higher
  - practicality of precautions – easy to check paint suitable for children so standard of care not reduced
  - benefits of taking the risk - no benefit for allowing Tim to use the paint.
Student answer for consideration

To establish whether or not Susan had broken had the duty of care owed to Tim, her actions would be compared to the reasonable man or in this case the reasonable paint supplier (Netleship v Weston; Bolam). The size of the risk is not a fantastic possibility. By supplying toxic paint harm would not be a consequence (sic) - standard of care increased. Susan did not take any practical precautions like providing safety mask or gloves so the standard of care is not reduced.

There were no benefits of taking the risk of this was not an emergency as in Watts where the risk to the fire-fighter did not outweigh the consequences to civilians. So the standard of care is not reduced.

In conclusion Susan did not act as the reasonable man or paint supplier would and therefore had broken the duty of care owed to Tim.
1 Outline the three-track case management system used in the civil courts and identify which track and which court would be used in any claim that Tim could make against Susan.

Potential Content

(A)
- Outline of tracks (small claims, fast and multi) + financial limits – Civil Procedure Act 1997
- Identification with respect to Tim’s claim, fast track for entire loss (as over £1000 personal injury, but not likely to be complex), so in County Court.

NB Accept old track limits or current limits (£10 000 max for small claims track)
Max 3 if no application
Student answer for consideration

In civil cases there are three tracks that could be used. These three tracks are the small track which is used for claims of £5000 under and personal injury claims of £1000 and under. There is also a fast track which deals with claims from £5000-£25,000 on a higher level – these can be done either magistrates or Crown. The last track is the multi track which deals with claims from £25,000 upwards. These can be done at the Crown Court. The track that Tim’s case would put into will be small track claims because it is £3000 which is less than £5000. He also has some personal injury claims these are what he would think he can also claim.
1 2 Outline how a court calculates an award of damages and briefly explain how the court would calculate an award of damages to Tim. [8 marks]

Potential Content

(A) Outline 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).

Application to Tim:
- general damages, personal injury + pain and suffering + loss of amenity
- no special damages stated for physical losses and no loss of earnings as only aged two
- possible reference to authority, eg Jefford v Gee.

NB Account should be taken of depth and breadth, ie a strong application can be balanced by a weaker framework explanation or vice versa.
Max 5 if no application
**Student answer for consideration**

The court might choose to award damages in one of two ways depending on the details of the case. The first of which being the lump sum payment; this is where all of the money is paid to the claimant in one instalment with no restrictions on how the cash should be used or allocated. This is often use for the loss of personal goods with the use of structured awards for long-term injured. Structured payment of awards is the preference of the insurance companies for very large claims and is whether compensation is paid in regular amounts to the claimant without interest until the day that they die.

The court would calculate an award of damages through using the guidelines which are set out by the Judicial Studies Board. With regard to the allocation of damages court first split damages to special damages and general damages. Special damages are cost of replacing lost material goods and the medical expenses and general expenses before the date of trial. Courts second consider general damages these can be divided into pecuniary and non pecuniary; pecuniary are costs which are easy to put a value on such as the alterations and loss of earnings which one might need to make as a result of injuries suffered and the second being non pecuniary which are damages which are hard to put a monetary value on these can be divided heads of damage such as loss of amenity, pain and suffering.

In the case of Tim, there is unlikely to be any damages awarded for loss of material goods as he was only a young boy. Tim would however be awarded damages for the medical expenses which were incurred up to the date of trial and stay in hospital (these been paid to the NHS). With regard to general damages Tim is like to be award damages for pain and suffering as a result of poisoning and also for the unpleasant experience which he would have suffered having been forced to be treated in hospital. The damages which Tim could be awarded would be per the guidelines already set out and any legal expenses which Tim's family would've suffered would also be paid for in damages by the defendant Susan. As it is a small amount it would be paid as a lump sum.
Section B: Commentaries

Comment on answer to Question 07

Three risk factors are correctly identified and illustrated, and effect on standard of care is generally explained well in the context set in the answer. This response was awarded 8 marks - Sound A.

Comment on answer to Question 08

Factual causation explained with legal authority, remoteness is identified with authority but not fully developed and is not totally accurate. This response was awarded Clear 6.

Comment on answer to Question 09

The Caparo test is identified and each element is addressed; the first element does not quite make the point that it is loss or injury to someone in the position of the defendant, but the sense and understanding emerge. It is also not quite clear how Haley illustrates the point; proximity is correctly described with an appropriate example although again it is not quite obvious how the illustration makes the point; fair just and reasonable is not really explained and there is no authority. The conclusion correctly makes the point that all three elements must be present (this is often omitted).

This does not quite reach maximum as none of the elements is entirely accurate. This response was awarded Sound 7 + 2 for AO3.

Comment on answer to Question 10

Correct idea of setting the standard for the reasonable man but odd choice of 'paint supplier' rather than nanny or carer. Some attempt at applying risk factors but does not take into account the age of Tim. This response was awarded Clear 6.

Comment on answer to Question 11

The correct limits (pre 2013) were used but the student has confused civil and criminal courts. The application is incorrect but gets some credit through the ambiguous response that suggests there may also be a separate claim for personal injuries, hence the choice of small claims track. This response was awarded Some 3.

Comment on answer to Question 12

Most aspects are dealt with reasonably well with a reasonable attempt at application. It should be noted that a 'perfect' answer is not required for maximum marks. This response was awarded Sound 8.
Section C: Introduction to Contract

Scenario 3

Jess wanted to buy a better car. She went to Baz’s garage and saw a car she liked. It had a price sticker on the windscreen for £1999. Jess asked Baz if the price could be reduced if there was no part exchange. Baz said, “No”.

Jess then asked Baz how much it would cost to swap her car for the newer one. Baz said, “£1750”. Jess said, “I'll give you £1500”. Baz said he would accept £1600, but before Jess agreed, Baz said, “but it would have to be through my finance company”.

Jess did not want to use Baz's very expensive finance, so she said, “OK, I'll give you £1750”.

A valid contract requires an offer, acceptance, an intention to create legal relations and consideration.

1 3 Other than by acceptance, outline three ways in which an offer can come to an end. [8 marks]

Potential Content

(A) Outline of the ways an offer can come to an end. These are any three from the following:
- counter offer – once communicated, rejects the original offer and opens a new offer, eg Hyde v Wrench
- rejection – once rejection is communicated, an offer cannot be accepted, eg Stevenson v McLean
- revocation – withdrawal can be done at any time by communicating revocation whilst the offer is open, eg Routledge v Grant
- lapse of time – ends the offer when a fixed time expires or, if no time is set, after a reasonable time, eg Ramsgate Victoria Hotel v Montefiore.
- death.

NB Three are needed for sound, two for clear and one for some
**Student answer for consideration**

An offer is a statement of terms upon which the offeror wants to enter a contract. An offer can come to an end by revocation when the offeror can revoke the offer at any time as long as it hasn't been accepted and the offeree knows it has been revoked as seen in Routledge. Once Grant rejected his offer on the house, Routledge couldn't accept it.

There can also be a counter offer. These end the original offer and make a new one which can then be accepted or rejected as seen in Hyde v Wrench. Wrench was allowed to reject £1000 original offer, as Hyde's £950 counter had already rejected it first.

A third way and offer can and is by lapse of time. An offer is only for a fixed period of time, and once the time elapses the offer comes to an end. If there is no time stated it depends on the circumstances as to what is a reasonable length of time. This is seen in Ramsgate Hotel v Montefiore. The hotel tried to accept the offer shares but it was held that five months wasn't a reasonable length of time so the defendant was allowed to assume the offer had been rejected. Offers can also end by death and rejection.
1 4 Briefly explain the law on acceptance by conduct and acceptance by post. [8 marks]

Potential Content

(A) Brief explanation of acceptance by conduct – the doing of a positive act (not silence, eg Felthouse v Brindley) – eg reward cases; Carlill v Carbolic Smoke Ball Co.

(B) Brief explanation of acceptance by post – postal rule applying to letters of acceptance only, contract complete on posting, requirements and provisos, eg Household Fire Insurance Co v Grant; Adams v Lindsell; Byrne v Van Tienhoven.
Student answer for consideration

Acceptance by conduct is where acceptance is made through the actions taken in the case of Carlill, because the claimant carried out the smokeball procedure as instructed. This was held as acceptance of the offer made by the smoke ball company.

Acceptance by post is made when the letter is sent in the case of Adam as long as the stampage and address are correct that acceptance is valid. In the case of fire insurance company acceptance was taken from when the letter was sent.
1 5 Discuss, in terms of contract law, the stages in the negotiations between Jess and Baz.  

[8 marks + 2 marks for AO3]

Potential Content

(A) Discussion of the stages in the negotiations:
- car with sticker is an invitation to treat
- asking for a reduction in price is merely an enquiry (no offer yet)
- the ‘no’ has no legal effect
- ‘how much for part exchange’ is a request for information resulting in an offer of £1750
- £1500 is a counter offer and ends offer of £1750
- £1600 with conditions is a counter offer
- £1750 from Jess is a new offer (not an acceptance of an offer which no longer exists)
- there is no apparent acceptance from Baz
- conclusion - no offer and acceptance so therefore no contract.

NB The above is one potential analysis of the facts. Students may adopt a different approach. Credit fully any alternative, credible approach.
Student answer for consideration

The display of Baz's car in the garage with the price is an invitation to treat. An invitation to treat is a willingness to start negotiations and an invitation to make an offer. In the case of Boots, goods on a shelf were held to be an invitation to treat. In the case of Partridge, an advertisement in the newspaper was held by the courts to be an invitation to treat. Finally in the case of Fisher the display of flick knives in the window was held as an invitation to treat.

When Jess asked about a reduction this was a request for extra information. A request for information was made again when Jess asked about the exchange and Baz's response of £1750 was Baz giving information. Jess made an offer when she offered £1500 an offer is shown in Barry where deckchairs on the beach were held as an offer. Also Thornton case shows vending machines are an offer and also the courts held that parking ticket machines make an offer. Baz made a counter offer when he requested £1500 and Jess made another offer upon stating £1750.
1 6 Outline the meaning of ‘consideration’ and briefly discuss the consideration that would exist if there were a contract between Jess and Baz for Jess to buy the car from Baz. [8 marks]

Potential Content

(A) Outline of consideration as something of value given by each party to a contract to the other, eg Currie v Misa. This may include:
- consideration is something of value, eg Chapple v Nestle, Thomas v Thomas, White v Bluett
- must move from promisee
- 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 McArdle, Lambleigh v Braithwaite
- brief discussion/application of consideration rules to Jess and Baz, eg cross promises of payment of money in return for the car, possible reference to executed/executory, time for payment/delivery.

NB Max 6 if no application
Student answer for consideration

Consideration is what each party brings to a contract it can be executed ie already carried out for example claiming a reward or executory i.e promising to do something for example pay after delivery. Consideration has to have some value as shown in the Nestlé case where although the wrappers had very little value, they did have some value and was held as consideration.

It cannot be in the past as in McArdle where the mother couldn't sue her children as she had already restored the house. Consideration cannot be part of an existing duty as shown in Stilk where because it was his job anyway to take care of the ship he could not claim more pay from the lack of support he was supposed to have.

The consideration between Baz and Jess is that Baz would supply the car and Jess will supply £1750 in exchange for it.
Potential Content

(A) Outline of procedure which would be followed in any claim for breach of contract:
- money claim on line in the County Court
- compliance with pre-action requirements (aimed at avoiding litigation)
- making claim/probable reference to small claims track and/or County Court, given the sums of money involved
- paying fee
- serving claim on defendant
- responding to the claim by defendant
- admitting or defending claim
- possible counterclaim
- possible application of actual breach – either failure to perform or poor/incomplete performance by either party to the contract
- possible explanation of anticipatory breach – where one party to the contract states or otherwise indicates that performance will not take place as contracted.
Student answer for consideration

The courts would ask that both parties try and sort any claim out by themselves before bringing it to court. The claim will be brought to the Small Claims Court as the value of the items are under £5000. Here they will see which offer has been accepted and each party can claim. In Jess and Baz's case Jess would be the most likely to be the one claiming as she is the one who has accepted the offer.
Outline the law relating to calculation of damages in contract and briefly discuss how this law would apply to any claim arising out of any potential contract between Baz and Jess. [8 marks]

Potential Content

(A)
- Outline of the way in which court calculates an award of damages, ie the two-stage test in Hadley v Baxendale, Victoria Laundry v Newman; The Heron II; mitigation
- brief discussion of Baz’s potential claim – loss of profit from usual sale
- brief discussion of Jess’s potential claim – additional costs if Jess has to buy elsewhere.
Student answer for consideration

Damages are claimed when a contract hasn't been performed properly and often put the claimant in the position they would've been had the contract been performed correctly. Loss of bargain is usually compensation for what has been lost such as the extra £150 Jess paid so she didn't go to the finance company. There are also consequential losses which can be claimed if they are reasonably foreseeable and there must be a chain of causation between the defendants breach and the claim being made. The remoteness test is used for these. In Hadley it established two categories normal losses which can be claimed and are not too remote to the beach and abnormal losses which can only be claimed if the defendant knew there could be a loss in the event of a breach. This is seen in Victoria Laundry where the company could claim for loss of bargain but not for the contract with the government department which the defendant did not know about. There is also loss of profit however Jess couldn't claim this as she doesn't have a business. If a business is claiming loss of profit, they would calculate profits based on the preview previous ones, as seen in Wiseman. They can also claim for emotional distress as seen in Jarvis. The claimant must mitigate their loss so as to make sure the loss is as minimal as possible. Jess still bought from Baz so she didn't need to do this. Overall she must claim £150 for loss of bargain.
Section C: Commentaries

Comment on answer to Question 13

Three aspects done well as per the question. Explanation of Hyde v Wrench a little weak but a 'perfect' answer is not required for maximum marks. This response was awarded Sound 8.

Comment on answer to Question 14

The student has the right idea but does not develop the answer accurately or completely. This is a typical 'some' response that can easily be improved upon. This response was awarded Some A, Some B 5.

Comment on answer to Question 15

Plenty of authority but not all aspects of the dealings applied fully. A logical sequence is taken - it is easier to ensure coverage by taking each point in turn and fully concluding. Thus "Baz made a counter offer when he requested £1500" needs to explain that this ends the previous offer that was countered rather than expecting the examiner to work it out for himself from previous statements. This response was awarded Sound 7 + 2 AO3.

Comment on answer to Question 16

This is a simple and straightforward response that covers sufficient to gain maximum marks. This response was awarded Sound 8.

Comment on answer to Question 17

A weak answer that gets the idea of the use of ADR being encouraged and the track system. It is perhaps slightly generously marked at 2. This response was awarded Limited 2.

Comment on answer to Question 18

This is a simple and straightforward response that covers sufficient material to gain maximum marks. The case names are, however, a little too abbreviated. This response was awarded Sound 8.
Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the Results Statistics page of the AQA Website.

Converting Marks into UMS marks

Convert raw marks into Uniform Mark Scale (UMS) marks by using the link below.

UMS conversion calculator [www.aqa.org.uk/umsconversion](http://www.aqa.org.uk/umsconversion)