



---

**A-Level**  
**LAW**  
**7162/2**

Paper 2

---

**Mark scheme**

June 2019

---

Version: 1.0 Final



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

## Level of response marking instructions

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

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

### Step 1 Determine a level

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

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

### Step 2 Determine a mark

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

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

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

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

**01** In relation to a claim for vicarious liability made against an employer, which of the following is **false**? **[1 mark]**

**Marks for this question: AO1 = 1**

**A** An employer cannot be vicariously liable for any negligence on the part of an employee.

**02** In a claim for psychiatric injury, which of the following is **not** a characteristic of a secondary victim? **[1 mark]**

**Marks for this question: AO1 = 1**

**A** Being in personal danger.

**03** Which **one** of the following methods of dispute resolution does **not** lead to a decision which would be binding on the parties to a dispute? **[1 mark]**

**Marks for this question: AO1 = 1**

**D** A case referred to mediation.

**04** Which of the following is **not** a role of a judge in the civil courts? **[1 mark]**

**Marks for this question: AO1 = 1**

**D** Referring a doubtful point of law to the Law Commission.

**05** The UK Parliament consists of which three institutions? **[1 mark]**

**Marks for this question: AO1 = 1**

**C** The House of Commons, the Queen and the House of Lords.

<b>06</b>	Explain, using examples, the role of tribunals in the English legal system.	<b>[5 marks]</b>
-----------	---	------------------

**Marks for this question: AO1 = 5**

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

### **Indicative content**

#### **AO1**

- Tribunals exist alongside the main court structure to hear disputes in certain matters, and relieve the burden on the courts.
- Where Parliament has directed that a particular type of dispute should be heard by a tribunal, the parties must take their dispute to the tribunal.
- Tribunals have an important role in adjudicating disputes relating to rights and duties under modern statute law.
- Tribunals offer an expert forum in which such disputes can be adjudicated.
- Tribunals offer a forum which is accessible to the individual.
- Some tribunals hear disputes between the authorities and a private individual, and some tribunals hear disputes between two private parties.
- Examples include claims relating to health, social welfare payments, education, taxation, employment and housing.
- The decision of a tribunal is binding (subject to appeal) and might include a declaration as to rights and entitlements, an order for compensation or a decision as to correct payments to be made to or by the authorities.

Credit any other relevant point(s).

Answers dealing only with roles of tribunals: **Max 4 marks**

Answers dealing only with examples: **Max 3 marks**

<b>07</b>	Suggest why any claim made by Andy in respect of his economic loss would not succeed in court.	<b>[5 marks]</b>
-----------	--	------------------

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

<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b>  <b>Band 3</b>	Good outline explanation of relevant legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b>  <b>Band 2</b>	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.
<b>1</b>  <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the relevant legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Brief explanation of the notion of pure economic loss.
- Brief explanation that a duty of care is not owed in respect of a pure economic loss caused by a negligent act (possible reference to the distinction between negligent acts and negligent statements).
- Possible brief explanation of illustrative case law for example **Cattle v Stockton Waterworks, Weller v Foot and Mouth Disease Research Institute** and **Spartan Steel v Martin**.

#### **AO2**

- Application to suggest that Andy's loss was an economic loss (loss of earnings).
- Application to suggest that as there was no physical damage, the loss was a pure economic loss.

Credit any other relevant point(s).

Alternative: Full credit is available if a student assumes that the water pipe belongs to Andy, and makes an argument that he can claim for physical loss and consequential economic loss.

<b>08</b>	Advise Cath as to her rights against Devi.	<b>[10 marks]</b>
-----------	--	-------------------

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	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.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Identification and brief explanation of psychiatric injury, and of the potential of an action in negligence. Possible reference to damages.
- Brief explanation of a primary victim (and perhaps the distinction from a secondary victim).
- Brief explanation of appropriate supporting case authority for example **Reilly v Merseyside RHA**, **Page v Smith** and **Chadwick v BRB**.

#### **AO2**

- Application to suggest that Cath will need to show that she has a psychiatric injury in the form of a recognised psychiatric condition.
- Application to suggest that Cath may qualify as a primary victim in that she was in the ‘zone of danger’ as it was reasonably foreseeable that she could have been physically injured.
- Application to suggest that Cath may also qualify as a primary victim in that she helped others and by doing so placed herself in physical danger (‘rescuer’).
- Possible application to explain that, in the event of a successful claim, Cath would be entitled to a remedy of compensatory damages.

**AO3**

- Analysis and application of the requirements for a claim in negligence for psychiatric injury: a duty of care normally only exists to someone who is a primary or a secondary victim.
- Analysis and evaluation of the requirements for a claimant to qualify as a primary victim on the grounds that they were in the ‘zone of danger’.
- Analysis and evaluation of the requirements for a claimant to qualify as a primary victim on the grounds that they were a ‘rescuer’.
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **McFarlane v EE Caledonia**, **White v Chief Constable for South Yorkshire**.

Credit any other relevant point(s).

Discussion of one route only to liability for a primary victim (“Zone of danger” or “rescuer”): **Max 9 marks**

Dealing with Cath as a secondary victim only: **Max 6 marks**



<b>09</b>	Examine the connection between legal rules and moral rules. Discuss whether liability in tort law reflects rules of morality.	<b>[15 marks]</b>
-----------	---	-------------------

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

<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	<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>
<b>10–12</b> <b>Band 4</b>	<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>
<b>7–9</b> <b>Band 3</b>	<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>
<b>4–6</b> <b>Band 2</b>	<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>
<b>1–3</b> <b>Band 1</b>	<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>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Basic definitions of legal rules (in simple terms, such as rules created by authority within a given jurisdiction, or by reference to theorists such as Austin) and of moral rules (for example as a set of expectations concerning behaviour which is right or wrong, as customary practices, as social manners, as rules based on religion, as beliefs, values, principles and standards of behaviour).
- Outline explanation of the connection between legal rules and moral rules for instance by identifying similarities and differences.
- Identification of appropriate examples drawn from civil and/or criminal law to illustrate the connection between legal rules and moral rules.
- Identification of appropriate examples and supporting case authority drawn from the law of tort to illustrate the extent to which the rules of tort law are founded on moral rules.

**AO3**

- Analysis of similarities and overlap between legal and moral rules, developed through illustration; for instance what is illegal is often also immoral, rules of law can influence the morality of society and vice versa and the notion that to break the law is of itself immoral.
- Analysis of differences between legal and moral rules, developed through illustration; for instance the sources of legal and moral rules, the consequences on infringing legal and moral rules and the idea that legal rules are subject to rules of recognition, change and adjudication.
- Analysis of relevant legal rules in tort law: for example negligence claims allowing recovery for physical, psychiatric and economic loss; occupiers' liability; vicarious liability; private nuisance and the rule in **Rylands v Fletcher**.
- Evaluation of the relationship between morality and the rules of tort law: for example the idea that negligence is founded on the moral principle of safeguarding one's neighbour (but denies many claims for psychiatric and economic loss); the duty of 'common humanity' underlying the Occupiers' Liability Act 1984; the idea that vicarious liability ensures that an employer taking the profit from an activity also takes the costs (although the employer will be liable regardless of fault); the requirements of nuisance and the rule in **Rylands v Fletcher** to ensure that people behave in a proper fashion towards those around them.

Credit any other relevant point(s).

**Indicative content groups (ICGs)**

ICG1: Morality and law

ICG2: Morality and tort

<b>10</b>	<p>Explain the rights and remedies of the residents against Edward in relation to the operation of the steam trains <b>and</b> of Fran against Edward in relation to the flooding of her garden.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
-----------	--

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

<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<p><b>25–30</b></p> <p><b>Band 5</b></p>	<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>
<p><b>19–24</b></p> <p><b>Band 4</b></p>	<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>
<p><b>13–18</b></p> <p><b>Band 3</b></p>	<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>
<p><b>7–12</b></p> <p><b>Band 2</b></p>	<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>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<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>
<p><b>0</b></p>	<p>Nothing worthy of credit.</p>

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the tort of private nuisance: an action for unreasonable interference with the use or enjoyment of land with a possible remedy of injunction and/or damages.
- Brief explanation of appropriate supporting case authority for instance **Hunter v Canary Wharf**, **Halsey v Esso** and **St Helens Smelting v Tipping**.
- Identification and outline explanation of the tort contained in the rule in **Rylands v Fletcher**: an action for reasonably foreseeable damage caused by the escape from the defendant's land of a dangerous thing accumulated during the course of a non-natural use of that land with a possible remedy of damages.
- Brief explanation of appropriate supporting case authority for instance **Rylands v Fletcher**, **Transco v Stockport MBC** and **Cambridge Water v Eastern Counties Leather**.

**AO2**

- Private nuisance: application of the requirement that the residents must demonstrate an appropriate legal interest in the land affected.
- Private nuisance: application to suggest that the residents may be able to show an unreasonable interference with their use or enjoyment of their land in view of locality, frequency of the activity, intensity of the activity, time of day and malice.
- Private nuisance: application to argue that a partial injunction is the appropriate remedy given the difficulty of assessing any financial loss and given the need to fulfil the wishes of Edward and the tourists.
- The rule in **Rylands v Fletcher**: application of the requirement that Fran must demonstrate an appropriate legal interest in the land affected.
- The rule in **Rylands v Fletcher**: application to argue that Fran may be able to show the elements required to establish liability in terms of an accumulation, on Edward's land, of a dangerous substance during the course of a non-natural user, an escape of that substance and the escape causing reasonably foreseeable damage.
- The rule in **Rylands v Fletcher**: application to argue a possible defence of act of a stranger in view of the activities of the tourist interfering with the water tank.
- The rule in **Rylands v Fletcher**: application to suggest that Fran may be entitled to a remedy of compensatory damages.

**AO3**

- Private nuisance: analysis and evaluation of the need to balance the interests of Edward and the residents when assessing if any interference with the ability of the residents to use or enjoy their land is unreasonable with reference to issues of locality, frequency of the activity, intensity of the activity, time of day, malice and the benefit to Edward and his customers.
- Private nuisance: analysis and evaluation of the remedy of an injunction with reference to balance the interests of Edward and the residents (injunction, partial injunction or damages instead of an injunction).
- Private nuisance: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Barr v Biffa**, **Coventry v Lawrence**, **Murdoch v Glacier Metals**, **Christie v Davey**, **Hollywood Silver Fox Farm v Emmett**, **Dennis v MoD**, **Miller v Jackson**.

- The rule in **Rylands v Fletcher**: analysis and evaluation of the requirements for liability (accumulation, dangerous substance, non-natural user of the land, escape causing reasonably foreseeable damage).
- The rule in **Rylands v Fletcher**: analysis and application of the relevant fault element (strict liability).
- The rule in **Rylands v Fletcher**: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Rickards v Lothian**, **Read v Lyons** and **Perry v Kendrick's Transport**.

Credit any other relevant point(s).

Note: in the case of the people living in the row of houses:

- If a student answers the question using public nuisance only: max credit – Limited
- If a student answers the question using both private nuisance and public nuisance, credit the answer as private nuisance, and credit the public nuisance as an enhancement.

Note: In the case of Fran's claim, credit an answer that uses general negligence to the extent that it deals with the issues raised by the scenario.

Note: In the case of Fran's claim, credit an answer that uses private nuisance to the extent that it deals with the issues raised by the scenario.

### **Indicative content groups (ICGs)**

ICG1: Nuisance

ICG2: The rule in **Rylands v Fletcher**

<b>11</b>	<p>Consider the rights and remedies of Ivan <b>and</b> of Jaima against Glenda in relation to their injuries and losses.</p> <p>Any of these parties might take the view that the rules of law which apply need reforming. Assess the role of the Law Commission in any reform process.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
-----------	---

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

<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<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>
<b>19–24</b>  <b>Band 4</b>	<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>
<b>13–18</b>  <b>Band 3</b>	<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>
<b>7–12</b>  <b>Band 2</b>	<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.</p>

	<p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology. There is limited analysis and evaluation of legal concepts and issues.</p> <p>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><b>1–6</b></p> <p><b>Band 1</b></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.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>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>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	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 defence contained in s 2(4)(b) OLA 1957: work carried out by an independent contractor.
- Identification and explanation of the defence of contributory negligence. Brief explanation that the defence will apply where the claimant partly contributed to the accident or to their loss because their own behaviour fell below that of the reasonable person.
- 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.
- Brief explanation of the role of the Law Commission as an independent body with a statutory duty to develop, reform, simplify and codify the law, either on its own initiative or at the request of the Lord Chancellor.

**AO2**

- Application to argue that the bookshelves were premises for the purposes of the 1957 Act, that Ivan was a visitor, that Glenda was the occupier and that there was a danger due to the state of the premises (loose shelves capable of falling on someone).
- Application to suggest that in those circumstances Glenda owed a duty of care to Ivan, and that she broke the duty of care by failing to ensure that a visitor would be reasonably safe.
- Application to discuss whether Glenda may be able to use the defence contained in s 2(4)(b) OLA 1957: the shelves were put up by an independent contractor.
- Application to argue that Glenda may be able to use the defence of contributory negligence in terms of whether Ivan's behaviour was below that of the reasonable person in attempting to hold onto the shelf given that he can see that it was loose.
- Application to conclude that if Glenda does not have a defence then she is liable to pay compensatory damages to Ivan for his injuries, but that the existence of a defence may reduce or eliminate her liability.
- Application to argue that the storeroom was premises for the purposes of the 1984 Act, that Jaima was an unlawful visitor (given the presence of the sign), that Glenda was the occupier and that there was a danger due to the state of the premises (loose wiring) rather than Jaima's own actions (walking through the storeroom).
- Application to consider whether the requirements of s1(3) were satisfied and whether therefore a duty under the 1984 Act existed: (1) whether Glenda was aware of the danger (the loose wiring) or had reasonable grounds to believe that it existed (Glenda knew of the wiring); (2) whether Glenda knew or had reasonable grounds to believe that another would or might come into the vicinity of the danger (Glenda knew that customers frequently took the shortcut); (3) whether the danger is one against which, in all the circumstances of the case, Glenda may reasonably be expected to offer another some protection (loose wiring capable of inflicting serious burns).
- Application to consider whether Glenda broke the duty of care (if it existed) in terms of factors such as likelihood of trespass, seriousness of the injury risked, cost and practicality of precautions and how obvious the danger was.
- Application to argue that Glenda may have a defence of consent if Jaima voluntarily assumed the risk of walking through the storeroom.
- Application to conclude that if Glenda does not have a defence then she is liable to pay compensatory damages to Jaima for her injuries (but not for her smashed phone), but that the existence of a defence may eliminate her liability.

**AO3**

- Analysis and evaluation of the existence of liability with reference to s 2(4)(b) (whether Glenda should have checked that Hank was a suitable contractor given that he was the brother of a friend), (whether Glenda should have known of the defect in the shelves, even though she was not a carpenter, given that Ivan could see that the shelves were loose).
- Analysis and evaluation of the existence of liability with reference to contributory negligence (whether Ivan did not act as the reasonable person would have done in terms of factors such as likelihood of injury, seriousness of injury risked and precautions he could have taken).
- Reference to and analysis of relevant case law, for example **Gwilliam v West Hertfordshire NHS, Haseldine v Daw, Woodward v Mayor of Hastings, Froom 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 Glenda's knowledge as to the frequency of trespassers, whether common humanity suggests she should have taken precautions 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, whether Glenda took appropriate precautions (the door was not locked despite frequent entry and the great danger) and whether Glenda should be expected to protect a person determined to be irresponsible.



- 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**.
- Evaluation of the role of the Law Commission (initiating a project or responding to a request from the Government, carrying out research into the chosen area, producing a consultation paper, producing a final report including proposals for reform) for instance expertise, research, freedom from political pressure, ability to codify, modernisation, lack of action by Parliament when a report is published, time taken to prepare a report.

Note: Credit any other relevant point(s).

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

Note: In the case of Ivan's claim, credit an answer that uses general negligence to the extent that it deals with the issues raised by the scenario.

**Indicative content groups (ICGs)**

ICG1: OLA 1957

ICG2: OLA 1984

ICG3: Law Commission

**Assessment Objectives Grid**

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

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
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
<b>Total</b>	75	25	100
<b>Total %</b>	75	25	100