



A-level LAW 7162/2

Paper 2

Mark scheme

June 2025

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.

No student should be disadvantaged on the basis of their gender identity and/or how they refer to the gender identity of others in their exam responses.

A consistent use of 'they/them' as a singular and pronouns beyond 'she/her' or 'he/him' will be credited in exam responses in line with existing mark scheme criteria.

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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 In relation to the Occupiers' Liability Act 1957, which of the following statements is **false**?

[1 mark]

Marks for this question: AO1 = 1

D The defendant owes a lower standard of care to visitors who are children.

02 In relation to vicarious liability, an employer can be found liable for the torts of which people?

[1 mark]

Marks for this question: AO1 = 1

C Only employees

03 Which **one** of the following is the name given to a Paper with firm proposals of government policy?

[1 mark]

Marks for this question: AO1 = 1

D A White Paper

04 Which **one** of the following is **true** about a conditional fee agreement?

[1 mark]

Marks for this question: AO1 = 1

A A solicitor may charge a success fee.

05 Which **one** of the following divisions of the High Court hears tort cases?

[1 mark]

Marks for this question: AO1 = 1

D The King's Bench Division

06	In the context of law reform and the work of the Law Commission, explain the terms codification , consolidation and repeal .	[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

- Codification: reviewing/reforming the law to produce a single code governing all aspects of a particular area of law.
- Consolidation: combining several statutes dealing with a particular area of law into a single Act of Parliament.
- Repeal: removal of obsolete statutes in whole or in part.

Max 4 - 2 terms explained

Max 2 - 1 term explained

Credit any other relevant point(s).

07	Suggest why Basma will be unable to claim damages for her lost profits from Arnie, even though he was clearly negligent.	[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 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.
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 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 Arnie committed a negligent act (rather than a negligent misstatement).
- Application to suggest that as Basma sustained no physical damage, her loss was a pure economic loss (loss of earnings).
- Application to suggest that therefore Basma will be unable to claim as she has sustained a pure economic loss caused by a negligent act.

Credit any other relevant point(s).

08	Taking into account the Occupiers' Liability Act 1984, advise Don of his rights against Cait.	[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 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.
- 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 defences of consent (s1(6) OLA 1984) and/or contributory negligence.

AO2

- Application to argue that the swimming pool and the set of steps were premises for the purposes of the 1984 Act, that Don was an unlawful visitor (given the existence of the sign at the top of the steps), that Cait was the occupier and that there was a danger due to the state of the premises (a loose set of steps) rather than Don's own actions (using the steps to access the pool).
- Application to consider whether the requirements of s1(3) were satisfied and whether therefore a duty under the 1984 Act existed: (1) whether Cait was aware of the danger (the loose steps) or had reasonable grounds to believe that it existed (Cait knew of the problem with the steps); (2) whether

Cait knew or had reasonable grounds to believe that another would or might come into the vicinity of the danger (Cait knew that the swimming pool was popular with hotel guests); (3) whether the danger is one against which, in all the circumstances of the case, Cait may reasonably be expected to offer another some protection (the danger was not necessarily apparent, the steps were clearly in a poor state as they collapsed when Don used them and the circumstances of falling injured into water are inherently dangerous).

- Application to consider whether Cait broke the duty of care (if it existed). Possible factors include whether Cait took appropriate precautions (Cait did put up a sign), whether she should have done more such as block off the top of the steps, whether she should be expected to protect a person determined to be irresponsible in ignoring a sign and the possible argument that the sign did not specify the precise danger. Possible reference to s1(5) OLA 1984.
- Application to argue that Cait may have a defence of consent if Don voluntarily assumed the risk of climbing into a swimming pool when there is a sign telling him to keep out. Possible argument that Don did not know specifically that there was a danger from the steps. Application to argue that Cait may have a defence of contributory negligence on the ground that Don fell below the standard of the reasonable person by entering a pool when he was told not to.
- Possible application to conclude that if Cait does not have a defence, then she is liable to pay compensatory damages to Don for his injuries, but that the existence of a defence may eliminate or reduce her liability.

AO3

- 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, 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**.

Credit any other relevant point(s).

Fully credit an application/analysis which concludes either that Don's claim may succeed or that it may not.

If a candidate introduces elements of ordinary negligence and/or OLA 1957, these can be credited to the extent that they are relevant to the question. If a candidate adopting this approach does not mention OLA 1984 at all, then it is unlikely that the answer could reach more than low Satisfactory.

09 Examine the meaning of fault.

Discuss the extent to which the law in the Occupiers' Liability Act 1957 is based on fault.

[15 marks]

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	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. 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. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
10–12 Band 4	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. 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. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
7–9 Band 3	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. 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. A chain of reasoning starts to develop which leads to a partially justified conclusion.
4–6 Band 2	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. 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.
1–3 Band 1	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. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
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 possible bases of fault in civil and possibly criminal law: voluntariness of conduct and causation as fundamental bases; intention, recklessness, negligence and strict liability; defences.
- Outline of the nature of occupiers' liability towards visitors who are not trespassers as indicated in the Occupiers' Liability Act 1957.

AO3

- Analysis of fault elements: meaning of terms such as 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).
- Analysis of the significance of fault for instance: a marker of blame; allocates responsibility; justifies the imposition of penalties or damages, indicates that behaviour should be modified in the future.
- Analysis of fault in the context of occupiers' liability, including (1) the requirements of the common duty of care imposed on occupiers of premises by the 1957 Act (2) the modifications in respect of children and those present in the exercise of their calling (3) the relevance of warnings and of dangers arising from the faulty work of independent contractors (4) the significance of voluntary acceptance of risk and of contributory negligence (5) limitations on contractual exclusion of liability.
- Conclusion as to the extent to which occupiers' liability is dependent on proof of fault, based on the analysis and evaluation presented: the concept is largely negligence-based but there is sufficient scope within the elements for an occupier potentially to avoid liability through lack of fault.

Credit any other relevant point(s).

ICG1: Law and fault

ICG2: Law, fault and OLA 1957

10	Consider the rights and remedies of Faye, Gaby and Harley against Ethan.	[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	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
19–24 Band 4	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
13–18 Band 3	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
7–12 Band 2	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. 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. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
1–6 Band 1	Knowledge is minimal and demonstrates minimal understanding of relevant legal rules and principles. Minimal selection and use of legal authority. 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. A fragmented legal argument is attempted. No chain of reasoning is attempted.
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**

- 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. Identification of the remedy of compensatory damages.
- 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)**.
- Negligence: 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.
- Psychiatric injury: identification and brief explanation of psychiatric injury, and of the possibility of an action in negligence to recover damages albeit on a restricted basis.
- Psychiatric injury: brief explanation of the difference between a primary victim and a secondary victim in the context of psychiatric injury.
- Psychiatric injury: brief explanation of appropriate supporting case authority for example **Reilly v Merseyside RHA**, **Page v Smith** and **Alcock v Chief Constable for South Yorkshire**.

AO2

- Negligence: application of the rules on duty of care to suggest that Ethan owes a duty of care to Faye as it is reasonably foreseeable that another car driver would be affected by Ethan's failure to drive competently. (That one road user owes a duty of care to another is an established duty of care.)
- Negligence: application of the rules on breach to suggest that Ethan should be judged by the standard of the reasonably experienced careful driver and that Ethan did not reach the standard of the reasonable person in terms of seriousness of risk, likelihood of risk and ease of prevention (using a mobile phone while driving, not paying attention to the road or other users and failing to notice that his car was on the wrong side of the road).
- Negligence: application of the rules on causation in fact to suggest that but for Ethan's poor driving, Faye would not have swerved and the accident would not have happened.
- Negligence: application of the rules on causation in law to suggest that Faye being injured in a road accident was a reasonably foreseeable consequence of Ethan failing to take proper care in respect of his driving. It is unlikely that the chain of causation was broken by the fact that Faye's car left the road as a result of Faye's swerve rather than contact with Ethan's car: Faye's actions were instinctive and foreseeable.
- Negligence: application to argue that Ethan may be able to use the defence of contributory negligence: Faye did not do as the reasonable driver would have done (no seat belt) and consequently her injuries were worse than they might have been.
- Negligence: application to suggest that Faye may be entitled to a remedy of compensatory damages against Ethan (albeit reduced for contributory negligence).
- Psychiatric injury: application to suggest that Gaby and Harley will need to show that they have a psychiatric injury in the form of a recognised psychiatric condition.

- Psychiatric injury: application to suggest that Gaby 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.
- Psychiatric injury: application to suggest that Harley may qualify as a secondary victim. Application of the rules on recovery for psychiatric injury by a secondary victim to suggest that Harley may be able (1) to satisfy the requirement that there should be an accident (an unexpected and unintended event which caused death, injury or risk by violent means to at least one primary victim), (2) that he might also satisfy the **Alcock** rules relating to a close tie of love and affection, that he was present at the scene of the accident (or, as in this case, the immediate aftermath) and that he directly perceived the immediate aftermath through his own senses (not the initial phone call) and (3) that psychiatric injury was reasonably foreseeable in the circumstances (reasonable fortitude).
- Psychiatric injury: application to explain that, in the event of a successful claim, Gaby and Harley would be entitled to a remedy of compensatory damages.

AO3

- Negligence: analysis and evaluation of the concept of duty in relation to a car accident resulting from a poor standard of driving 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 fact and causation in law.
- Negligence: analysis and evaluation of the possible defence of contributory negligence and its impact on the remedy of compensatory damages.
- 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**, **Smith v Leech Brain**, **Froom v Butcher** and **Brannon v Airtours**.
- Psychiatric injury: analysis and application of the requirements for a claim in negligence for psychiatric injury in terms of primary and secondary victims.
- Psychiatric injury: analysis and evaluation of the requirements for a claimant to qualify as a primary victim on the ground that they were in the “zone of danger”.
- Psychiatric injury: analysis and evaluation of the requirements for a claimant to qualify as a secondary victim in terms of the requirement for an accident, the requirements of the **Alcock** rules (including “immediate aftermath”) and the need for psychiatric injury to be reasonably foreseeable.
- Psychiatric injury: Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **McLoughlin v O’Brian** and **Paul v Royal Wolverhampton NHS Trust**.

Credit any other relevant point(s).

ICG1: negligence leading to a physical injury

ICG2: negligence leading to a psychiatric injury

11 Consider the rights and remedies of Kelvin against Lola in relation to the go-karting track **and** the destruction of his summer house.

Kelvin may be granted an injunction if his claim against Lola for the noise from the go-karting track succeeds. Assess the factors which will influence a judge when deciding whether or not to grant an injunction.

[30 marks]

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	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. There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. There is excellent analysis and evaluation of legal concepts and issues. 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.
19–24 Band 4	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. There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. There is good analysis and evaluation of legal concepts and issues. Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
13–18 Band 3	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. There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. There is satisfactory analysis and evaluation of legal concepts and issues. Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.

7–12 Band 2	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.
1–6 Band 1	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.
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
23	7	30

Indicative content

AO1

- Identification and outline explanation of the tort of private nuisance: an action for a substantial interference with the ordinary use and enjoyment of a person's land, and a possible acknowledgment that this is an objective test judged by the standards of an ordinary or average person in the claimant's position.
- Brief explanation of appropriate supporting case authority for instance **Hunter v Canary Wharf**, **St Helens Smelting v Tipping**, **Coventry v Lawrence** and **Fearn v Board of Trustees of the Tate Gallery**.
- 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.
- Brief explanation of appropriate supporting case authority for instance **Rylands v Fletcher**, **Transco v Stockport MBC**, **Cambridge Water v Eastern Counties Leather**, **Perry v Kendrick's Transport**.
- Brief explanation of the nature of an injunction as a remedy, ie a court order requiring a defendant to stop or limit their activities.

AO2

- Private nuisance: application of the requirement that Kelvin must demonstrate an appropriate legal interest in the land affected.
- Private nuisance: application to suggest that Kelvin may be able to show a substantial interference with his ordinary use and enjoyment of his land in view of locality, frequency of the activity, intensity of the activity, malice, common and ordinary use of the defendant's land and (possibly) sensitivity.
- Private nuisance: application to suggest that Lola may seek to rely on the inapplicable defence of coming to the nuisance.
- Private nuisance: application to argue that an injunction or damages might be the appropriate remedy given the need to balance the interests of Kelvin and the need for Lola to operate her karting track.
- The rule in *Rylands v Fletcher*: application of the requirement that Kelvin must demonstrate an appropriate legal interest in the land affected.
- The rule in *Rylands v Fletcher*: application to consider whether Kelvin can show the elements required to establish liability in terms of an accumulation, on Lola's land, of a dangerous substance during the course of a non-natural user (due to the quantity of petrol stored) and an escape causing reasonably foreseeable damage.
- The rule in *Rylands v Fletcher*: application to argue a possible defence of act of a stranger in relation to the activities of Max
- The rule in *Rylands v Fletcher*: application to suggest that Kelvin may be entitled to a remedy of compensatory damages.

AO3

- Private nuisance: analysis and evaluation of balancing interests when assessing substantial interference with use or enjoyment of land.
- Private nuisance: analysis and evaluation of the remedy of an injunction with reference to balancing interests of the claimant and defendant; 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 **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 evaluation 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 **Read v Lyons** and **Stannard v Gore**.
- Analysis and evaluation of the factors considered by a judge when deciding whether to award an injunction, eg the nature of an injunction as an equitable (discretionary) remedy, whether damages may be a more appropriate/satisfactory remedy in the circumstances, any potential public benefit lost by awarding an injunction.

Credit any other relevant point(s).

Note: In the case of Kelvin's claim in respect of the petrol catching fire, credit an answer that uses general negligence to the extent that it deals with the issues raised by the scenario

ICG1: private nuisance

ICG2: the rule in *Rylands v Fletcher*

ICG3: factors relevant to the grant of an injunction

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