



GCE AS MARKING SCHEME

SUMMER 2025

**AS
LAW – UNIT 2
2150U20-1**

About this marking scheme

The purpose of this marking scheme is to provide teachers, learners, and other interested parties, with an understanding of the assessment criteria used to assess this specific assessment.

This marking scheme reflects the criteria by which this assessment was marked in a live series and was finalised following detailed discussion at an examiners' conference. A team of qualified examiners were trained specifically in the application of this marking scheme. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners. It may not be possible, or appropriate, to capture every variation that a candidate may present in their responses within this marking scheme. However, during the training conference, examiners were guided in using their professional judgement to credit alternative valid responses as instructed by the document, and through reviewing exemplar responses.

Without the benefit of participation in the examiners' conference, teachers, learners and other users, may have different views on certain matters of detail or interpretation. Therefore, it is strongly recommended that this marking scheme is used alongside other guidance, such as published exemplar materials or Guidance for Teaching. This marking scheme is final and will not be changed, unless in the event that a clear error is identified, as it reflects the criteria used to assess candidate responses during the live series.

WJEC GCE AS LAW
UNIT 2 - THE LAW OF TORT
SUMMER 2025 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Unit 2

The questions assess all three assessment objectives - AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology, and the ability to analyse and evaluate legal rules, principles, concepts and issues.

The structure of the mark scheme

The mark scheme for each question has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive, and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1, AO2 and AO3.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance, if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner. Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

1. Explain the rules and theories of the law of tort.

[8]

Indicative content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the main rules and theories underpinning the law of tort, candidates are expected to demonstrate knowledge and understanding of legal rules and theories underlying the law of tort. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on tort.

The response might consider issues such as:

- Civil claim and associated standard of proof (on the balance of probabilities). Private law.
- Parties involved – burden on claimant v defendant.
- Aim – to settle a dispute and remedy the wrong.
- Theories in the law of tort:
 - Competing theories.
 - Corrective justice supports that the purpose of damages in tort is to ‘right the wrong’. It provides a civil recourse to ‘put things back as they were’, as far as this is possible. It is also known as restorative justice.
 - Retributive justice, more commonly associated with the criminal law, does play a role. This theory is associated with punishment with the intention of dissuading the defendant and others from future wrongdoing. In the law of tort, the knowledge that one might be sued for a tortious act may serve as a deterrent or higher standard of care when performing certain acts. However, the fact that insurance premiums are, in many cases, used to pay compensation means that the deterrent value is reduced despite the knowledge that premiums may increase.
 - Fault based liability and strict liability.
- A claimant who successfully proves his case in negligence will be entitled to a remedy. Damages are one form of remedy along with injunctions, etc.
- Damages aim to place the claimant, where possible, in the same position as if the tort had never happened. Not always possible for serious, life changing injuries.
- Injunctions can compel or prohibit an action.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	• Excellent, detailed knowledge and understanding of legal rules and theories relating to the law of tort.
2	3 - 5	• Good knowledge and understanding of the legal rules and theories relating to the law of tort.
1	1 - 2	• Basic knowledge and understanding of the legal rules and theories relating to the law of tort.
	0	Response not creditworthy or not attempted.

2. Explain the significance of the Robinson v Chief Constable of West Yorkshire Police (2018) case in establishing a duty of care in the tort of negligence. [8]

Indicative content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the significance of the Robinson case in establishing a duty of care in the tort of negligence, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying a duty of care. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply to give a general answer on all elements of negligence.

The response might consider issues such as:

- History of test for duty of care – **Donoghue v Stevenson**
 - A person must take reasonable care to avoid acts or omissions which could be reasonably foreseen to likely injure a neighbour
 - Test of reasonable foreseeability
 - Who is 'neighbour'? – persons who are so closely and directly affected by the defendant's act that they ought to have them in their contemplation
- Possible illustrative examples such as the duty of care owed by drivers to pedestrians and other road users
- The neighbour principle has been modified by the three-part incremental test set out in **Caparo v. Dickman** and again in the case of **Robinson v. CCWY**. Robinson sets out the current approach:
 - the court should establish if there is a duty of care by applying existing or analogous precedents.
 - If there are no such precedents and it is a novel case, the Court should apply the three-part incremental test from **Caparo** so that the law on duty of care should develop incrementally.
- The three elements from Caparo are:
 - Reasonable foreseeability that a person in the claimant's position would be injured
 - There was sufficient proximity between the parties
 - It is fair, just and reasonable to impose liability on the defendant

Citation of relevant case law for each of the above.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	Excellent, detailed knowledge and understanding of legal rules and principles relating to the significance of the Robinson case in establishing a duty of care in the tort of negligence.
2	3 - 5	Good knowledge and understanding of legal rules and principles relating to the significance of the Robinson case in establishing a duty of care in the tort of negligence.
1	1 - 2	Basic knowledge and understanding of legal rules and principles relating to the significance of the Robinson case in establishing a duty of care in the tort of negligence.
	0	Response not creditworthy or not attempted.

3. Explain what is meant by a primary victim in claims for psychiatric harm. [8]

Indicative content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining what is meant by a primary victim in claims for psychiatric harm, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the law of psychiatric harm.

In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on negligence.

The response might consider issues such as:

- Definition of psychiatric harm and how it differs from other types of harm. Why the law is cautious about imposing a duty. Floodgates argument.
- A primary victim is someone who is injured or fears he will be injured and who suffers psychiatric harm as a result. In the former case, of course, he can claim for both his physical loss and his psychiatric damage.
- There are two key examples of a primary victim.

Those involved directly in an accident

- A person involved directly in an accident can claim for psychiatric damage, even though he escaped physical injury, provided that he feared for his own safety. In such circumstances, it does not matter that psychiatric harm specifically was not reasonably foreseeable, as long as some sort of harm, either physical or psychiatric, was reasonably foreseeable. - **Page v Smith (1996)**,
- The courts have made it clear that a primary victim can exist in other situations. E.g. **Donachie v Chief Constable of Greater Manchester (2004)**.

Rescuers

- The House of Lords confirmed in **White v Chief Constable of South Yorkshire (1998)** that someone who is not involved in an accident but who attends the scene as a rescuer can qualify as a primary victim if they suffer psychiatric damage as a result of their experiences. In order to claim, such a person must be engaged in rescue activities and must fear for their own safety during such activities.
- In **White v Chief Constable of South Yorkshire (1998)** itself, the claimants were police officers attending the scene of the Hillsborough stadium disaster. Although they undoubtedly witnessed horrific scenes, and suffered psychiatric damage as a result, their claims failed as they themselves never feared for their own safety.
- **McFarlane v EE Caledonia Ltd (1993)** - his claim for psychiatric damage caused as a result of what he saw and experienced failed: he was neither a rescuer or in immediate physical danger himself.
- A contrasting example is **Chadwick v British Railways Board (1967)**. The claimant, a member of the public, attended the scene of a fatal train crash which occurred near his home. His claim for psychiatric injury succeeded: he was engaged as a rescuer, and he had placed himself in danger.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	Excellent, detailed knowledge and understanding of legal rules and principles relating to the law on primary victims.
2	3 - 5	Good knowledge and understanding of the legal rules and principles relating to the law on primary victims.
1	1 - 2	Basic knowledge and understanding of the legal rules and principles relating to the law on primary victims.
	0	Response not creditworthy or not attempted.

4. Ibraheem, who has just passed his driving test, is driving along the main road outside a primary school at 35mph, above the speed limit of 20mph. Suddenly, a young girl runs into the road and Ibraheem swerves to avoid her. In doing so, he veers onto the other side of the road and hits Betty who is riding her motorcycle. She is knocked off the motorcycle and suffers a broken leg. Her motorcycle is damaged beyond repair. She misses three months of paid work and is likely to suffer ongoing pain. Ibraheem is trying to claim that his lack of experience as a driver makes him less liable.

Advise Betty as to whether Ibraheem is liable in the tort of negligence for her injuries and losses. [18]

Indicative content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In assessing the extent to which the Ibraheem is liable for Betty's injuries, candidates are expected to apply legal rules and principles to the scenario in order to present a legal argument using appropriate legal terminology.

The response might consider issues such as:

- For Betty to succeed in an action in negligence against Ibraheem, it must first be established that Ibraheem owed Betty a duty of care. The basis of whether or not a duty of care is owed is determined now by **Robinson** and, if not, **Caparo Industries PLC v Dickman**.
- Ibraheem does not owe a duty to the whole world but only to those persons that could be reasonably foreseen to be affected by her actions or omissions as determined in **Donoghue v Stevenson**. It could reasonably be foreseen that Ibraheem's speeding could lead to other persons being affected.
- **Robinson** sets out the current approach:
 - the court should establish if there is a duty of care by applying existing or analogous precedents. **It is an established duty – driver to another road user.**
 - If there are no such precedents and it is a novel case, the Court should apply the three-part incremental test from **Caparo** so that the law on duty of care should develop incrementally.
 - The three elements from **Caparo** are:
 - Reasonable foreseeability that a person in the claimant's position would be injured
 - There was sufficient proximity between the parties
 - It is fair, just and reasonable to impose liability on the defendant
- If it is established that a degree of foreseeability exists, then the proximity of the parties involved must be considered. Proximity is determined on the basis of the relationship of the parties involved. There is a clear proximity of relationship between Ibraheem and other road users including Motorcyclists such as Betty.
- The courts will also consider if it is reasonable to impose a duty of care on Ibraheem on the basis of fairness or policy. It is both fair and in the interests of public policy to impose a duty of care on drivers and would not result in the floodgates being opened.

- Betty has suffered damage as a result of Ibraheem's breach of duty of care. Objective test but consider potential special characteristics of the defendant. **There are none.** Application of relevant breach factors. **New driver irrelevant - Nettleship v Weston.**
- Causation – 'but for' test.
- There was no evidence of novus actus interveniens that could negate Ibraheem's liability for the bump and responsibility for the injuries suffered by Betty and damage to bike.
- Remoteness of damage – egg-shell skull rule.
- Credit for any other relevant citation.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	14 - 18	• Excellent, detailed application of legal rules and principles to the situation involving Ibraheem and Betty. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the elements of negligence.
3	9 - 13	• Good application of legal rules and principles to the situation involving Ibraheem and Betty. • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the elements of negligence.
2	5 - 8	• Satisfactory application of legal rules and principles to the situation involving Ibraheem and Betty. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the elements of negligence.
1	1 - 4	• Basic application of legal rules and principles to the situation involving Ibraheem and Betty. • Basic presentation of a legal argument, using minimal legal terminology relating to the elements of negligence.
	0	Response not creditworthy or not attempted.

5. Analyse and evaluate the extent to which an award of damages in the law of tort adequately compensates a claimant. [18]

Indicative content

NOTE: The content is not prescriptive, and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the extent to which an award of damages in the law of tort adequately compensates a claimant. Candidates will offer an analysis and evaluation of the remedies available, focusing on damages. In order to reach a judgement about these issues, candidates will offer a debate and come to a substantiated judgement regarding the extent to which an award of damages in the law of tort adequately compensates a claimant.

The response might consider issues such as:

- A claimant who successfully proves his case in negligence will be entitled to a remedy. Damages are one form of remedy.
- Damages aim to place the claimant, where possible, in the same position as if the tort had never happened. Not always possible for serious, life changing injuries.
- Damages can be divided into general and special damages:
 - Special damages – These comprise quantifiable financial losses up to the date of trial and are assessed separately from other awards because the exact amount to be claimed is known at the time of the trial. The major types of damages are as follows: -
 - Loss of earnings.
 - Medical Expenses.
 - Expenses to cover special facilities.
 - General damages - This term covers all losses that are not capable of exact quantification, and they are further divided into pecuniary and non-pecuniary damages.
 - Pecuniary damages - The major type of pecuniary damages is future loss of earnings. The courts calculate this amount using the multiplicand (a sum to represent the claimant's annual net lost earnings) and the multiplier (a notional figure that represents a number of years for which the claimant was likely to have worked). These are multiplied together in order to calculate the future losses.
 - Non-pecuniary damages – pain and suffering, loss of amenity, damages for the injury itself.
- Discussion of other remedies where damages will not suffice.
- Mitigation of loss, contributory negligence.
- Reference to the Damages Act 1996 as amended by the Civil Liability Act 2018.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	14 - 18	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the extent to which an award of damages in the law of tort adequately compensates a claimant. • Excellent evaluation of the law surrounding to the extent to which an award of damages in the law of tort adequately compensates a claimant. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
3	9 - 13	• Good analysis of legal rules, principles, concepts and issues relevant to the extent to which an award of damages in the law of tort adequately compensates a claimant. • Good evaluation of the law surrounding the extent to which an award of damages in the law of tort adequately compensates a claimant. • Good use of supporting case law and legal authorities. • Writing demonstrates reasonably accurate grammar, punctuation and spelling.
2	5 - 8	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the extent to which an award of damages in the law of tort adequately compensates a claimant. • Satisfactory evaluation of the law the extent to which an award of damages in the law of tort adequately compensates a claimant. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 4	• Basic analysis of legal rules, principles, concepts and issues relevant to the extent to which an award of damages in the law of tort adequately compensates a claimant. • Basic evaluation of the purpose of the extent to which an award of damages in the law of tort adequately compensates a claimant. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.