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# **GCE AS MARKING SCHEME**

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**SUMMER 2023**

**AS  
LAW – UNIT 2  
2150U20-1**

## **INTRODUCTION**

This marking scheme was used by WJEC for the 2023 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

It is hoped that this information will be of assistance to centres but it is recognised at the same time that, without the benefit of participation in the examiners' conference, teachers may have different views on certain matters of detail or interpretation.

WJEC regrets that it cannot enter into any discussion or correspondence about this marking scheme.

**WJEC GCE AS LAW**  
**UNIT 2 - THE LAW OF TORT**  
**SUMMER 2023 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 difference between general and special damages in 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 terms general and special damages, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying an award of damages. 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 damages.

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.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6-8	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to general and special damages.</li> </ul>
2	3-5	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the legal rules and principles relating to general and special damages.</li> </ul>
1	1-2	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the legal rules and principles relating to general and special damages.</li> </ul>
	0	Response not creditworthy or not attempted.

2. Explain when a duty of care is owed 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 how the law decides what is meant by a duty of care, 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
- Test redefined in *Caparo v Dickman*. Three elements must be proved:
  - 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

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6-8	<ul style="list-style-type: none"><li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the principle of duty of care.</li></ul>
2	3-5	<ul style="list-style-type: none"><li>• Good knowledge and understanding of legal rules and principles relating to the principle of duty of care.</li></ul>
1	1-2	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of legal rules and principles relating to the principle of duty of care.</li></ul>
	0	Response not creditworthy or not attempted.

3. Explain the law on occupiers' liability under the Occupiers Liability Act 1984. [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 law on occupiers' liability under the Occupiers Liability Act 1984, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the law on occupiers' liability under the Occupiers Liability Act 1984. 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 occupiers' liability.

The response might consider issues such as:

- Trespasser — a person who has no permission or authority to be on the occupier's premises or a visitor who has gone beyond their permission to be on the premises.
- Common law – no duty owed - *Addie v Dumbreck* (1929). The House of Lords introduced a duty of 'common humanity' owed by occupiers. *British Rail Board v Herrington* (1972).

#### ***The scope of the duty under OLA 1984.***

- By s 1(1)(a) of the 1984 Act a duty applies in respect of people other than lawful visitors (who are covered by the 1957 Act) for 'injury on the premises by reason of any danger due to the state of the premises or things done or omitted to be done on them'.
- The 1984 Act provides compensation for personal injuries only, NOT property. Trespassers are deserving of less protection than lawful visitors.
- The occupier will only owe a duty under s 1(3) if:
  - a) he is aware of the danger or has reasonable grounds to believe it exists;
  - b) he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger (in either case, whether the other has lawful authority for being in the vicinity or not); and
  - c) the risk is one against which, in all the circumstances of the case, he may be expected to offer the other some protection.
- The duty owed **under s 1(4)** is to 'take such care as is reasonable in the circumstances to see that he [the trespasser] is not injured by reason of the danger'.
- The danger referred to in these sections is the object or part of land on which the trespasser is injured. The standard of care is objective.

#### ***Case examples involving adult trespassers***

- **Obvious dangers - *Ratcliff v McConnell***
- The **time of day and the time of year** when the accident happened will be relevant for whether the occupier owes a duty of care. ***Donoghue v Folkestone Properties*** –
- An occupier does not have to spend lots of money in making premises safe from obvious dangers. ***Tomlinson v Congleton Borough Council***.

- The occupier will not be liable if he had no reason to suspect the presence of a trespasser. **Higgs v Foster**.
- The occupier will not be liable if he was not aware of the danger or had no reason to suspect the danger existed. **Rhind v Astbury Water Park**.

**Cases involving child trespassers**

- The same statutory rules apply to child visitors as for adult visitors. **Keown v Coventry Healthcare NHS Trust**

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>3</b>	<b>6-8</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the law on occupiers' liability under the Occupiers Liability Act 1984.</li> </ul>
<b>2</b>	<b>3-5</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the legal rules and principles relating to the law on occupiers' liability under the Occupiers Liability Act 1984.</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the legal rules and principles relating to the law on occupiers' liability under the Occupiers Liability Act 1984.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.



4. Marco is driving his motorcycle along the high street. Meanwhile, Noa is rushing to work and texting while driving to let his boss know he is going to be late. He pulls out in front of Marco and knocks him off his bike. Marco suffers a serious head injury and is unable to work. The head injury would not have been so serious if he had taken the advice of the paramedics called to the scene and gone to the hospital immediately.

Advise Marco as to whether Noa is liable in the law of negligence for his injuries. [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 Noa is liable for Marco'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 Marco to succeed in an action in negligence against Noa, it must first be established that Noa owed them a duty of care. The basis of whether or not a duty of care is owed is determined on a three-part test as laid out in **Caparo Industries PLC v Dickman**.
- Noa does not owe a duty to the whole world but only to those persons that could be reasonably foreseen to be affected by his actions or omissions as determined in **Donoghue v Stevenson**. It could reasonably be foreseen that Noa's distracted driving could lead to other persons being affected.
- 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 Noa and Marco.
- The courts will also consider if it is reasonable to impose a duty of care on Noa 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.
- Marco has suffered damage as a result of Noa's breach of duty of care. Objective test but consider potential special characteristics of the defendant. Application of relevant breach 'risk' factors.
- Causation – 'but for' test.
- There was no evidence of novus actus interveniens that could negate Noa's liability for the bump and responsibility for the injuries suffered by Marco
- Remoteness of damage – egg-shell skull rule.
- Contributory negligence of Marco not going to the hospital immediately.
- Credit for any other relevant citation.

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
<b>4</b>	<b>14-18</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed application of legal rules and principles to the situation involving Noa and Marco.</li> <li>• Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.</li> </ul>
<b>3</b>	<b>9-13</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules and principles to the situation involving Noa and Marco.</li> <li>• Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.</li> </ul>
<b>2</b>	<b>5-8</b>	<ul style="list-style-type: none"> <li>• Satisfactory application of legal rules and principles to the situation involving the Noa and Marco.</li> <li>• Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.</li> </ul>
<b>1</b>	<b>1-4</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules and principles to the situation involving Noa and Marco.</li> <li>• Basic presentation of a legal argument, using minimal legal terminology relating to the elements of the tort of negligence.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

5. Analyse and evaluate when damages are payable in respect of psychiatric harm. [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 psychiatric harm and primary and secondary victims in tort. Candidates will offer an analysis and evaluation of psychiatric harm and primary and secondary victims. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding when damages are payable in respect of psychiatric harm.

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.
- A primary victim is where the claimant is involved, immediately in time, as a participant, e.g. a person who feared for their own safety, injured rescuers or an involuntary participant. They would be present at scene and usually (but not always) have suffered physical injury. It does not matter if the victim is more susceptible to shock.
- A secondary victim is where the claimant has suffered some type of psychiatric injury. To be classified as a secondary victim there must be a proximity in terms of relationship with a primary victim and the secondary victim must have witnessed the accident with his/her own unaided senses.
- Candidates may evaluate relevant case law such as *Hambrook v Stokes Bros*; *McCloughlin v O'Brien*; *Page v Smith*; *Alcock v Chief Constable of South Yorkshire Police*.

<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>4</b>	<b>14-18</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to psychiatric harm and primary and secondary victims in negligence.</li> <li>• Excellent evaluation of the law surrounding to psychiatric harm and primary and secondary victims in negligence, including a valid and substantiated judgement.</li> <li>• Excellent use of supporting case law and legal authorities.</li> <li>• Writing demonstrates accurate grammar, punctuation and spelling.</li> </ul>
<b>3</b>	<b>9-13</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to psychiatric harm and primary and secondary victims in negligence.</li> <li>• Good evaluation of the law surrounding psychiatric harm and primary and secondary victims in negligence, including a valid judgement.</li> <li>• Good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates reasonably accurate grammar, punctuation and spelling.</li> </ul>
<b>2</b>	<b>4-8</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to psychiatric harm and primary and secondary victims in negligence.</li> <li>• Satisfactory evaluation of the law surrounding psychiatric harm and primary and secondary victims in negligence, including reference to a judgement.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> <li>• Writing demonstrates some errors in grammar, punctuation and spelling.</li> </ul>
<b>1</b>	<b>1-4</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to psychiatric harm and primary and secondary victims in negligence.</li> <li>• Basic evaluation of the purpose of the law surrounding psychiatric harm and primary and secondary victims in negligence.</li> <li>• Basic use of supporting case law and legal authorities.</li> <li>• Writing demonstrates many errors in grammar, punctuation and spelling.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.