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AS

**Law**

LAW02 Unit 2 The Concept of Liability  
Final Mark scheme

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June 2017

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Version/Stage: v1.0

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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 Assessment Writer.

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)

## **LAW02**

### **Assessment Objectives One and Two**

#### **General Marking Guidance**

You should remember that your marking standards should reflect the levels of performance of students, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.

#### **Positive Marking**

You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as students penalise themselves in terms of the time they have spent.

#### **Mark Range**

You should use the whole mark range available in the mark scheme. Where the student's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the student's answer does not deserve credit, then no marks should be given.

#### **Citation of Authority**

Students will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.

**Assessment Objective Three****QUALITY OF WRITTEN COMMUNICATION (QoWC)**

<b>2 marks</b>	The work is characterised by some or all of the following: <ul style="list-style-type: none"><li>• clear expression of ideas</li><li>• a good range of specialist terms</li><li>• few errors in grammar, punctuation and spelling</li><li>• errors do not detract from the clarity of the material.</li></ul>
<b>1 mark</b>	The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>
<b>0 marks</b>	The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>

**The level of understanding in AS Law – LAW02**

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year-old, so the level of understanding required by these criteria will be that of the notional 17-year-old.

<p><b>Sound</b></p>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain material relevant to the Potential Content.</li> <li>• The material will be supported by generally relevant authority and/or examples.</li> <li>• It will generally deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<p><b>Clear</b></p>	<ul style="list-style-type: none"> <li>• The material is broadly accurate and relevant to the Potential Content.</li> <li>• The material will be supported by some use of relevant authority and/or examples.</li> <li>• The material will broadly deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being</p>
<p><b>Some</b></p>	<ul style="list-style-type: none"> <li>• The material shows some accuracy and relevance to the Potential Content.</li> <li>• The material may occasionally be supported by some relevant authority and/or examples.</li> <li>• The material will deal with some of the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions</p>
<p><b>Limited</b></p>	<ul style="list-style-type: none"> <li>• The material is of limited accuracy and relevance to the Potential Content.</li> <li>• The material will be supported by minimal relevant authority and/or examples.</li> <li>• The material will deal superficially with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the concepts of the Potential Content will barely be established, as there will be many errors, omissions and/or confusion which almost completely undermine the essential elements of the potential content.</p>

**0 1** Explain the meaning of the term causation in criminal law.

**[8 marks]**

**Potential Content**

(A) Explanation of the meaning of causation.

- Factual causation–“but for” test and explanation, case used to illustrate, eg **White, Pagett**
- Legal causation - this can include:
  - significant contribution / substantial and operating cause eg **Cheshire, Smith**
  - novus actus interveniens: cases/examples to illustrate, eg medical negligence, eg **Smith, Jordan, Cheshire**
  - **contribution** of others, eg **Benge**
  - **victim’s** own contribution, eg **Roberts, Williams**
  - take your victim as you find him, eg **Blaue, Hayward**

*Note - Max 4* for factual causation only.

*Note – Max 5* for legal causation only.

*Note - Take into account depth and breadth*

<b>Mark Bands</b>	
8 – 7	The student deals with (A) as follows: sound.
6 – 5	The student deals with (A) as follows: clear.
4 – 3	The student deals with (A) as follows: some.
2 – 1	The student demonstrates limited capacity for explanation <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- Explanation of the requirement for both factual and legal causation if there is to be a conviction for the offence
- Explanation of factual causation as the ‘but for’ test demonstrated through a relevant case
- Explanation of legal causation as significant contribution / substantial and operating cause potentially demonstrated through a relevant case
- Explanation of other aspects of legal causation demonstrated through relevant cases as in the potential content

[AO1 = 5; AO2 = 3]

<b>0 2</b>	Outline the meaning of both of the following terms: <ul style="list-style-type: none"> <li>• oblique (indirect) intention</li> <li>• transferred malice</li> </ul>	<b>[8 marks]</b>
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**Potential Content**

(A) Outline of the meaning of oblique (indirect) intention

- oblique intent (where the consequence is virtually certain, and the defendant goes ahead with his actions knowing that is the case + example, eg **Woollin, Matthews and Alleyne**)
- court then has the option to find that the defendant had direct intention and convict accordingly, but are not obliged to do so

(B) Outline of the meaning of transferred malice

- meaning - mens rea directed toward one person is transferred to the victim
- an understanding that the rule operates from person to person or object to object, but not object to person or vice versa
- cases and/or examples in support, eg **Latimer, Mitchell, Pembliton**

<b>Mark Bands</b>	
8 – 7	The student deals with (A) and (B) as follows: 8: one sound, one clear 7: one sound, one some or two clear
6 – 5	The student deals with (A) and (B) as follows: 6: one sound or one clear, one some 5: one clear or two some
4 – 3	The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)
2 – 1	The answers consists of brief, fragmented comments or examples so that no coherent explanation emerges <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include**

Outline of the meaning of oblique (indirect) intention and the meaning of transferred malice:

- definition of this type of mens rea set out, with an example showing how this type of mens rea is illustrated in the facts of the case. Plus **either** showing how the jury has an option whether or not to infer intention **or** dealing with the objective aspect of the test (ie is virtually certain).
- definition of transferred malice with an example showing how this is illustrated in the facts of the case. Reference to the scope of the principle of transferred malice.

[AO1 = 5; AO2 = 3]

<b>0 3</b>	Outline the actus reus and mens rea of the offences of assault and battery <b>and</b> discuss how these offences could be applied to the events between John and Gordon. <b>[10 marks + 2 marks for AO3]</b>
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**Potential Content**

(A) Outline of the offence of assault

- a recognition of the fear/apprehension of unlawful force/personal violence and the lack of the need for any physical injury.
- discussion of intention or recklessness as to creating the fear/apprehension of immediate unlawful force
- reference to cases such as **Savage, Logdon, Smith v Chief Constable of Woking Police Station, Ireland.**

Outline of the offence of battery

- application of the slightest force to another.
- intention or recklessness as to the application of force.
- reference to cases and/or examples in support, eg **Thomas, Venna**

*Note* – **Max Clear** if only one offence dealt with

(B) Application of the offences to the scenario

- a recognition of the fear/apprehension of unlawful force/personal violence and the lack of the need for any physical injury, possible discussion of immediacy; sensitivity of victim; Gordon’s knowledge of John’s propensity to violence – this frightened Gordon.
- discussion of intention or recklessness as to creating the fear/apprehension of immediate unlawful force by shouting and making accusations in the context of the known character of John
- discussion of the slightest force to another – John roughly pushed Gordon
- intention or recklessness as to the application of force – John clearly intended this as he pushed him deliberately

*Note* – **Max Clear** if only Assault dealt with

*Note* – **Max Some** if only Battery dealt with

<b>Mark Bands</b>	
10 – 8	The student deals with (A) and (B) as follows: 10: two sound 9: one sound, one clear 8: one sound, one some or two clear
7 – 5	The student deals with (A) and (B) as follows: Max 7: one sound or one clear, one some Max 5: one clear or two some
4 – 3	The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)

2 – 1	The answers consists of brief, fragmented comments or examples so that no coherent explanation emerges <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

<b>AO3</b>	
<b>2 marks</b>	The work is characterised by some or all of the following: <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul>
<b>1 mark</b>	The work is characterised by: <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>
<b>0 marks</b>	The work is characterised by: <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>

**A sound answer is likely to include**

- an outline of the actus reus and mens rea of the offences of assault and battery with cases to support the outlines of the requirements of the offences
- application to the facts showing the actus reus of both the assault and the battery
- that John showed intention for both the assault and the battery
- conclusion that the offences of assault and battery have been committed.

[AO1 = 3; AO2 = 7; AO3 = 2]

<b>0 4</b>	Discuss whether John is likely to be found guilty of the offence of assault occasioning actual bodily harm on Pia.	<b>[8 marks]</b>
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### Potential Content

(A) Explanation of the law and discussion of the application of the actus reus and mens rea of assault occasioning actual bodily harm under **Section 47 of the Offences Against the Person Act 1861**. This can include:

Explanation of actus reus of offence:

- assault meaning assault or battery
- occasioning meaning causing
- actual bodily harm meaning not trivial or insignificant, eg **Chan-Fook**, or any hurt or injury calculated to interfere with the health or comfort of the victim, eg **Miller**. Such hurt or injury need not be permanent, but must be more than merely trifling, even if transient **T v DPP**

Explanation of mens rea of offence:

- identical to that of assault or battery (depending on the mode by which the offence is committed), eg **Parmenter, Savage, Roberts**. No additional mens rea is needed.

Application

- should be based on the sprained ankle which is more than merely trivial and mens rea based on an intentional battery towards Gordon and an application of the transferred malice rule with respect to Pia's injury. Possible application through recklessness as to consequences of a rough push on Gordon to Pia.

*Note – Max 5 no application*

<b>Mark Bands</b>	
8 – 7	The student deals with (A) as follows: sound.
6 – 5	The student deals with (A) as follows: clear.
4 – 3	The student deals with (A) as follows: some.
2 – 1	The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

### A sound answer is likely to include

- a discussion of the actus reus and mens rea of the offence of assault occasioning actual bodily harm Section 47 of the Offences Against the Person Act 1861 with cases to support the requirements of the offence
- an application to the facts showing that the sprained ankle amounts to abh

- that John committed an intentional battery to Gordon and that the transferred malice rule applies to Pia’s sprained ankle
- conclusion of offence of assault occasioning actual bodily harm having been committed.

[AO1 = 3; AO2 = 5]

<b>0</b>	<b>5</b>	Outline the pre-trial procedure which would be followed if John were charged with assault and/or battery on Gordon (both summary offences).	<b>[5 marks]</b>
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**Potential Content**

(A) Outline and application of procedure.

- First appearance at Magistrates Court
- Duty solicitor or own solicitor or John represents himself
- Plea
- Legal Representation application (if appropriate)
- Possible pre trial review
- Date set for trial or sentencing following guilty plea
- Bail
- Trial (if not guilty plea) and sentencing (if pleads guilty or found guilty) to be at Magistrates Court

<b>Mark Bands</b>	
5	The student deals with (A) as follows: <b>one</b> sound.
4	The student deals with (A) as follows: <b>one</b> clear.
3	The student deals with (A) as follows: <b>one</b> some.
2–1	The student demonstrates limited capacity for explanation and/or application but neither is clear <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- accurate outline of pre-trial procedure for summary offences

[AO1 = 3; AO2 = 2]

<b>0 6</b>	Assume that John has been convicted of the offence of assault on Gordon. Outline the range of sentences that would be available to the court.	<b>[6 marks]</b>
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**Potential Content**

(A) Material outlined and applied can include: (in the context of assault - max six months in prison, max £5 000 fine):

- Custodial (immediate or suspended term of imprisonment)
- Community – eg carry out between 40 and 300 hours (240 usual max in Magistrates Court) unpaid work as 'Community Payback' etc
- Financial – fine and/or compensation order
- Conditional or absolute discharge
- Some application both to the offence of assault and to John

<b>Mark Bands</b>	
6 – 5	The student deals with (A) as follows: sound.
4	The student deals with (A) as follows: clear.
3	The student deals with (A) as follows: some.
2 – 1	The student demonstrates limited capacity for explanation and/or application but neither is clear <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- an outline of the maximum penalty for the offence and an understanding of the implications for John of assault being a summary only offence
- limits on Magistrates Court sentencing powers and tariffs
- Identification of the range of sentences with some explanation/expansion/description of the main types identified in the potential content and some application to John's particular offence

[AO1 = 4; AO2 = 2]

<b>0 7</b>	<p>A claimant has to prove that a duty of care is owed using the three-part test set out in the case of <b>Caparo v Dickman</b>. Two parts of the test are that there is proximity between the claimant and the defendant <b>and</b> that it must be fair, just and reasonable to impose a duty of care.</p> <p>Briefly explain these <b>two</b> parts of the test.</p> <p style="text-align: right;"><b>[7 marks]</b></p>
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**Potential Content**

Brief explanation, with cases, of the two parts of the Caparo three-part test:

- (A) is there proximity by space, time or relationship between claimant and defendant?  
Explained through cases such as **Bourhill v Young, McLoughlin v O'Brien**
- (B) is it fair, just and reasonable to impose a duty of care?  
Reference to arguments such as public policy / 'floodgates' principle  
Explained through cases such as **Hill v Chief Constable of West Yorkshire, Mitchell v Glasgow City Council**.

<b>Mark Bands</b>	
7	The student deals with (A) and (B) as follows: <b>one</b> sound, <b>one</b> clear
6 – 5	The student deals with (A) and (B) as follows: 6: <b>one</b> sound, <b>one</b> some or <b>two</b> clear 5: <b>one</b> sound or <b>one</b> clear, <b>one</b> some
4	The student deals with (A) and (B) as follows: <b>One</b> clear or <b>two</b> some
3	The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)
2 – 1	The answers consists of brief, fragmented comments or examples so that no coherent explanation emerges <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include**

Brief explanation of the two parts of the test together with exemplification by relevant cases

(AO1 = 4; AO2 = 3)

<b>0 8</b>	<p>Breach of duty involves the defendant failing to reach the standard of care of a reasonable man. Risk factors affect whether that standard has been breached. Risk factors include:</p> <ul style="list-style-type: none"> <li>• special characteristics of the claimant</li> <li>• the magnitude (size) of the risk</li> <li>• whether all practical precautions have been taken</li> <li>• the social utility of taking the risk (benefits of taking the risk).</li> </ul> <p>Briefly explain any <b>two</b> of these risk factors.</p> <p style="text-align: right;"><b>[7 marks]</b></p>
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**Potential Content**

(A) Brief explanation with cases of the meaning of any one risk factor and the effect that has on the standard of care, eg

- special characteristics of the claimant – if known to the defendant to be more vulnerable, then higher standard expected – explained through a case such as **Paris v Stepney BC**
- the size of the risk – the reasonable man does not take care against minute risks, but does against big risks – explained through a case such as **Bolton v Stone**
- practical precautions – taking reasonable but not excessive precautions – explained through a case such as **Latimer v AEC**
- the benefits of taking the risk – emergencies and public utility – explained through a case such as **Watt v Herts CC**.

(B) Brief explanation with cases of the meaning of any other risk factor and the effect that has on the standard of care, eg

- special characteristics of the claimant – if known to the defendant to be more vulnerable, then higher standard expected – explained through a case such as **Paris v Stepney BC**
- the size of the risk – the reasonable man does not take care against minute risks, but does against big risks – explained through a case such as **Bolton v Stone**
- practical precautions – taking reasonable but not excessive precautions – explained through a case such as **Latimer v AEC**
- the benefits of taking the risk – emergencies and public utility – explained through a case such as **Watt v Herts CC**.

<b>Mark Bands</b>	
7	The student deals with (A) and (B) as follows: <b>one</b> sound, <b>one</b> clear
6 – 5	The student deals with (A) and (B) as follows: 6: <b>one</b> sound, <b>one</b> some or <b>two</b> clear 5: <b>one</b> sound or <b>one</b> clear, <b>one</b> some
4	The student deals with (A) and (B) as follows: <b>One</b> clear or <b>two</b> some
3	The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)
2 – 1	The answers consists of brief, fragmented comments or examples so that no coherent explanation emerges <b>or</b>

	mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include**

Explanation of the two chosen risk factors together with exemplification by relevant cases

(AO1 = 4; AO2 = 3)

<b>0 9</b>	Briefly explain the rules relating to the principle of res ipsa loquitur and explain how these rules may apply in any claim that Debbie makes against Martin <b>and</b> against Raza. <b>[10 marks + 2 marks for AO3]</b>
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**Potential Content**

A) Brief explanation and application of these rules. This may include:

- recognition that proof of breach of duty normally rests with the claimant, on the balance of probabilities
- recognition that res ipsa loquitur involves an obvious case of negligence
- some development of the res ipsa loquitur rule i.e. that the thing that causes the harm was wholly under the control of the defendant; the accident would not have happened unless someone had been negligent; there is no other explanation of the injury caused to the claimant.
- where res ipsa applies, the burden of proof shifts to the defendant to prove that no breach of duty by the defendant has taken place.
- Reference to cases in support, e.g. **Byrne v Boadle, Pearson v NW Gas Board, Mahon v Osborne, Scott v London and St Katherine's Docks**
- application to Debbie i.e. that normally burden of proof lies on the claimant (Debbie), on the balance of probabilities, but this burden would shift to Martin and Raza if res ipsa loquitur applied;
- reasoned conclusions based on whether the 'standard' rule or the res ipsa loquitur rule applies. Martin can prove that he was not in breach, Raza cannot.

*Note – Max 6 no application*

<b>Mark Bands</b>	
10 – 8	The student deals with (A) as follows: sound.
7 – 5	The student deals with (A) as follows: clear.
4 – 3	The student deals with (A) as follows: some.
2– 1	The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

<b>AO3</b>	
<b>2 marks</b>	The work is characterised by some or all of the following: <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul>
<b>1 mark</b>	The work is characterised by: <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>
<b>0 marks</b>	The work is characterised by: <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>

**A sound answer is likely to include:**

- a brief explanation / application of the burden and standard of proof rules in civil cases
- a brief explanation / application, supported by reference to cases, of the res ipsa loquitur rule .
- reasoned conclusions based on both of the above bullet points

(AO1 = 3; AO2 =7; AO3 = 2)

<b>1</b>	<b>0</b>	Briefly explain the rules on causation <b>and</b> remoteness of damage in negligence. Discuss how these rules would apply to Debbie <b>and</b> to Martin's claims against Raza.	<b>[8 marks]</b>
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### Potential Content

(A) Brief explanation, with cases, of factual causation and remoteness

- brief explanation of factual causation – but for the defendant's breach of duty, the consequence would not have occurred, eg **Barnett v Chelsea & Kensington Hospital Board**
- brief explanation of the meaning of remoteness of damage – reasonable foreseeability test, eg **The Wagon Mound** and possible reference to the effect that the kind of damage/method of damage has on remoteness and the thin skull rule, eg **Doughty v Turner Manufacturing, Hughes v Lord Advocate, Bradford v Robinson Rentals, Smith v Leech Brain**.
- application to Debbie's claim against Raza
- application to Martin's claim against Raza – but for sufficient as there is no issue of remoteness

*Note – Max 5 no application*

<b>Mark Bands</b>	
8–7	The student deals with (A) as follows: sound.
6–5	The student deals with (A) as follows: clear.
4–3	The student deals with (A) as follows: some
2–1	The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

### A sound answer is likely to include:

- an explanation of factual causation as the 'but for' test, exemplified by a relevant case, the facts of which are then used to demonstrate factual causation
- an explanation of remoteness as the 'reasonable foreseeability' test, exemplified by a relevant case(s), the facts of which are then used to demonstrate remoteness
- the answer then applies these tests to each claim and draws sustainable conclusions

(AO1 = 4; AO2 = 4)

<b>1</b>	<b>1</b>	Outline the three-track case management system used in the civil courts and briefly explain which track and which court would be used in any claim that Debbie could make. <span style="float: right;"><b>[5 marks]</b></span>
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**Potential Content**

(A) Outline of tracks (small claims, fast and multi) + financial limits – Civil Procedure Act 1997 (as amended)

- Brief explanation / application with respect to Debbie’s claim – fast track (as personal injuries likely to be well over £1000 but total claim under fast track ceiling)
- County Court.

*Note - Max 3 if no application*

<b>Mark Bands</b>	
5	The student deals with (A) as follows: sound.
4	The student deals with (A) as follows: clear.
3	The student deals with (A) as follows: some.
2–1	The student demonstrates limited capacity for explanation and/or application but neither is clear  or  Mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- an accurate statement of the limits for each of the three tracks (correctly named)
- a brief explanation of why it will be fast track
- a brief explanation as to why it is likely to be the County Court based on total value.

(AO1 = 3; AO2 = 2)

<b>1</b>	<b>2</b>	Assume that Raza was found liable in negligence to Martin and also to Debbie. Explain how the court would calculate an award of damages to each of them.	<b>[8 marks]</b>
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**Potential Content**

(A) Explanation of the aim and calculation of damages

- General and special damages; pecuniary and non-pecuniary
- Heads of damage (damage to property + expenses incurred, loss of future earnings, loss of amenity, pain and suffering, ‘tariff’ award based on the injury itself)
- Mitigation
- Structure of awards (lump sum or structured settlement)
- Possible reference to authority, eg **Jefford v Gee**.

Application to Martin – special damages for repair of car (£600) payable as lump sum

Application to Debbie

- General damages – personal injury + pain and suffering + loss of amenity
- Special damages stated for damage to greenhouse
- Special damage payable as lump sum
- General damages likely to be paid in lump sum as small amount

Note – account should be taken of depth and breadth, ie a strong application can be balanced by a weaker framework explanation or vice versa.

Note - **Max 5** marks if no application to either claimant

<b>Mark Bands</b>	
8–7	The student deals with (A) as follows: sound.
6–5	The student deals with (A) as follows: clear.
4–3	The student deals with (A) as follows: some.
2–1	The student demonstrates limited capacity for explanation or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- An explanation of the structure (heads) of damages focusing on the distinctions between special and general damages. Application to Debbie may allow the structure to emerge.
- The idea of lump sum and structured settlement could be explored in the context of known losses (the car and the greenhouse - special damages) and known larger losses being the consequences of the injuries (general damages + likely to be lump sum only because the damages are relatively modest).

(AO1 = 4; AO2 = 4)

**Section C Introduction to Contract**

**Total for this scenario: 45 marks + 2 marks for AO3**

<b>1</b>	<b>3</b>	Outline the law relating to the ways in which an offer can be accepted.	<b>[7 marks]</b>
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**Potential Content**

(A) Acceptance must be communicated, and in accordance with offer where specified

Outline of acceptance of an offer by conduct

- the doing of a positive act now, eg reward cases, **Carlill v Carbolic Smoke Ball Co**
- not silence – eg **Felthouse v Bindley**

Outline of acceptance of an offer by post

- postal rule applying to letters of acceptance only
- contract complete on posting
- requirements and provisos
- cases such as **Household Fire Insurance Co v Grant; Adams v Lindsell; Byrne v Van Tienhoven.**

Outline of electronic forms of communication

- telex and fax – eg **Entores v Miles Far East Corporation**
- other forms – **Electronic Commerce (EC Directive) Regulations 2002**

<b>Mark Bands</b>	
7–6	The student deals with (A) as follows: sound.
5–4	The student deals with (A) as follows: clear.
3	The student deals with (A) as follows: some.
2–1	The student demonstrates limited capacity for explanation <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- an outline of when there is acceptance of an offer by conduct
- an outline of the postal rule of acceptance
- an outline of the law relating to electronic forms of communication
- each supported by a relevant case or example, the facts of which are used to illustrate the principle.

**(AO1 = 5; AO2 = 2)**

<b>1</b>	<b>4</b>	Briefly explain what is meant by consideration in the law of contract.	<b>[7 marks]</b>
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**Potential Content**

- (A) Brief explanation of consideration
- something of value given by each party to a contract to the other – eg **Currie v Misa, Chapple v Nestle, Thomas v Thomas, White v Bluett**
  - must move from promisee, eg **Tweddle v Atkinson**
  - can be executed or executory
  - must not be past consideration – something already done at time of making contract so does not provide some new act or forbearance – eg **Re McArdle, Lampleigh v Braithwaite**

<b>Mark Bands</b>	
7–6	The student deals with (A) as follows: sound.
5–4	The student deals with (A) as follows: clear.
3	The student deals with (A) as follows: some.
2–1	The student demonstrates limited capacity for explanation <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- a definition of consideration, with cases or examples
- a brief explanation of the key rules of consideration, eg distinction between good consideration and past consideration, with cases or examples.

**(AO1 = 5; AO2 = 2)**

<b>1</b>	<b>5</b>	<p>In relation to contract law, discuss each of the stages in the negotiations between Marnie and Discs. Discuss if and when a contract was formed between them.</p>	<p><b>[10 marks + 2 marks for AO3]</b></p>
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**Potential Content**

(A) Discussion of the stages in the negotiations

- Information on the website is an invitation to treat – no offer
- Filling in the form must be part of the negotiations because of the special label request (accept view that this is all an invitation to treat)
- Phone call about details on special label merely clarifying the terms under which a contract may be formed
- Email from D is an offer. D would expect a response by the same method
- Marnie’s letter is a counter-offer (valid on receipt) because of the change of terms re the price
- D sends letter of acceptance to counter-offer in Marnie’s letter. Post now seems to be normal method of communication so the contract should be complete when posted
- Marnie’s dealings with ZP are irrelevant to the contract with D
- Marnie’s purported revocation of her offer by email (sent and received) on Thursday is too late as her offer has already been accepted by Discs on the Wednesday
- Conclusion – Contract between D and Marnie complete when D posts an acceptance of Marnie’s counter offer.

*Note* – allow credit for other logical sequences where a different view is taken on the effect of a particular communication

<b>Mark Bands</b>	
10–8	The student deals with (A) as follows: sound.
7–5	The student deals with (A) as follows: clear.
4–3	The student deals with (A) as follows: some.
2–1	The student demonstrates limited capacity for explanation <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.
<b>AO3</b>	
<b>2 marks</b>	<p>The work is characterised by some or all of the following:</p> <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul>

<b>1 mark</b>	The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>
<b>0 marks</b>	The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>

**A sound answer is likely to include:**

- a correct discussion of each stage in negotiations stating the legal effect, if any, of each event and/or statements of the parties
- an accurate conclusion, based on that analysis

(AO1 = 1; AO2 = 9 AO3 = 2)

<b>1</b>	<b>6</b>	<p>Explain the differences between actual breach and anticipatory breach of contract. Briefly explain which form of breach occurs in the following:</p> <ul style="list-style-type: none"> <li>• when Marnie sends her email to Discs on Thursday</li> <li>• when Discs attempt to deliver Marnie’s order on Saturday.</li> </ul> <p style="text-align: right;"><b>[8 marks]</b></p>
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**Potential Content**

(A) Explanation and application of actual and anticipatory breach of contract

- Explanation of actual breach and anticipatory breach, showing the distinction between breach and anticipatory breach
- both are forms of breach, but anticipatory breach takes place before the date due for performance of the contract – explained through cases such as **Hochster v De La Tour; Poussard v Spiers, White and Carter Councils v McGregor, SK Shipping (S) Pte Ltd v Petroexport Ltd**
- claimant can start action as soon as anticipatory breach occurs – does not have to wait to see if performance takes place
- claimant is not required to accept anticipatory breach and can continue with performance
- actual breach – the breach is established and a right of action follows.

Application to the scenario:

- Marnie would have made an anticipatory breach by her email on Thursday as she is refusing to carry out the terms of the contract before the date of performance is due
- Discs would make an actual breach of contract because it occurs after the date when performance was due.

Note – **Max 5** no application to scenario

<b>Mark Bands</b>	
8–7	The student deals with (A) as follows: sound.
6–5	The student deals with (A) as follows: clear.
4–3	The student deals with (A) as follows: some.
2–1	The student demonstrates limited capacity for explanation <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- An explanation of the difference between actual and anticipatory breach explained through the cases
- Application to the breaches by Marnie and Discs.

**(AO1 = 5; AO2 = 3)**

<b>1</b>	<b>7</b>	Outline the three-track case management system used in the civil courts and briefly explain which track and which court would be used in any claim that Discs could make against Marnie.	<b>[5 marks]</b>
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**Potential Content**

- (A) Outline of tracks (small claims, fast and multi) + financial limits – Civil Procedure Act 1997 (as amended).
- Brief explanation / application with respect's to Discs's claim – small claims track (as damages likely to be well under small claims track ceiling)
  - County Court (only venue for small claims)

Note - **Max 3** if no application

<b>Mark Bands</b>	
5	The student deals with (A) as follows: sound.
4	The student deals with (A) as follows: clear.
3	The student deals with (A) as follows: some.
2–1	The student demonstrates limited capacity for explanation <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- an accurate statement of the limits for each of the three tracks (correctly named)
- a brief explanation / application of why it will be small claims track
- a brief explanation / application as to why it is almost certain to be the County Court based on total value.

**(AO1 = 3; AO2 = 2)**

<b>1</b>	<b>8</b>	Assume that Marnie was found liable for breach of a contract with Discs. Explain how the court would calculate an award of damages to Discs.	<b>[8 marks]</b>
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**Potential Content**

(A) Explanation of the aim and the way in which the court calculates an award of damages

- the two-stage test in Hadley v Baxendale, Victoria Laundry v Newman, The Heron II
- mitigation of loss – eg selling the discs elsewhere.

Application to Discs’ potential claim

- loss of profit on the 1000 DVDs or possibly full contract price
- Mitigation may be difficult because of the special label. Claim could be for as much as £875 if discs cannot be sold elsewhere, otherwise limited to the expected profit on the deal.

*Note - Max 5* no application to the contract between the Marnie and Discs

<b>Mark Bands</b>	
8–7	The student deals with (A) as follows: sound.
6–5	The student deals with (A) as follows: clear.
4–3	The student deals with (A) as follows: some.
2–1	The student demonstrates limited capacity for explanation <b>or</b> mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

**A sound answer is likely to include:**

- an explanation of the ways in which damages are calculated in contract claims, shown through the leading cases which are explained using their facts
- an explanation of the concept of mitigation of loss
- an application of the principles to the facts of the case
- an accurate conclusion.

(AO1 = 4; AO2 = 4)

**ASSESSMENT GRID 2017**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level Law (LAW02)**

				<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
<b>Section A:</b>						
Question	<b>0</b>	<b>1</b>		5	3	
Question	<b>0</b>	<b>2</b>		5	3	
Question	<b>0</b>	<b>3</b>		3	7	2
Question	<b>0</b>	<b>4</b>		3	5	
Question	<b>0</b>	<b>5</b>		3	2	
Question	<b>0</b>	<b>6</b>		4	2	
Totals Section A				23	22	2
<b>Section B:</b>						
Question	<b>0</b>	<b>7</b>		4	3	
Question	<b>0</b>	<b>8</b>		4	3	
Question	<b>0</b>	<b>9</b>		2	8	2
Question	<b>1</b>	<b>0</b>		5	3	
Question	<b>1</b>	<b>1</b>		3	2	
Question	<b>1</b>	<b>2</b>		4	4	
Totals Section B				22	23	2
<b>Section C:</b>						
Question	<b>1</b>	<b>3</b>		4	3	
Question	<b>1</b>	<b>4</b>		4	3	
Question	<b>1</b>	<b>5</b>		1	9	2
Question	<b>1</b>	<b>6</b>		6	2	
Question	<b>1</b>	<b>7</b>		3	2	
Question	<b>1</b>	<b>8</b>		4	4	
Totals Section C				22	23	2