



**General Certificate of Secondary Education
June 2013**

Law 41602

Law in Action

Unit 2

Final

Mark Scheme

Mark schemes are prepared by the Principal Examiner and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation meeting attended by all senior examiners 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 examiner understands and applies it in the same correct way. As preparation for the standardisation process each examiner analyses a number of candidates' scripts: alternative answers not already covered by the mark scheme are discussed and legislated for. If, after this process, examiners encounter unusual answers which have not been discussed at the meeting they are required to refer these to the Principal 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.

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GCSE Law

Suggested answers are neither prescriptive nor exhaustive.

Within the exam paper as a whole, questions are set involving a varying number of marks. In general, marks can vary between a minimum of 3 marks up to a maximum of 15 marks. All of these questions, irrespective of the number of marks, are to be marked according to the following banded types of response. Marks are to be awarded for identifying the legal issue(s) involved, together with the quality of the explanation, showing the application of knowledge and understanding of the legal issues involved and/or the level of critical awareness displayed. All answers must be judged according to the standard one would expect from a notional 16-year-old, under examination conditions.

Banded Mark Scheme

Band 0	Inappropriate answer showing no understanding	The number of marks will reflect the marks appropriate to the individual question
Band 1	Basic awareness	
Band 2	Answer based on limited understanding	
Band 3	Appropriate answer showing sound understanding	

As an exception to the above banded mark scheme, some questions will be marked on the basis of a mark for a particular point which the Mark Scheme will prescribe. Such questions will clearly be identified in the detailed Mark Scheme below.

Whilst it is not expected that alternative answers to questions are likely to attract credit, candidates may, on occasions, interpret questions in an unexpected way and produce answers which, though not expected, should still be credited. Answers such as these will be discussed at Standardisation meetings in the period following each new examination and credited where appropriate.

Question 1

- 1 (a) The golf club committee is considering suspending Calum from membership for his 'negligent' behaviour on the golf course.

Discuss whether, in law, Calum could be liable to Bert in the tort of negligence.

(8 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-3 marks
Band 2	Answer based on limited understanding	4-6 marks
Band 3	Appropriate answer showing sound understanding	7-8 marks

Potential Content

Duty based on neighbour test + reasonable foreseeability
Possible reference to incremental (**Caparo**) tests

Breach based on reasonable man test
Possible reference to risk factors

Damage based on factual causation + foreseeability

Credit any other sensible development

Authority based on probably **Donoghue v Stevenson/Caparo v Dickman** – credit other relevant cases/examples

Application of the relevant law + conclusion

Possible reference to inevitable accident/consent

Note – notional 3:3:3 marks per proof requirement for negligence – check Band at end

Note – only 1 aspect dealt with – Max 3 for a good answer including application

Note – only 2 aspects dealt with – Max 6 for two good answers including application

[AO1: 3, AO2: 5, AO3: 0]

1 (b) Discuss AGC's liability for public nuisance towards:

- (i) the residents of the housing estate
- (ii) Denis.

(8 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based upon limited understanding	3-5 marks
Band 3	Appropriate answer showing sound understanding	6-8 marks

Potential Content

(i) Public nuisance definition/explanation

Case, eg **A/G v PYA Quarries**

Application to dangerous golf balls landing in residents gardens + conclusion

Recognition that public nuisance can be actioned by the residents/A/G on their behalf

Remedy – most likely an injunction

(ii) Application to Denis (particular damage suffered) + conclusion

Case, eg **Castle v St Augustine's Links**

Remedy – most likely a claim for damages

Note – in (i) and (ii) credit possible reference to vicarious liability

Note – private nuisance is not a creditworthy answer

Note – (i) or (ii) only, max 5 marks for a good answer

[AO1: 2, AO2: 6, AO3: 0]

1 (c) (i) Discuss AGC's liability to Denis for the tort of trespass.

(6 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

- Recognition of trespass to land based on placing objects on the land of another
Application to golf balls + conclusion
Possible case/example in support
- Recognition of trespass to goods based on damaging goods belonging to another
application to smashed pane of glass (repairable, therefore not conversion) + conclusion
- Reference to Torts (interference with Goods Act) 1977 and/or case/example, eg **Kirk v Gregory**

Note – only one aspect dealt with – max 4 marks

Note – credit possible reference to vicarious liability

[AO1: 1, AO2: 5, AO3: 0]

1 (c) (ii) Discuss AGC's liability to Erica for the tort of trespass.	(4 marks)
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Recognition of trespass to land based on unlawful entry
Case/example, eg Harrison v Duke of Rutland
Application to golfers entering E's garden + conclusion

Note – credit possible reference to vicarious liability

[AO1: 1, AO2: 3, AO3:0]

1 (d) Consider AGC's liability to Farouk for the noise coming from the bar and car park at weekends.	(6 marks)
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Recognition of private nuisance **(1 mark)**

Definition/explanation

Factors, eg locality, continuity, possible sensitivity, possible moving to nuisance, possible malice

Case(s), eg **Christie v Davey**, **Bliss v Hall**

Application to incidents from problem, especially the noise from the bar, car doors etc

Conclusion

Remedies (injunction, damages)

Note – credit possible reference to vicarious liability

[AO1: 1, AO2: 5, AO3: 0]

1 (e) (i) Briefly explain whether the club could be held responsible for Gus's injuries	(3 marks)
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 marks
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

Potential Content

Recognition of occupiers liability/position of child trespassers – **1 mark**

Occupiers Liability Act 1984 – duty of 'common humanity'

Special rules relating to children, eg allurement, prescriptive rights

Possible case/example

Possible reference to G's illegal action and/or consent

[AO1: 2, AO2: 1, AO3: 0]

Note – approach based on negligence – max 1 mark

Note – where appropriate, credit can be carried forward into the mark for question 1(e)(ii) and vice versa

1 (e) (ii) Comment on whether the club **should** be held responsible for Gus's injuries.
(Answer in continuous prose.) **(5 marks)**

Note: Quality of Written Communication is to be assessed in this part-question. Examiners should place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0 marks
Band 1	Basic awareness. The student spells, punctuates and use the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	1-2 marks
Band 2	Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	3-4 marks
Band 3	Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5 marks

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 3 marks), then assess the QWC on the following basis:

- **Average performance for a notional 16-year-old under exam conditions – 1 mark**
- **Better than average – 2 marks**
- **Significantly below average – 0 marks**

Add the two marks (for law and QWC) together. Then place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Potential Content

For – eg;

- children are less careful than adults
- warnings may not be understood
- regular trespasses imply permission
- allurement
- Possible case/example in support, eg **Glasgow Corp v Taylor**

Against – eg:

- child was trespassing to steal (does not deserve a remedy)
- child should have been better controlled by his parents
- club may not know that the child was regularly trespassing/difficult to enforce etc.

Note – credit any other reasonably sensible points

Note – unbalanced answer, max 4 marks for a good response

Note – where appropriate, credit can be carried back into the mark for question 1(e)(i), and vice versa

[AO1: 0, AO2: 0, AO5: 5]

- 1 (f)** Comment on how effective the 'traditional' tort remedies of damages and injunctions may be, in dealing with these problems. *(5 marks)*

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5 marks

Potential Content

Recognition of the limitations of the traditional remedies, i.e. damages only compensates prior fault + cannot prevent repetition; injunctions try to protect against future transgressions but do not compensate for losses already incurred.

Combination of these remedies may be the best tort-based solution.

Credit where students have re-applied the value of these remedies to the problem.

Note – credit possible discussion of the difficulties involved in civil action (time, cost, etc)

Note – credit possible recognition of reasonable alternatives:

- *eg Police powers to abate a nuisance*
- *Local Council/Environmental Health*
- *Criminal prosecution for nuisance/harassment etc.*
- *Anti-Social Behaviour Orders*

Note – credit any other sensible points raised

[AO1: 0, AO2: 0, AO3:5]

Question 2

- 2 (a)** Ignoring any possible defences, consider Hal's criminal liability as he enters John and Kay's house. (4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

S.9(1)(a) burglary: entry as a trespasser with intent to steal (conditional).

Possible reference to S.10 aggravated burglary – any burglary + weapon of offence (the iron bar)

Application + conclusion (looks like a straightforward charge(s))

Authority in support, eg **Collins, Walkington** [AO1: 2, AO2: 2, AO3:0]

Note – max marks available for a good answer on the S.9 (1) (a) or S. 10 offences.

- 2 (b)** The Crown Prosecution Service is considering charging Hal with manslaughter in respect of John's death.
- (i)** Discuss **which** type of involuntary manslaughter would be the most appropriate **and** what the prosecution will need to prove to secure a conviction. (6 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 mark
Band 2	Answer based upon limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Recognition of constructive (unlawful act) manslaughter based on an assault by Hal on John.

Elements of a constructive manslaughter, ie unlawful act + *mens rea*, dangerous, death linked to act

Case(s)/example(s) in support, eg **Mitchell, Newbury & Jones**

Application + conclusion (constructive manslaughter).

Note – on the facts, gross negligence manslaughter cannot be creditworthy other than at a basic level, eg a killing without the intent required for murder.

Note – students must not be credited for detailed discussion of the causation issue as that is credited in the next question.

However, where appropriate credit can be carried from Q2 (b) (i) to Q 2 (b) (ii) and vice versa.
[AO1: 1, AO2: 5, AO3:0]

2 (b) (ii) Discuss whether Hal has **caused** John's death.

(4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Recognition of the causation issue, (**1 mark**, irrespective of how applied)

Application of the 'but for' and 'significant and operative' cause tests.

Recognition that Hal must take his victim as he find him (thin skull rule).

Possible case/example, eg **R v Hayward**

Conclusion

Note – provided a student is not being credited twice, credit for relevant material can be carried back into Q 2 (b) (i). [AO1: 2, AO2: 2, AO3:0]

2 (c) (i) Ignoring any possible defences and causation:

- outline the elements of the crime of murder
- briefly discuss how those elements may apply to Hal, if he is charged with Kay's murder. (5 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based upon limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5 marks

Potential Content

- **Definition** of murder (*actus reus* and *mens rea*) (**worth up to 2 marks**)
- Application of *actus reus* elements (no issue)
Application of *mens rea*
Case/example in support, eg **Woollin**
Application and conclusion (clear basis to charge)

Note – do not credit any defence issues including, possible break in the chain of causation or mental health issue

[AO1: 1, AO2: 4, AO3:0]

2 (c) Assuming that Hal is charged with the murder of Kay, consider the legal effect at his trial of the following:

2 (c) (ii) Kay's allergic reaction in the operating theatre; (4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Recognition of causation issue – **1 mark** (irrespective of how applied)

Significant + operating cause/intervening act/thin skull rule

Case(s), eg **Smith, Jordan, Hayward, Blaue**

Application + conclusion (either way depending on whether the allergy was known by the hospital)

Note – max 3 marks for a conclusion which is not properly reasoned.

Note – answers focussed only on the gross negligence of the hospital – max 1 mark

[AO1: 1, AO2: 3, AO3:0]

2 (c) (iii) Hal's personality disorder. (4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Recognition of diminished responsibility – **1 mark** (irrespective of how applied).

Definition (abnormality of mental functioning, explanation, Exercise self-control).

Relevant authority, eg *Coroners and Justice Act 2009*, case/example, eg **Byrne**.

Application and conclusion (looks like an arguable 'defence').

Note – insanity – max 2 marks

[AO1: 1, AO2: 3, AO3:0]

2 (d) Briefly discuss Hal's liability for taking the gold watch.

(4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Recognition of theft/burglary (s.9(1)(b)/aggravated burglary) (*full credit for any of these offences*)

Definition of *actus reus/mens rea* of chosen offence

Application + conclusion (likely conviction if charged with any of these offences)

Authority in support, eg Theft Act, possible case/example

Note – robbery - max 2 marks (force not used in order to steal)

[AO1: 1, AO2: 3, AO3:0]

2 (e) (i) Hal has been advised that he may be able to plead the defence of duress in relation to the incidents in the house.

Briefly discuss why this defence may apply **and** whether the defence is likely to succeed.

(4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Recognition of threat of serious injury to closely connected person

Unavoidable dilemma? (time lag)

Voluntary association

Application + conclusion, ie pleadable for property offences + manslaughter. Not pleadable for murder

Possible case/example, eg **Wright, Howe, Ali**

[AO1: 1, AO2: 3, AO3:0]

<p>2 (e) (ii) Comment on whether duress ought to be a defence to murder. (Answer in continuous prose.)</p>	<p><i>(5 marks)</i></p>
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Note: Quality of Written Communication is to be assessed in this part-question. Examiners should place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0 marks
Band 1	Basic awareness. The student spells, punctuates and use the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	1-2 marks
Band 2	Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	3-4 marks
Band 3	Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5 marks

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 3 marks), then assess the QWC on the following basis:

- **Average performance for a notional 16-year-old under exam conditions – 1 mark**
- **Better than average – 2 marks**
- **Significantly below average – 0 marks**

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

Potential Content

- Possible reference to case/example, eg **Howe**
- Recognition that the restriction ignores the real sense of terror that an individual may feel/makes no allowance for human frailty/survival instinct.
- Recognition that deliberately killing someone to save against possible death/serious injury is morally unacceptable?
- People should be encouraged to stand up to the threat
- Reasoned conclusion (required for max marks)

[AO1: 0, AO2: 0, AO3: 5]

Note – credit any other sensible points made

2 (f) Comment on whether the law relating to murder is in need of reform.	<i>(5 marks)</i>
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5 marks

Potential Content

- Comments relating to the definition of murder, eg intention to cause gbh treated the same as intention to kill.
- Comments relating to the special defences, diminished responsibility + loss of self-control.
- Comments relating to the mandatory nature of the sentence, ie life only/not all murders are as heinous, eg euthanasia.
- Comments relating to the death penalty (life for a life)
- Conclusion (either way).

Note – credit any sensible points raised

Note – students may take a broad or narrow perspective. Either approach is equally creditworthy.
 [AO1: 0, AO2: 0, AO3: 5]

3(a) (i) As Nancy knows that you are studying law, she has approached you to ask for legal advice about marrying her boyfriend.	
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Advise Nancy as to the relevant law on marriage at the age of 17.

(5 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based upon limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5 marks

Potential Content

16/17 year-olds (1 mark)

Parental permission **(1 mark)**

Family Proceedings Court (Magistrates) permission **(1 mark)**

Marriage valid in the absence of permission, but parties liable to prosecution for fraud

Possible reference to marriage in a foreign jurisdiction, eg Scotland

Possible reference to *Matrimonial Causes Act 1973*

Note – no credit for legal position on marriage for those under 16

[AO1: 2, AO2: 3, AO3: 0]

3 (a) (ii) Briefly comment on whether the law is satisfactory with regard to the following:

- the legal restrictions on young people who wish to marry
- the legal requirement that the parties are a man and a woman. (5 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 mark
Band 2	Answer based upon limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5 marks

Potential Content

Comments may include:

- Ban on marriage under 16 appropriate to protect young people, especially girls from exploitation/early pregnancy
- Permission rules (16/17 year-olds) probably sensible as young people mature at different ages + parents in the best position to judge
- Marriage without permission being valid looks odd, why not make the marriage void?
- Fraud prosecutions in practice very rare
- Easy way round the law by going to Scotland, etc.
- Understanding that marriage has to be between a (birth) man and woman
- Recognition that civil partnerships exist under English law but are not the same as a marriage
- Comment may focus on equality issues or recognise that relaxing the law of marriage may cause difficulties, especially for the Church.
- Up-to-date students may well be aware of the current debate in the coalition government over the issue.

Note – credit any other sensible comments in a legal context

Note – only one aspect addressed – max 3 marks

Note – better answers are likely to show some balance, but this is not a requirement for max provided both aspects are addressed.

Note – well reasoned moral/religious comments are creditworthy

[AO1: 0, AO2: 0, AO3: 5]

- 3 (b)** Molly has approached you for advice about the relevant law and process on divorce.
- (i)** Explain the meaning of irretrievable breakdown **and** how it is proved. (6 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 mark
Band 2	Answer based upon limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Irretrievable breakdown – definition (1 mark)

Reference to proof requirements, ie adultery + petitioner finds it intolerable to live with respondent, unreasonable behaviour (case or example), 2 year desertion, 2 year separation with consent, 5 year separation.

Matrimonial Causes Act 1973

Note – minimum for sound understanding = explanation of irretrievable breakdown + at least three of the proof requirements.

Note – application not required and not creditworthy.

[AO1: 1, AO2: 5, AO3:0]

- 3 (b) (ii)** Explain the meaning of *decree nisi* **and** *decree absolute*. (4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Decree nisi and *decree absolute* – recognition of stages in divorce (1 mark)

Translations + meaning/effect

6 week rule + purpose

Possible reference to the *Matrimonial Causes Act 1973*

[AO1: 1, AO2: 3, AO3: 0]

3 (c) Based on the facts set out in the Problem, discuss whether **and** on what basis:

3 (c) (i) Molly can apply for a divorce; (5 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 mark
Band 2	Answer based upon limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5 marks

Potential Content

Molly and Lee have been married for over a year
 Recognition that with Molly's petition, the marriage would have to have broken down irretrievably
 Recognition of the relevant proofs
 Adultery by Lee + that Molly would now find it intolerable to live with Lee.
 Unreasonable behaviour by Lee
 Application – adultery was 5 years ago + apparently 'forgiven'. Difficult to use now as a basis for proving irretrievable breakdown. Unreasonable behaviour based on refusing to financially support the family. Current issue + stronger basis of application
 Possible desertion by Lee?
Matrimonial Causes Act 1973

Note – only adultery or unreasonable behaviour addressed – max 4 marks for an excellent answer.
 [AO1: 0, AO2: 5, AO3: 0]

3 (c) (ii) Lee can apply for a divorce. (4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Lee and Molly have been married for over a year.
 Recognition that with Lee's petition, the marriage would have to have broken down irretrievably
 Recognition of the relevant proof
 Adultery by Molly + that Lee would now find it intolerable to live with Molly.
 Application – adultery is current + long-standing relationship + Lee left the matrimonial home immediately. Looks like a sound basis for proving irretrievable breakdown
 Lee can prove irretrievable breakdown based on two years separation (if Molly consents) or five years (if she does not).
Matrimonial Causes Act 1973

[AO1: 0, AO2: 4, AO3: 0]

3 (d) (i) Lee has approached you, worried about the issue of maintenance. Outline what is meant by maintenance. (3 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

Potential Content

Maintenance – definition (**1 mark**) + types of settlement (capital payment, transfer of interest in property, on-going financial payments)

Possible reference to Matrimonial and Family Proceedings Act 1984 criteria, eg children’s needs first priority, clean break principle, financial resources of the parties (current + future), financial obligations of the parties etc.

Possible reference to child maintenance (**1 mark**) (not required for a sound answer)

Note – application is not required + is not creditworthy

[AO1: 1, AO2: 2, AO3:0]

3 (d) (ii) Assuming that Lee and Molly do proceed with a divorce, outline what factors the court may consider before maintenance is decided. (3 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

Potential Content

Children’s needs paramount, especially youngest child (Paul); therefore more difficult to settle on an immediate clean break; mismatch in current financial resources; on-going commitment with mortgage; potential future provider for Molly.

Possible reference to transfer of matrimonial home to Molly from Lee (assuming Molly gets ‘custody’ of Paul).

Possible reference to on-going maintenance payments based on the one third rule.

Note – max marks can be achieved for application of the criteria to the problem even if the suggested settlement is impractical.

Note – no application – max 1

[AO1: 0, AO2: 3, AO3: 0]

3 (e) (i) Identify the **two** courts that can deal with divorce cases.

(2 marks)

Potential Content

- County Court – **1 mark**
- Family Division or High Court – **1 mark**

If in doubt, escalate answer to Principal Examiner

[AO1: 2, AO2: 0, AO3:0]

3 (e) (ii) Outline what is meant by mediation.

(3 marks)

<i>Band 0</i>	<i>Inappropriate answer showing no understanding</i>	<i>0 marks</i>
<i>Band 1</i>	<i>Basic awareness</i>	<i>1 mark</i>
<i>Band 2</i>	<i>Answer based upon limited understanding</i>	<i>2 marks</i>
<i>Band 3</i>	<i>Appropriate answer showing sound understanding</i>	<i>3 marks</i>

Potential Content

Out-of-court attempt to resolve issues between the parties

Used to try and save the marriage or resolve key issues on divorce (children + finances)

Court appointed or via Relate

Mediator attempts to get the parties to agree their own solution

[AO1: 3, AO2: 0, AO3: 0]

3 (e) (iii) Comment on the advantages of mediation compared with the disadvantages of a contested divorce case in court. (Answer in continuous prose)

(5 marks)

Note: Quality of Written Communication is to be assessed in this part-question.

Examiners should place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0 marks
Band 1	Basic awareness. The student spells, punctuates and use the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	1-2 mark
Band 2	Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	3-4 marks
Band 3	Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5 marks

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 3 marks), then assess the QWC on the following basis:

- **Average performance for a notional 16-year-old under exam conditions – 1 mark**
- **Better than average – 2 marks**
- **Significantly below average – 0 marks**

Add the two marks (for law and QWC) together. Then place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Potential Content

Mediation – eg

- *cheaper + quicker than a contested divorce hearing*
- *saves parties and/or matrimonial Legal Representation costs*
- *better preserves the future relationship of the parties*
- *better for any children*
- *agreed solution more likely to work than a court imposed settlement etc.*

Court – eg

- *significantly more expensive (personal or Legal Representation costs)*
- *takes longer to reach a settlement*
- *less likely to be a workable settlement*
- *acrimony less beneficial to parties + children etc.*

Note – credit any other sensible comments in a legal context

Note – only one aspect addressed – max 4 marks for a v good response (2 law, 2 QWC)

[AO1: 0, AO2: 0, AO3: 5]

Question 4

4 (a) (i) Outline how you would reply to Thalia's email. Include in your answer an indication of the main terms and conditions that you would need to include in a written statement for new employees. (4 marks)

<i>Band 0</i>	<i>Inappropriate answer showing no understanding</i>	<i>0 marks</i>
<i>Band 1</i>	<i>Basic awareness</i>	<i>1 mark</i>
<i>Band 2</i>	<i>Answer based on limited understanding</i>	<i>2-3 marks</i>
<i>Band 3</i>	<i>Appropriate answer showing sound understanding</i>	<i>4 marks</i>

Potential Content

- Possible reference to Employment Rights Act 1996 – requirement to provide a written statement/2 month rule
- Main terms required are – names of parties, job title/description, starting date, pay rate/when paid, hours of work, holiday entitlement, job site, sick pay arrangements, notice periods, disciplinary and grievance procedures, collective agreements, pension rights, termination date (if applicable).

Note – minimum 4 terms outlined for sound understanding

Note – minimum 3 terms outlined for sound understanding if the Act is correctly identified.

[AO1:1, AO2:3, AO3:0]

4 (a) (ii) Outline the key duties of employers, such as SF Ltd, **and** its employees in the workplace. (4 marks)

<i>Band 0</i>	<i>Inappropriate answer showing no understanding</i>	<i>0 marks</i>
<i>Band 1</i>	<i>Basic awareness</i>	<i>1 mark</i>
<i>Band 2</i>	<i>Answer based on limited understanding</i>	<i>2-3 marks</i>
<i>Band 3</i>	<i>Appropriate answer showing sound understanding</i>	<i>4 marks</i>

Potential Content

Employer – pay wages as agreed, fair reference, indemnify against losses, safe system of work.

Employee – reasonable care and skill, obey reasonable instructions, loyal and faithful, comply with safety legislation.

Note – minimum 2 duties on both sides for sound understanding

Note – only one aspect addressed – max 3 marks for a good answer

[AO1:1, AO2:3, AO3:0]

4 (b) (i) In the context of vicarious liability, briefly explain the following terms for your manager:

- course of employment
- employees and independent contractors.

(5 marks)

<i>Band 0</i>	<i>Inappropriate answer showing no understanding</i>	<i>0 marks</i>
<i>Band 1</i>	<i>Basic awareness</i>	<i>1-2 marks</i>
<i>Band 2</i>	<i>Answer based on limited understanding</i>	<i>3-4 marks</i>
<i>Band 3</i>	<i>Appropriate answer showing sound understanding</i>	<i>5 marks</i>

Potential Content

Course of employment – doing the job employed to do, irrelevance of instructions, possible reference to ‘frolic of his own’, implications re liability of employer.

Case/example, eg ***Limpus v LGO, Beard v LGO***

Employees/independent contractors – control test (what to do/how to do it), implications re liability of employer, possible reference to exceptions for independent contractors.

Note – only one aspect addressed - max 3 marks

[AO1:4, AO2:1, AO3:0]

4 (b) (ii) Discuss whether the company is likely to be found liable for the actions of Arun.

(4 marks)

<i>Band 0</i>	<i>Inappropriate answer showing no understanding</i>	<i>0 marks</i>
<i>Band 1</i>	<i>Basic awareness</i>	<i>1 mark</i>
<i>Band 2</i>	<i>Answer based on limited understanding</i>	<i>2-3 marks</i>
<i>Band 3</i>	<i>Appropriate answer showing sound understanding</i>	<i>4 marks</i>

Potential Content

Recognition of vicarious liability (1 mark)

Requirements of employee/acting in the course of his employment

Application

*Authority, eg ***Limpus v LGO****

Conclusion – highly likely that SF Ltd. will be liable for Arun’s actions

[AO1:0, AO2:4, AO3:0]

4 (b) (iii) Discuss whether the company is likely to be found liable for the actions of Bishan. (4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Recognition of vicarious liability (1 mark)

Requirements of employee/acting in the course of his employment

Application – instructions irrelevant, but Bishan clearly not acting within the course of his employment/on a frolic of his own

Authority, eg **Beard v LGO**

Conclusion – highly likely that SF Ltd. will not be liable for Bishan's actions

[AO1:0, AO2:4, AO3:0]

4 (b) (iv) Comment on the advantages **and** disadvantages of vicarious liability. (5 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

Advantages

- employers profit, should be employers loss
- employee may be a man of straw
- insurance position etc.

Disadvantages

- employer may have specifically prohibited activity but irrelevant if employee is doing his job
- potential for undeserved loss to company/shareholders etc.

Note – credit any other sensible points raised

Note – only one aspect dealt with – max 3 marks

[AO1:0, AO2:0, AO3:5]

- 4 (c)** You decide to produce a leaflet to raise awareness of health and safety in the workplace, using Carmen's letter about the safety guard as an example.
- 4 (c) (i)** Outline the key principles of the Health and Safety at Work Act 1974 that you would need to include in the leaflet. *(3 marks)*

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 marks
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

*Potential Content**Three key principles:*

- employer's duty to its workforce
- employer's duty to the general public
- employees' duty to fellow employees

Note – Any two properly outlined can achieve sound understanding

[AO1:1, AO2:2, AO3:0]

- 4 (c) (ii)** Consider the legal implications for SF Ltd if a machine was operating with a faulty safety guard. *(4 marks)*

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Looks like a clear breach of HSWA

Role/powers of inspectorate (enter premises, investigate, prohibition notice, improvement notice, prosecution)

Potential for unlimited fines in the Crown Court

Possible case/example, eg ***Dexter v Tenby Electrical***

[AO1:0, AO2:4, AO3:0]

4 (d) (i) Discuss the legal implications for the company of Carmen's second letter regarding her application for promotion. (4 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4 marks

Potential Content

Recognition of potential for sex discrimination (1 mark)

Recognition of potential for discrimination on the grounds of race (1 mark)

Relevant legislation

Application/conclusion

Possible case/example, eg **Garland v BR, Johnson v Timber Tailors**

Possible reference to role of Employment Tribunal

Note – students who address both types of discrimination will inevitably do so in less depth. Max marks can be obtained with discussion of either or both forms of discrimination

[AO1:0, AO2:4, AO3:0]

4 (d) (ii) Other than protection from discrimination, identify **three** other rights contained within the Human Rights Act 1998. (3 marks)

Potential Content

eg

- personal liberty
- freedom of communication
- the right to a fair trial.

1 mark each

Note – credit any other rights contained within the HRA

[AO1:3, AO2:0, AO3:0]

4 (d) (iii) Comment on the advantages **and** disadvantages of the Human Rights Act.
(Answer in continuous prose) **(5 marks)**

Note: Quality of Written Communication is to be assessed in this part-question.

Examiners should place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0 marks
Band 1	Basic awareness. The student spells, punctuates and use the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	1-2 marks
Band 2	Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	3-4 marks
Band 3	Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5 marks

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 3 marks), then assess the QWC on the following basis:

- **Average performance for a notional 16-year-old under exam conditions – 1 mark**
- **Better than average – 2 marks**
- **Significantly below average – 0 marks**

Add the two marks (for law and QWC) together. Then place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Potential Content

Advantages – eg

- *clear set of rights set in statute for the first time in the UK*
- *applies to all public bodies and Parliament itself*
- *clear protection against infringement of those rights*
- *wide range covered by the legislation*
- *applies to all English courts*
- *quicker + cheaper than previous position (enforcement via the ECofHR in Strasbourg etc.).*

Disadvantages – eg

- *all-encompassing nature of Act + application*
- *some 'odd' use of the legislation to prevent 'abuse', eg known terrorist able to avoid deportation*
- *public perception that the Act is another example of European influence on English law*
- *conflict between Articles, eg Articles 8 and 10 etc.*

Note – credit any other sensible comments

Note – only one aspect addressed – max 4 marks for a v good response (2 law, 2 QWC)

[AO1: 0, AO2: 0, AO3: 5]

**ASSESSMENT GRID
PAPER 2**

	Maximum Mark	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3
Question 1	45	a) 3 b) 2 c) 2 d) 1 e) 2 f) 0	5 6 8 5 1 0	0 0 0 0 5 5
Question 2	45	a) 2 b) 3 c) 3 d) 1 e) 1 f) 0	2 7 10 3 3 0	0 0 0 0 5 5
Question 3	45	a) 2 b) 2 c) 0 d) 1 e) 5	3 8 9 5 0	5 0 0 0 5
Question 4	45	a) 2 b) 4 c) 1 d) 3	6 9 6 4	0 5 0 5
SUB-TOTAL	90	20	50	20

ASSESSMENT GRID OVERALL (Both Papers)

<u>AO1</u>	Target	30-40%	Achieved	37.2%
<u>AO2</u>	Target	20-30%	Achieved	27.8%
<u>AO3</u>	Target	35-40%	Achieved	35.0%

Assessment objective coverage identical to Specimen Papers, taking into account also 41601