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**A-level**  
**LAW**  
**7162/2**

Paper 2

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**Mark scheme**

June 2024

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Version: 1.0 Final



2 4 6 A 7 1 6 2 / 2 / M S

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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

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

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## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Which of the following would **not** have to be proved when claiming under the rule in Rylands v Fletcher?

[1 mark]

**Marks for this question: AO1 = 1**

**B** That the defendant's actions were reckless.

**02** Which of the following is **not** a remedy available to a claimant in the tort of private nuisance?

[1 mark]

**Marks for this question: AO1 = 1**

**A** A fine

**03** In relation to a mediation hearing, which of the following statements is **false**?

[1 mark]

**Marks for this question: AO1 = 1**

**B** The mediator can make a decision which is legally binding.

**04** Which of the following is **not** a feature of a case brought in the civil courts?

[1 mark]

**Marks for this question: AO1 = 1**

**D** The standard of proof is beyond reasonable doubt.

**05** Which of the following **best** describes repeal as a method of law reform?

[1 mark]

**Marks for this question: AO1 = 1**

**B** Outdated Acts of Parliament are removed.

**06** Explain **three** of the stages in the House of Commons during the process of creating an Act of Parliament.

**[5 marks]**

**Marks for this question: AO1 = 5**

<b>Levels of response mark scheme 5 marks – AO1 only</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

**Indicative content**

Any three stages from:

- first reading involves the formal introduction of the Bill in Parliament without a debate
- second reading involves a debate in the whole House and a likely vote
- committee stage involves a detailed examination of the Bill (line by line) in committee of between 16–50 MPs/specialists in the field
- report stage requires amendments made at committee stage to be reported back and voted on
- third reading involves the final version of the Bill to be read out and voted on
- voting on amendments proposed by the House of Lords.

Credit any other relevant point(s).

Note:

- One stage explained = max 2 marks
- Two stages explained = max 4 marks.

<b>07</b>	Suggest <b>two</b> factors that the court might have taken into account when reaching its decision that Bess’s activities amounted to an unlawful or unreasonable interference under private nuisance.	<b>[5 marks]</b>
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**Marks for this question: AO1 = 2 and AO2 = 3**

<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

**Indicative content**

**AO1**

- Identification of two relevant factors for instance malice, locality, duration, degree of interference.
- Outline explanation of the two factors chosen to establish liability for private nuisance.

**AO2**

- Application to suggest that the factor of malice (state of mind) was relevant to the court’s decision to find liability for nuisance: the defendant’s actions were motivated by dislike of the claimant.
- Application to suggest that the factor degree of interference (and/or the factor of duration) were relevant to the court’s decision to find liability for nuisance: the loudness of the sound and the regularity of the sound disrupted a reasonable user of the claimant’s property.
- Possible brief reference to illustrative case law for example **Barr v Biffa**, **Coventry v Lawrence**, **Murdoch v Glacier Metals**, **Christie v Davey** and **Hollywood Silver Fox Farm v Emmett**.

Credit any other relevant point(s).

Note: Answers which explain/apply only one factor cannot achieve marks higher than band 2.

**08** Taking into account the rules of negligence, advise Debbie of her rights against Craig.  
**[10 marks]**

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)	
Mark range	Description
<p><b>7–10</b></p> <p><b>Band 3</b></p>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles.</p> <p>Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>Good explanation of relevant legal authority to support the application.</p> <p>A good legal argument is presented using appropriate terminology to support advice.</p>
<p><b>3–6</b></p> <p><b>Band 2</b></p>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles.</p> <p>Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>Satisfactory explanation of relevant legal authority to support the application.</p> <p>A satisfactory legal argument is presented using some appropriate terminology to support advice.</p>
<p><b>1–2</b></p> <p><b>Band 1</b></p>	<p>A limited demonstration of knowledge.</p> <p>Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.</p> <p>No chain of reasoning is attempted.</p>
<p><b>0</b></p>	<p>Nothing worthy of credit.</p>

**Indicative content**

**AO1**

- Identification and outline explanation of negligence leading to personal injury: duty, breach and causation.
- Identification and outline explanation of the ‘thin skull’ rule.
- Brief explanation of appropriate supporting case law, eg **Donoghue v Stevenson**, **Robinson v Chief Constable for West Yorkshire**, **Nettleship v Weston**, **Bolton v Stone**, **the Wagon Mound (No 1)**.

### AO2

- Application of the rules on duty of care to suggest that Craig owes a duty of care to Debbie on the grounds that it is an established duty of care that one road user owes a duty to another and that it is reasonably foreseeable that one road user would be affected by the failure of another road user to drive with care.
- Application of the rules on breach to suggest that Craig should be judged by the standard of the reasonable experienced biker, and not one who is effectively a learner because of his unfamiliarity with a new motorbike. Further application to suggest that Craig did not reach the standard of the reasonable person in terms of seriousness of risk, likelihood of risk and ease of prevention, given the serious risk posed by a moving motorbike and the option to become familiar with the new motorbike at a more appropriate speed.
- Application of the rules on causation to suggest that the injury and loss caused to Debbie were reasonably foreseeable consequences of Craig's failure to take care. In particular, an application of the 'thin skull' rule to suggest that Debbie can claim for the full extent of her injuries.

### AO3

- Analysis and evaluation of the concept of duty in relation to a collision between a motorbike and a pedestrian on a pavement in terms of reasonable foreseeability, sufficient proximity and the established nature of the duty of care.
- Analysis and evaluation of the standard of care in breach of duty in determining the appropriate standard to be shown by the reasonable person (with reasonable experience) given the seriousness of risk, likelihood of risk and ease of prevention.
- Analysis and evaluation of the rules on causation in terms of reasonable foreseeability and the 'thin skull' rule.
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Caparo v Dickman**, **Robinson v Chief Constable of West Yorkshire**, **Bolton v Stone**, **Paris v Stepney BC**, **Latimer v AEC**, **Bradford v Robinson Rentals** and **Smith v Leech Brain**.

Credit any other relevant point(s).

**09** Examine the connection between law and morality. Discuss whether the rules for secondary victims claiming for psychiatric injury in negligence reflect morality. **[15 marks]**

**Marks for this question: AO1 = 5 and AO3 = 10**

<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>13–15</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>10–12</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>7–9</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>4–6</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–3</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of Law and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>Minimal analysis and evaluation of legal concepts and issues.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Basic definitions of legal rules and moral rules: the contrast between rules created by authority within a given jurisdiction, and a set of expectations concerning behaviour which is right or wrong.
- Outline explanation of the connection between legal rules and moral rules for instance by identifying similarities and differences.
- Identification of appropriate examples drawn from civil and/or criminal law to illustrate the connection between legal rules and moral rules.
- Identification of appropriate examples and supporting case authority drawn from the law on claims by secondary victims for psychiatric injury to illustrate the extent to which these rules are founded on moral rules.

**AO3**

- Analysis of the contrast between legal and moral rules, in terms of, for instance, the different origins of the two sets of rules, different methods of enforcement, different consequences of breaking the rules and different mechanisms for changing the rules.
- Analysis of the possible relationship between legal and moral rules, in terms of, for instance whether law does enforce morality, and whether law should enforce morality. Possible reference to theories of law and morality such as the 'harm principle' and the Hart-Devlin debate.
- Analysis of appropriate examples to illustrate the differences and the possible relationship between moral rules and legal rules.
- Evaluation of the relationship between morality and the law relating to claims by secondary victims for psychiatric injury: for example the use of the four stage test from **Alcock v Chief Constable of South Yorkshire** as a common approach to dealing with all secondary victims regardless of the individual merits of their claim; the change in approach to rescuers following the decision in **White v Chief Constable of South Yorkshire** compared to **Chadwick v British Railways Board**; the flexibility introduced in relation to proximity to the incident taking into account the 'immediate aftermath'; the extension of sudden and unexpected shock to include a 'continuing horrifying event'; the requirement for a positive psychiatric illness to avoid fraudulent (immoral) claims; whether it is moral to distinguish between those who suffer physical harm from those who suffer psychiatric harm, the reasoning used by the Supreme Court in **Paul v Royal Wolverhampton NHS Trust** to restrict secondary victim claims to accident cases.

Credit any other relevant point(s).

**Indicative Content Groups (ICGs):**

ICG1: Morality and law

ICG2: Morality and psychiatric injury

<b>10</b>	Taking into account the law of occupiers' liability, consider the rights and remedies of Frank against Ella <b>and</b> of Gemma against Ella.	<b>[30 marks]</b>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

<b>Levels of response mark scheme 30 marks – AO1 (10), AO2 (10) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b> <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b> <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b> <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–6</b> <b>Band 1</b>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Explanation of the provisions of the Occupiers' Liability Act 1957: premises, occupier, visitor and dangers due to the state of the premises or to things done or omitted to be done on them. Remedy of damages.
- Explanation of the duty imposed by the 1957 Act on occupiers to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupiers to be there.
- Identification and explanation of the provision contained in s 2(3)(b) OLA 1957: the degree of care to be shown towards a person in the exercise of his calling.
- Identification and explanation of the defence of contributory negligence: s2(3) OLA 1957. Possible alternative of a defence of consent: s. 2(5) OLA 1957.
- Identification of the basic elements relevant to the existence of a duty under the Occupiers' Liability Act 1984: occupier, premises, conditions necessary for a duty to arise under s1(3) of the Act. Remedy of damages.
- Explanation of the duty imposed by the 1984 Act on occupiers to take such care as is reasonable in all the circumstances of the case to see that the unlawful visitor does not suffer injury on the premises by reason of the danger concerned.
- Identification and explanation of the defence of consent: s1(6) OLA 1984. Possible alternative defence of contributory negligence.

**AO2**

- Application to argue that the oven was premises for the purposes of the 1957 Act, that Frank was a visitor, that Ella was the occupier and that there was a danger due to the state of the premises (an oven that was not working properly and which posed a danger to those in the vicinity given that it could become unexpectedly hot).
- Application to suggest that in those circumstances Ella owed a duty of care to Frank.
- Application to assess whether Ella broke her duty of care by failing to ensure that a visitor would be reasonably safe given s 2(3)(b) OLA 1957 and given that Frank was in the exercise of his calling (Frank was acting in the exercise of his calling and knew that there was a problem with the oven as that is why he had been asked to attend. Possible query as to whether Frank had been told of the precise problem).
- Application to argue that Ella may be able to use the defence of contributory negligence in terms of whether Frank's behaviour was below that of the reasonable person in not checking that the oven door was safe and not taking proper precautions in respect of an oven he knew was not working properly. Possible alternative defence of consent.
- Application to conclude that if Ella does not have a defence then she is liable to pay compensatory damages to Frank for his injuries, but that the existence of a defence may reduce or eliminate her liability.
- Application to argue that the warehouse door was premises for the purposes of the 1984 Act, that Gemma was an unlawful visitor (given the existence of a fence and the notice on the door telling people to keep out), that Ella was the occupier and that there was a danger due to the state of the premises (a loose door on the point of collapse) rather than Gemma's own actions (running through the doorway).

- Application to consider whether the requirements of s1(3) were satisfied and whether therefore a duty under the 1984 Act existed: (1) whether Ella was aware of the danger (the loose door) or had reasonable grounds to believe that it existed (Ella knew of the problem with the door); (2) whether Ella knew or had reasonable grounds to believe that another would or might come into the vicinity of the danger (Ella knew that the children regularly climbed the fence to enter the warehouse); (3) whether the danger is one against which, in all the circumstances of the case, Ella may reasonably be expected to offer another some protection (a door that was sufficiently dangerous that Ella had asked her own employees to avoid it and in circumstances where she was aware that children were running through it and could be injured).
- Application to consider whether Ella broke the duty of care (if it existed) in terms of factors such as whether Ella took appropriate precautions (the factory has a fence, and Ella has put up a sign telling people to keep out, which presumably a 12-year-old can read). Possible argument that she should have done more given that a fence is clearly not stopping the children. Possible argument as to whether Ella should be expected to protect a person determined to be irresponsible. Possible argument that the sign was not specific as to the specific danger.
- Application to argue that Ella may have a defence of consent if Gemma voluntarily assumed the risk of running through a door when there is a sign telling her to keep out. Possible argument that Gemma did not know specifically that there was a danger from the door. Possible alternative defence of contributory negligence.
- Application to conclude that if Ella does not have a defence then she is liable to pay compensatory damages to Gemma for her injuries (but not for the damage to the mobile phone), but that the existence of a defence may reduce or eliminate her liability.

### AO3

- Analysis and evaluation of the existence of liability with reference to s 2(3)(b) and breach of duty.
- Analysis and evaluation of the existence of liability with reference to contributory negligence and the standard of behaviour of the claimant in terms of factors such as likelihood of injury, seriousness of injury risked and precautions Frank could have taken. Possible analysis and evaluation of the defence of consent.
- Reference to and analysis of relevant case law, for example **Wheat v Lacon, Roles v Nathan, Fromm v Butcher, Brannon v Airtours, Bolton v Stone, Paris v Stepney BC**.
- Analysis and evaluation as to the existence of a duty of care under the 1984 Act with reference to matters such as the frequency of trespassers, common humanity and whether the danger was obvious.
- Analysis and evaluation of the breach of any duty of care under the 1984 Act with reference to matters such as, for instance, the obviousness of the danger, the likely age of any trespasser, likelihood of trespass, seriousness of the injury risked, cost and practicality of precautions and warnings. Analysis and evaluation of possible defences.
- Reference to and analysis of relevant case law, for example **Tomlinson v Congleton BC, Keown v Coventry NHS Trust, Donoghue v Folkestone Properties, Platt v Liverpool City Council, Ratcliff v McConnell**.

Credit any other relevant point(s).

Note: Fully credit an application/analysis which arrives at either conclusion (that either Frank or Gemma's claim may succeed or otherwise).

Note: In the context of ICG2, an answer which utilises the doctrine of allurement to produce a discussion focused solely on OLA 1957 cannot be classified as higher than Satisfactory. Where an answer is wholly or partly focused on a claim under OLA 1984, any discussion of the doctrine of allurement is not required but can enhance the overall quality of the response.

**Indicative Content Groups (ICGs):**

ICG1: Occupiers' Liability Act 1957

ICG2: Occupiers' Liability Act 1984

<b>11</b>	<p>Consider the rights and remedies of Les against Kanish <b>and</b> of Les against Bluebricks in relation to the sale of his house.</p> <p>There are rules which restrict when a claimant can recover for pure economic loss in tort. Assess the reasons why restrictions on recovery for pure economic loss exist.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks – AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b> <b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority. There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. There is limited analysis and evaluation of legal concepts and issues. Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b> <b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority. There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. There is minimal analysis and evaluation of legal concepts and issues. Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<p><b>0</b></p>	<p>Nothing worthy of credit.</p>

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Identification and outline explanation of economic loss and of the possibility of an action in negligence to recover damages for a negligent misstatement albeit on a restricted basis.
- Brief explanation of appropriate supporting case authority for instance **Spartan Steel v Martin**, **Hedley Byrne v Heller** and **Caparo v Dickman**.
- Possible identification and explanation of the defence of contributory negligence. Brief explanation that the defence will apply where the claimant partly contributed to the accident or to their loss because their own behaviour fell below that of the reasonable person. Possible brief explanation of the Law Reform (Contributory Negligence) Act 1945.
- Identification and outline explanation of an action in negligence under the principle of vicarious liability against an employer.
- Identification and outline explanation of the tests for determining employment status and rules on acting in the course of employment.
- Brief explanation of appropriate supporting case authority for instance **Ready Mixed Concrete v Minister of Pensions**, **Century Insurance v NI Road Transport Board**, **Lister v Hesley Hall** and **Trustees of the Barry Congregation of Jehovah’s Witnesses v BXB**.
- The role law plays in society: brief explanation of the rules governing recovery for pure economic loss - pure economic loss cannot normally be recovered if caused by a negligent act; pure economic loss can be recovered if caused by a negligent misstatement as long as there is a special relationship between the claimant and the defendant.

## AO2

- Negligent misstatement: application of the rules governing the difference between a consequential economic loss and a pure economic loss to suggest that Les has sustained a pure economic loss.
- Negligent misstatement: application of the rules governing the differing ways in which the courts treat a claim for pure economic loss caused by negligent acts and negligent statements to suggest that Les has sustained a pure economic loss caused by a statement.
- Negligent misstatement: application of the elements necessary to establish a special relationship between the claimant and defendant such as whether Kanish has the necessary expertise, a voluntary assumption of responsibility towards a known user and reasonable reliance on the part of the claimant to consider whether Kanish and Les have such a special relationship in the context of an informal discussion in a social setting and the relative ease of getting a free professional valuation.
- Negligent misstatement: application of the rules governing breach of duty and causation of damage. Brief consideration of the remedy of compensatory damages.
- Possible defences: application to argue that Kanish may be able to use the defence of contributory negligence in terms of whether Les's behaviour was below that of the reasonable person in failing to get a second opinion in terms of a professional valuation before putting his house up for sale.
- Vicarious liability: application of the rules determining whether a worker is an independent contractor or an employee to consider the status of Kanish, for instance the control test, the integration test and the multiple test.
- Vicarious liability: application of the rules determining whether a tort was committed in the course of employment to consider the status of Kanish's statement with reference to, for instance, authorised acts and the 'so closely connected' test in the light of Les's contact with Bluebricks.
- Application to suggest that Les may be entitled to a remedy of compensatory damages against Kanish and Bluebricks. Fully credit alternative conclusions.

## AO3

- Negligent misstatement: analysis and evaluation of the requirements for a claim in negligence for pure economic loss with reference to the restricted nature of the duty of care.
- Negligent misstatement: analysis and evaluation of the elements required to establish the special relationship in the context of a social event.
- Negligent misstatement: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Chaudhry v Prabhakar**, **Patchett v SPATA** and **Smith v Bush**.
- Possible defences: analysis and evaluation of the existence of liability with reference to contributory negligence. Possible reference to and analysis of case authority for example **Froom v Butcher**.
- Vicarious liability: analysis and evaluation of the requirements for a worker to be considered an employee (for example level of control, connection to the employer's business, mutuality of obligation).
- Vicarious liability: analysis and evaluation of the requirements to establish that an employee was acting in the course of employment (for instance the difference between an unauthorised act and an authorised act carried out in an unauthorised manner, disobeying a direct instruction, whether an act was so closely connected to the employment that it is fair and just to hold the employer liable).
- Vicarious liability: further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases, for example **Various Claimants v Catholic CWS**, **Limpus v London General Omnibus** and **Rose v Plenty**.
- The role law plays in society: evaluation of the rules governing the recovery of pure economic loss and the role that these rules play in society; for instance, one or more of the following: the 'floodgates' argument in relation to both negligent acts and negligent misstatements, the desire not to allow claimants to circumvent contract law, the difficulty of insuring against such losses, the 'unfairness' of allowing a claimant who has lost through no fault of their own to go uncompensated, a contrast with rules governing physical losses. Illustrative case law for example **Spartan Steel v Martin**, **White v Jones**, **Hedley Byrne v Heller**, and **Caparo v Dickman**.

Credit any other relevant point(s).

**Indicative Content Groups (ICGs):**

ICG1: Negligent misstatement

ICG2: Vicarious liability

ICG3: Assessing why claims for economic loss are restricted

**Assessment Objectives Grid**

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	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

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**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>