



**General Certificate of Secondary Education
June 2011**

Law 41602

Law in Action

Unit 2

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 pre-standardisation meeting attended by all senior examiners and any post-standardisation changes made in the light of candidates' responses. The process of standardisation ensures that the mark scheme covers the candidates' responses to questions and that every examiner understands and applies it in the same correct way. As preparation for standardisation, each examiner analyses a number of candidates' scripts, the marks for which have already been agreed. If, later in the process, examiners encounter unusual answers which have not previously been seen, they are required to refer these to a senior examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of candidates' 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.

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	

In addition to the above banded mark scheme, the mark scheme for some questions will include marks for specific points. Such questions will clearly be identified in the detailed Mark Scheme which follows.

While it is not expected that alternative answers to such questions will 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 during the pre-standardisation process in the period following each new examination and credited where appropriate.

Quality of Written Communication is to be assessed in certain questions within each paper. The relevant questions are clearly identified on the front cover of the question paper, and, within the body of the paper, it also carries the instruction 'Answer in continuous prose'. The mark bands for these questions indicate the criteria which examiners should use to decide which band to place a candidate in, looking at both legal content and QWC to arrive at a band of 'best fit'.

- 1 (a)** The local residents have been advised the 'activities' centred on the student house may amount to a **public** nuisance. Discuss whether or not the late-night parties, drunkenness and anti-social behaviour amount to a **public** nuisance. What would be the likely outcome if such a case were brought in the civil or criminal courts? (7 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-5 marks
Band 3	Appropriate answer showing sound understanding	6-7 marks

Potential Content

Public nuisance definition/explanation

Case, eg A/G v PYA Quarries

Application to noisy parties, drunkenness + anti-social behaviour

Possible application to Chay + family (particular damage suffered) – civil claim for damages

Case eg Castle v St Augustine's Links

Recognition that public nuisance is both crime + tort/role of A/G

'Remedies' could include criminal sanctions/civil injunction

Note: answer based on crime or tort only – max 5 marks for a very good answer

[AO1: 2, AO2: 5, AO3: 0]

- 1 (b)** Chay is also considering suing for nuisance. Advise him as to how successful he might be and what remedies he may wish to apply for in court. (7 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	6-7 marks

Potential Content

Recognition of private nuisance

Definition/explanation

Factors, eg locality, sensitivity, continuity, possible malice

Case(s) eg Robinson v Kilvert

Application to incidents from problem, especially noisy parties

Remedies

Possible reference to public nuisance/particular damage/remedies

Note – public nuisance only, max 4; private only, max 7 for a good answer

[AO1: 2, AO2: 5, AO3: 0]

1 (c) Discuss Chay's liability in trespass for his behaviour towards Dave and Becci.

(7 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-5 marks
Band 3	Appropriate answer showing sound understanding	6-7 marks

Potential Content

Recognition of trespass to the person

Assault + definition

Case, eg R v St George

Application to Dave

Battery + definition

Case, eg Nash v Sheen

Application to Becci

Possible reference to trespass to land depending on where the assault/battery took place

Note – only one aspect dealt with – max 4 marks

[AO1: 2, AO2: 5, AO3:0]

1 (d) (i) Consider Efraim's liability in trespass for his actions when hitting and fetching the cricket ball.

(7 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-5 marks
Band 3	Appropriate answer showing sound understanding	6-7 marks

Potential Content

Trespass to land based on entry (both cricket ball + Efraim)

Case or example eg Harrison v Duke of Rutland

Application to Efraim's entry to retrieve ball (both trespasses – person and object)

Conversion/trespass to goods (conversion more likely)

Torts (Interference with Goods) Act 1977

Case or example

Application to smashed sunglasses

Note – only one aspect dealt with – max 5 marks for a very good answer

[AO1: 2, AO2: 5, AO3:0]

1 (d) (ii) Consider Dave's liability for his actions to Efraim and his cricket ball. (7 marks)

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-5 marks
Band 3	Appropriate answer showing sound understanding	6-7 marks

Potential Content

Recognition of trespass to goods/conversion (trespass to goods better answer)

Torts (Interference with Goods) Act 1977

Case or example, eg Kirk v Gregory

Application to hidden cricket ball

Recognition of trespass to the person – false imprisonment

Case or example, eg Bird v Jones

Application to locking Efraim in the shed

Note – only one aspect dealt with – max 5 marks for a very good answer

Note – credit also appropriate references to assault and battery [AO1: 2, AO2: 5, AO3: 0]

1 (e) Compare and contrast the torts of nuisance and trespass to land. (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

Both torts protect interests in land, but:

Indirect v direct

No entry v entry

Repetitive (private) v single incident

Damage required v actionable *per se*

Tort + crime (public) v tort only

Possible case(s)/example(s)

Note – minimum three points for Band 3 (note that Band 2 can achieve 4 marks)

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

- 1 (f) Comment on how well the law of tort deals with the sort of 'neighbours from hell' incidents set out in the Problem. In your answer, consider alternative ways of dealing with these problems. **(Answer in continuous prose.)**

(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.

- | | | |
|--------|---|------------------|
| Band 0 | Inappropriate answer showing no understanding. The candidate 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 candidate 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 candidate 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 candidate spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly. | 5 marks |

Potential Content

Recognition of reasonable alternatives

up to 3 marks

Eg police powers to abate a nuisance

Local Council/Environmental Health

Criminal prosecution for nuisance/harassment, etc

Anti-Social Behaviour Orders

Discussion of pros + cons of civil action (time, cost, financial remedy) v allowing the 'State' to intervene to protect against 'neighbours from hell' (no cost to individual but difficult to persuade authorities to act)

Note – credit any other reasonably sensible points

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

- 2 (a)** In relation to the crime of burglary, outline what is meant by 'entry as a trespasser' and 'building or part of a building'. (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 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

Entry as a trespasser – outline explanation of the notion of 'entry' (whole or partial/effective); outline explanation of what is meant by trespassing

Building – structure + permanence; example(s)

Part of a building – example(s) eg manager's office in a supermarket

Possible case/statutory reference (S.9(3))

Note – only one aspect dealt with – max 3 marks for a very good answer [AO1: 4, AO2: 0, AO3: 0]

- 2 (b)** Discuss Freddie's criminal liability for burglary both as he entered and as he left Graham's house. (8 marks)

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

Potential Content

S.9(1)(a) burglary entry as a trespasser with intent to steal (the 'presents')

S.9(1)(b) burglary having entered as a trespasser, then steals (gold chain + card, but not the watch)

In both the above, possible issue of dishonesty (does Freddie believe he is retrieving items which Graham should not have?)

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

Application + conclusion (either way for all possible offences)

Authority in support, eg Collins, Walkington

[AO1: 1, AO2: 7, AO3:0]

- 2 (c)** Discuss Freddie's liability for the theft of Graham's watch. (5 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	4-5 marks

Potential Content

Definition of theft

Recognition that this is only theft because the watch was not in a 'building' (max 4 if this element not addressed)

Application + conclusion (looks like a clear theft)

Authority in support, eg Morris and Burnside

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

2 (d) (i) Discuss the criminal liability of Freddie for the death of Ian. (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

Definition of murder (*actus reus + mens rea*)

Application, especially in relation to the intention to kill/cause serious harm

Conclusion (looks like a clear intention to at least cause serious harm = murder)

Authority in support, eg Woollin

Alternative approach based on involuntary (constructive) manslaughter – credit fully up to max

Note: Band 2 can achieve 4 marks

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

2 (d) (ii) Discuss whether or not Freddie could plead not guilty because he was not intending to harm Ian. (3 marks)

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

Potential Content

Recognition of transferred malice (or an explanation which shows understanding)

Application + conclusion

Authority in support, eg Latimer

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

2 (d) (iii) Discuss the criminal liability of Freddie for the injuries suffered by Graham. (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 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

Recognition of serious injury = gbh

Recognition of two versions under S.18 + S.20

Application + conclusion (probably enough evidence to suggest a S.18)

Authority in support, eg Belfon

Note – abh only – max 2

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

2 (e) Discuss Hazel's criminal liability for the injury suffered by Freddie. (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 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

Recognition of a wound (definition) but probably not a serious injury (scar?)

Recognition of two versions under S.18 + S.20 (does Hazel have intent to cause serious injury?)

Application + conclusion (probably enough evidence to suggest a S.20 wounding, possibly a S.18)

Authority in support, eg Eisenhower [AO1: 0, AO2: 4, AO3: 0]

2 (f) Identify the **two** criminal courts before which Freddie and Hazel are likely to appear.

(2 marks)

Potential Content

Magistrates + Crown

Note - shopping list rule applies

1 mark each

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

- 2 (g) (i)** Comment on whether borrowing something without permission should be a criminal offence. **(Answer in continuous prose.)** (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.

Band 0	Inappropriate answer showing no understanding. The candidate 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 candidate 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 candidate 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 candidate spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly. 5 marks

Potential Content

Eg recognition of the current offence of taking without consent applies to conveyances

No application of S.12 offence to other property – why?

Inconvenience that temporary losses can have

Potential problems under S.6 Theft Act

Possible authority in support

Note – credit any reasonably sensible points

Note – unbalanced answer can still get 5 marks

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

- 2 (g) (ii)** Choose any **one** of the offences you have discussed in relation to the Problem. Comment on whether you think the law in relation to that offence is in need of reform. (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

Identification of relevant issues:

Eg non-fatal offences – issues of language/public understanding; structure of offences; sentencing, etc

Eg homicide offences – problems of definition; sentencing issues (life does not mean life, etc); problems relating to the 'special' defences; problems with mercy killings, etc

Commentary related to one of the above

Case/examples in support

Note – credit any reasonably sensible comments

Note – candidates may take a wide or narrow approach to the question, ie individual offences or groups of offences – fully credit either approach.

Note – comments in relation to the 'special' defences can be credited in respect of either the Homicide Act or the Coroners and Justice Act 2008.

Note – a candidate who chooses theft and discusses borrowing as an issue can be credited, but max Band 1.

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

3 (a) (i) Discuss the validity of Rex and Teresa as witnesses to James's will. (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

Rex – not in the presence of another witness and blind = not valid

Teresa – in the presence of another witness + probably just about old enough to understand what is required

Possible reference to statutory authority (Wills Act 1837)

Note – only one witness dealt with – max 3 marks for a good answer [AO1: 1, AO2: 4, AO3: 0]

3 (a) (ii) Briefly explain why, for legal reasons, Paul refused to sign as a witness to James's will. (2 marks)

Potential Content

An understanding that there is an 'issue' if someone is both beneficiary and witness 1 mark

Clear understanding that a witness/beneficiary may well lose their bequest 1 mark

Possible reference to Wills Act 1968/Re Bravda [AO1: 1, AO2: 1, AO3: 0]

3 (b) Discuss the validity of James's will, taking into account the following issues:

- what the will was written on
- where the will was signed
- how the will was witnessed
- James's state of mind.

(8 marks)

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

Potential Content

Wills can be written on anything

Position of signature no longer fatal in these circumstances (S.17 Administration of Justice Act 1982)

Application of witness issues (Scott + Teresa look like valid witnesses in the presence of each other, assuming Teresa is considered old enough to understand)

Was James of sound mind? (Note the doctor's report)

Reference to authority, eg Wills Act 1837

Conclusion (either way, depending on 'sound mind' issue and validity of Teresa)

Notional 3:3:3:3 mark split may help – check Band at end

Note – any 3 issues properly discussed can therefore reach top Band [AO1: 2, AO2: 6, AO3: 0]

- 3 (c)** If James's will were to be declared invalid, he would have died intestate.
Explain how James's estate would be distributed under the Intestacy Rules. (8 marks)

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

Potential Content

Wife – first £250,000 absolutely + personal chattels (explain) + life interest in half remainder (explain)
Children – other half divided equally on statutory trusts (Oliver's in trust until 18 or earlier marriage),
balance divided equally on death of mother

Nothing for anyone else

Reference to statutory authority (Administration of Estates Act 1925 as amended)

Note – the maths does not have to be correct, but the principles of division must be for a sound answer [AO1: 4, AO2: 4, AO3: 0]

- 3 (d)** Comment on how well the Intestacy Rules would have dealt with James's estate.
(Answer in continuous prose.) (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.

Band 0	Inappropriate answer showing no understanding. The candidate 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 candidate 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 candidate 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 candidate spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5 marks

Potential Content

Eg under an intestacy, absent children can potentially do as well as those with needs; 'unofficial' relationships will have to show longevity; those with clear financial dependency may not receive sufficient from the estate to meet needs; friends are ignored under the rules; surviving spouse may not be able to afford settlement to children, etc

Note – credit any sensible comment around these issues.

Note – unbalanced answer can still get max marks

Note – only limited application required

Note – credit any other sensible issues raised [AO1: 0, AO2: 0, AO3: 5]

- 3 (e)** If James's will were to be declared valid, it would almost certainly be contested.
(i) Name the Act of Parliament under which a will can be contested. (1 mark)

Inheritance (Provision for Family and Dependants) Act 1975 (date not necessary) 1 mark
Note – credit a close effort, but not the Family Provision Rules/Act, as in the stem
 [AO1: 1, AO2: 0, AO3: 0]

- 3(e) (ii)** Identify **three** groups of people who are entitled to contest a will under this Act. (3 marks)

Any 3 from wife, ex-wife (not remarried), child, someone treated as a child, someone who is financially dependent (or example) 1 mark each
Note - shopping list rule applies [AO1: 1, AO2: 2, AO3: 0]

- 3 (e) (iii)** In this particular Problem, discuss who may choose to contest James's will and who may have the best chances of success. (8 marks)

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

Potential Content

Liz (wife) has a good claim assuming they were living as man and wife
 Margaret has a reasonable claim but is 28 – circumstances?
 Oliver has a much stronger claim as a dependent minor (only 15)
 Nick has a poor claim in the circumstances, but could still do so
 Karen (lover) may be able to claim if she can show dependency
 Queenie has a good claim, clearly financially dependent
 No-one else has a claim, eg Paul

Note – candidates must properly deal with at least 4 of the above people to achieve Band 3
 [AO1: 0, AO2: 8, AO3: 0]

- 3 (f)** Comment on how well the Family Provision Rules would have dealt with James's estate. (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

Eg under family provision rules, testators wishes can be overridden; interests of the original beneficiary can be reduced/removed; protects legitimate interests of close family/2+ year cohabitants + dependants; those with clear financial dependency may not receive sufficient from the estate to meet needs; friends are ignored under the rules etc

Note – credit any sensible comment around these issues.

Note – unbalanced answer can still get max marks

Note – only limited application required

Note – credit any other sensible issues raised

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

- 4 (a)** Uma is not certain as to the relevant **contract** law that may apply to the sale of the coffee. Explain to Uma whether Yvette would be legally entitled to buy the coffee for £4.00. (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

Recognition of the contractual nature of the situation

Recognition of the difference between an offer, an invitation to treat and an acceptance

Application to the facts

Authority in support, eg Fisher v Bell, Boots case

Conclusion

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

- 4 (b) (i)** When Zac made his first phone call about his home delivery, Uma promised to ring him back. Advise Uma what to say based on the relevant Acts of Parliament on consumer law relating to:
- the rotten oranges
 - the two-slice toaster
 - the wine glasses.
- (10 marks)*

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-3 marks
Band 2	Answer based on limited understanding	4-7 marks
Band 3	Appropriate answer showing sound understanding	8-10 marks

Potential Content

Oranges – recognition of satisfactory quality/fitness for purpose

S.14 S of G Act 1979 as amended

Case(s) in support

Application + conclusion

Toaster – recognition of a sale by description

S.13 Sale of Goods Act 1979

Case(s) in support

Application + conclusion

Wine glasses – recognition of service not carried out with reasonable care and skill

S.13 Supply of Goods and Services Act 1982

Credit glasses not fit for purpose at the time of delivery S.14 of Sale of Goods Act 1979

Possible case/example in support

Application + conclusion

Note – only one aspect dealt with – max 4 marks for a good answer

Note – only two aspects dealt with – max 7 marks

[AO1: 3, AO2: 7, AO3: 0]

- 4 (b) (ii)** Comment on how well consumers are protected by Acts of Parliament relating to the sale of goods and the supply of services. **(Answer in continuous prose.)** **(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.

Band 0	Inappropriate answer showing no understanding. The candidate 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 candidate spells, punctuates and use the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	1-2 marks
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Band 3	Appropriate answer showing sound understanding. The candidate spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5 marks

Potential Content

Advantages could include, eg range of protection across both goods and services; growth of consumer advice agencies + helpful websites; support role of the OFT; better civil process through small claims; trade association intervention; implied terms do not have to be agreed by the parties; limited opportunities for the trader to exclude liability; overall the legislation promotes a pro-consumer culture

Disadvantages could include: eg restriction on private sales for S.14 SoGA; buyer must show reliance on seller's skill and judgement for S.14(3); consumer ignorance of protection; consumer fear of taking legal action; difficulties in taking/enforcing those rights eg lack of Legal Representation at Small Claims

At least two issues discussed for Band 2

At least three issues discussed for max

Unbalanced response – max Band 2

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

- 4 (c)** Zac estimates that the damage to his kitchen as a result of the burnt-out toaster is likely to be in excess of £400. Advise Zac as to his legal rights against the manufacturer **and** against Vengers supermarket. (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

Manufacturer – recognition of a right of action for a defective product under the Consumer Protection Act 1987; looks like a clear ‘defect’ + damage (over £275)

Possible case/example in support

Application + conclusion (can claim for consequential damage, not the cost of the product)

Alternative action in the tort of negligence – credit fully

Supermarket – looks like a breach of S.14(2) SoGA as amended.

Application + conclusion (can claim for cost of toaster, not other damage)

Note – only one aspect dealt with – max 4 marks for a good answer [AO1: 1, AO2: 4, AO3: 0]

- 4 (d)** Explain how the Health and Safety at Work Act 1974 may apply to the situation involving the spilled yoghurt. (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

Duties on both employer and employee to protect others in the workplace

Role of H & S Executive/inspectors to enforce the Act

Methods of enforcement, including criminal enforcement/sanctions

Case(s) in support, eg Dexter v Tenby Electrical

Application + conclusion [AO1: 2, AO2: 3, AO3: 0]

- 4 (e) (i)** Amy is considering taking legal action because of her broken leg. Explain why Vengers may be liable for the wrongful actions of its employees. (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

Recognition of vicarious liability

Key requirements of an 'employee', acting in the 'course of their employment'

Case(s)/example in support, eg *Limpus v LGO*, *Beard v LGO*

Application + conclusion (straightforward claim against the employer) [AO1: 2, AO2: 3, AO3: 0]

- 4 (e) (ii)** Comment on **why** employers are generally held responsible for the actions of their employees. (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

Eg ensures employers set up and maintain proper training + standards

Employee works for employer's profit, therefore employer should risk the loss

Employee may be a 'man of straw'

Employers must be insured, etc

Note – credit any other sensible points raised

Note – no requirements of balance for Band 3

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

- 4 (f)** Winnie feels that she has been unfairly treated by Vikram and is considering claiming for unfair dismissal.

- (i)** Name the body that would hear her case. (1 mark)

Potential Content

(Employment) Tribunal

1 mark

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

- 4 (f) (ii)** Outline the various rules that are in place to ensure that Winnie would have a fair hearing. **(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 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

Possible answers include:

Rules of natural justice, ie both sides must be heard, unbiased decision makers

Presence of lay experts to judge the case

Rights of appeal

Human Rights Act provisions relating to the right to a fair trial, etc

Note – credit any other reasonably sensible points described

Note – credit can be given for discussion rather than description

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

ASSESSMENT GRID PAPER 2

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

ASSESSMENT GRID OVERALL

	Target	Achieved
AO1	30-40%	37.2%
AO2	20-30%	27.8%
AO3	30-40%	35.0%

This Paper is identical in terms of Assessment Objective coverage to the Specimen Paper.

SPECIFICATION COVERAGE

Law of Tort	Negligence	✓		
	Trespass	✓		
	Nuisance	✓		
	General Defences			
	Remedies	✓		
Criminal Law	Introduction			
	Fatal offences	✓		
	Non-fatal offences	✓		
	Property offences	✓		
	Defences			
Family Law	Marriage			
	Divorce			
	Succession	✓		
Rights and Responsibilities	Introduction			
	Buyers and Sellers	✓		
	In Employment	✓		
	As a citizen	✓		

Converting Marks into UMS marks

Convert raw marks into Uniform Mark Scale (UMS) marks by using the link below.

UMS conversion calculator www.aqa.org.uk/umsconversion