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# **GCE AS MARKING SCHEME**

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**SUMMER 2024**

**AS  
LAW – UNIT 2  
2150U20-1**

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## About this marking scheme

The purpose of this marking scheme is to provide teachers, learners, and other interested parties, with an understanding of the assessment criteria used to assess this specific assessment.

This marking scheme reflects the criteria by which this assessment was marked in a live series and was finalised following detailed discussion at an examiners' conference. A team of qualified examiners were trained specifically in the application of this marking scheme. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners. It may not be possible, or appropriate, to capture every variation that a candidate may present in their responses within this marking scheme. However, during the training conference, examiners were guided in using their professional judgement to credit alternative valid responses as instructed by the document, and through reviewing exemplar responses.

Without the benefit of participation in the examiners' conference, teachers, learners and other users, may have different views on certain matters of detail or interpretation. Therefore, it is strongly recommended that this marking scheme is used alongside other guidance, such as published exemplar materials or Guidance for Teaching. This marking scheme is final and will not be changed, unless in the event that a clear error is identified, as it reflects the criteria used to assess candidate responses during the live series.

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**WJEC GCE AS LAW**  
**UNIT 2 - THE LAW OF TORT**  
**SUMMER 2024 MARK SCHEME**

**Marking guidance for examiners**

**Summary of assessment objectives for Unit 2**

The questions assess all three assessment objectives - AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology, and the ability to analyse and evaluate legal rules, principles, concepts and issues.

**The structure of the mark scheme**

The mark scheme for each question has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1, AO2 and AO3.

**Stage 1 - Deciding on the band**

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

## **Stage 2 - Deciding on the mark**

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner. Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

1. Explain the principle of causation in the law of tort. [8]

**Indicative content**

*NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining the principle of remoteness of damage in the law of tort, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the principle of remoteness of damage. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on negligence.

The response might consider issues such as:

- Definition of causation – defendant’s acts or omissions must have caused the loss complained of.
- Both factual and legal causation must be proved.
- Within factual causation:
  - ‘but for’ test - Barnett v Chelsea and Kensington Hospital Management Committee (1969).
- Within legal causation:
  - Novus actus interveniens - an intervening act to break the chain of causation. The principle to be applied is *whether the injury or damage was a foreseeable consequence of the original negligent act or omission.*
  - remoteness of damage – the damage must not be too remote from the negligence of the defendant - Wagon Mound (No.1) (1961).
  - Type or kind of injury must be ‘reasonably foreseeable’ – Hughes v Lord Advocate (1967); Doughty v Turner Asbestos (1964).
  - Eggshell skull test - ‘take your victim as you find him’ – Smith v Leech Brain and Co. (1962).
  - Possible mention of *res ipsa loquitur* – the facts speak for themselves - Scott v London and St Katherine Docks (1865).

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

2. Explain the terms general and special damages.

[8]

**Indicative content**

*NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining the terms general and special damages, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying an award of damages. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on negligence.

The response might consider issues such as:

- A claimant who successfully proves his case in negligence will be entitled to a remedy. Damages are one form of remedy.
- Damages aim to place the claimant, where possible, in the same position as if the tort had never happened. Not always possible for serious, life changing injuries.
- Damages can be divided into general and special damages:
  - Special damages – These comprise quantifiable financial losses up to the date of trial and are assessed separately from other awards because the exact amount to be claimed is known at the time of the trial. The major types of damages are as follows: -
    - Loss of earnings.
    - Medical Expenses.
    - Expenses to cover special facilities.
  - General damages - This term covers all losses that are not capable of exact quantification and they are further divided into pecuniary and non-pecuniary damages.
    - Pecuniary damages - The major type of pecuniary damages is future loss of earnings. The courts calculate this amount using the multiplicand (a sum to represent the claimant’s annual net lost earnings) and the multiplier (a notional figure that represents a number of years for which the claimant was likely to have worked). These are multiplied together in order to calculate the future losses.
    - Non-pecuniary damages – pain and suffering, loss of amenity, damages for the injury itself.

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

3. Explain what is meant by breach of duty of care in the tort of negligence. [8]

**Indicative content**

*NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In explaining how the law decides what is meant by a breach of duty of care, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying a breach of duty of care. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply to give a general answer on all elements of negligence.

The response might consider issues such as:

- Breach of duty of care as second element of negligence.
- The objective standard of care and the reasonable person – **Blyth v Birmingham Waterworks**.
- Special characteristics:
  - Professionals (**Bolam v Friern Barnet Hospital Management Committee (1957)**, **Montgomery v Lanarkshire Health Board (2015)**)
  - Learners are judged at the standard of the competent, more experienced person (**Nettleship v Weston (1971)**)
  - Children and young people - For this group the standard is that of a reasonable person of the defendant's age at the time of the accident. (**Mullin v Richards (1998)**)
- Risk factors:
  - Has the claimant any special characteristics which should be taken into account? (**Paris v Stepney Borough Council (1951)**). Professional persons (**Bolam**).
  - Size of the risk. (**Bolton v Stone (1951)**, **Hayley v LEB (1965)**).
  - Have all appropriate precautions been taken? The cost and practicality of preventing risk. (**Latimer v AEC Ltd (1953)**).
  - Were the risks known about at the time of the accident? **Roe v Minister of Health (1954)**.
  - Public benefit of taking the risk? (**Day v High Performance Sports (2003)**, **Watt v Hertfordshire County Council (1954)**).
  - Credit for any other relevant citation.

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

Omar is a self-employed qualified plumber; he supplies and installs dishwashers. One day, he is installing a new dishwasher at Rhidian's house and suffers a bad electric shock and burns when he accidentally touched a live wire that had been left exposed by a previous plumber. Omar had failed to turn off the electricity supply before starting the work. Omar suffered deep burns to his hand and arm and has been unable to work since the incident.

4. Advise Omar as to whether Rhidian is liable under the Occupiers' Liability Act 1957 for his injuries. [18]

### Indicative content

*NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

In assessing the extent to which Rhidian is liable under the Occupiers Liability Act 1957, candidates are expected to apply legal rules and principles to the scenario in order to present a legal argument using appropriate legal terminology.

In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and consider the 1957 Act specifically. Comparisons may be drawn with the law of negligence.

The response might consider issues such as:

- **The Occupiers' Liability Act 1957** provides that an occupier of premises owes a duty of care to lawful visitors, and if that duty is breached and the visitor is injured he is entitled to receive compensation. *Omar is a lawful visitor to Rhidian's house.*
- Definition of occupier - may be, but do not have to be, the owner or tenant of the premises. There is in fact no statutory definition of 'occupier'. The test for deciding whether a person is the occupier is found in case law – **Wheat v E Lacon and Co Ltd (1966), Harris v Birkenhead Corporation (1976), Bailey v Armes (1999)**. *Rhidian is the occupier of the premises. Omar is the visitor.*
- Definition of 'premises' - There is no full statutory definition of premises except in s 1(3)(a) of the 1957 Act where there is reference to a person having occupation or control of any 'fixed or moveable structure, including any vessel, vehicle and aircraft'. Includes houses, offices, buildings and land, premises has also been held to include: a ship in dry dock, a vehicle, a lift, etc. *The house is the premises. There is a danger owing to the state of the premises – the exposed wires.*
- 'Adult visitors' – common duty of care (**s.2(2)**) imposes a duty on the occupier to keep the visitor 'reasonably safe'. 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 occupier to be there.
- Adult lawful visitors include: invitees, licensees, contractual permission, statutory right of entry. **Laverton v Kiapasha Takeaway Supreme (2002), Dean and Chapter of Rochester Cathedral v Debell (2016)**. *Omar is an example of an adult lawful visitor who has been invited to install a dishwasher.*
- Lawful visitors may become trespassers if they exceed their permission (1984 Act then applies). *Not applicable but may be mentioned.*
- *Omar was acting in the exercise of his calling (as a plumber and supplier and installer of dishwashers) and might have been expected to be aware of, and*

*guard against, risks of the kind in question. He should have ensured the electricity supply was shut off before commencing work.*

- *It is likely that Rhidian was not in breach of his duty towards Omar as Omar should have guarded against those risks incidental to his calling. **S.2(3)(b). Roles v Nathan.***
- Defences to a claim by a lawful visitor - contributory negligence, consent (volenti).

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
<b>4</b>	<b>14 - 18</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed application of legal rules and principles to the situation involving Omar and Rhidian.</li> <li>• Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the law under the Occupiers' Liability Act 1957</li> </ul>
<b>3</b>	<b>9 - 13</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules and principles to the situation involving Omar and Rhidian.</li> <li>• Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the Occupiers' Liability Act 1957.</li> </ul>
<b>2</b>	<b>5 - 8</b>	<ul style="list-style-type: none"> <li>• Satisfactory application of legal rules and principles to the situation involving the Omar and Rhidian.</li> <li>• Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the Occupiers' Liability Act 1957.</li> </ul>
<b>1</b>	<b>1 - 4</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules and principles to the situation involving Omar and Rhidian.</li> <li>• Basic presentation of a legal argument, using minimal legal terminology relating to the Occupiers' Liability Act 1957.</li> </ul>
	<b>0</b>	<ul style="list-style-type: none"> <li>• Response not creditworthy or not attempted.</li> </ul>

5. Analyse and evaluate when damages are payable to primary and secondary victims in respect of psychiatric harm. [18]

**Indicative content**

*NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.*

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to psychiatric harm and primary and secondary victims in tort. Candidates will offer an analysis and evaluation of psychiatric harm and primary and secondary victims. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding when damages are payable in respect of psychiatric harm.

The response might consider issues such as:

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

<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>4</b>	<b>14 - 18</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to psychiatric harm and primary and secondary victims in negligence.</li> <li>• Excellent evaluation of the law surrounding to psychiatric harm and primary and secondary victims in negligence, including a valid and substantiated judgement.</li> <li>• Excellent use of supporting case law and legal authorities.</li> <li>• Writing demonstrates accurate grammar, punctuation and spelling.</li> </ul>
<b>3</b>	<b>9 - 13</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to psychiatric harm and primary and secondary victims in negligence.</li> <li>• Good evaluation of the law surrounding psychiatric harm and primary and secondary victims in negligence, including a valid judgement.</li> <li>• Good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates reasonably accurate grammar, punctuation and spelling.</li> </ul>
<b>2</b>	<b>5 - 8</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to psychiatric harm and primary and secondary victims in negligence.</li> <li>• Satisfactory evaluation of the law surrounding psychiatric harm and primary and secondary victims in negligence, including reference to a judgement.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> <li>• Writing demonstrates some errors in grammar, punctuation and spelling.</li> </ul>
<b>1</b>	<b>1 - 4</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to psychiatric harm and primary and secondary victims in negligence.</li> <li>• Basic evaluation of the purpose of the law surrounding psychiatric harm and primary and secondary victims in negligence.</li> <li>• Basic use of supporting case law and legal authorities.</li> <li>• Writing demonstrates many errors in grammar, punctuation and spelling.</li> </ul>
	<b>0</b>	<ul style="list-style-type: none"> <li>• Response not creditworthy or not attempted.</li> </ul>