December 2021: Marker Guidance: Unit 1

The marking rubric and guidance is published as an aid to markers, to indicate the requirements of the examination. It shows the basis on which marks are to be awarded by examiners. However, candidates may provide alternative correct answers and there may be unexpected approaches in candidates' scripts. These must be given marks that fairly reflect the relevant knowledge and skills demonstrated. Where a candidate has advanced a point that is not included within the marking rubric please do make a note of the same so that it can be raised at the standardisation meeting.

Mark schemes should be read in conjunction with the published question paper and any other information provided in this guidance about the question.

Before you commence marking each question you must ensure that you are familiar with the following:

- ☑ the requirements of the specification
- ☑ these instructions
- ☑ the exam questions (found in the exam paper which will have been emailed to you along with this document)
- ☑ the marking rubric

The marking rubric for each question identifies indicative content, but it is not exhaustive or prescriptive and it is for the marker to decide within which band a particular answer falls having regard to all of the circumstances including the guidance given to you. It may be possible for candidates to achieve top level marks without citing all the points suggested in the scheme, although the marking rubric will identify any requirements.

It is imperative that you remember at all times that a response which:

- ☑ differs from examples within the practice scripts; or,
- ☑ includes valid points not listed within the indicative content; or,
- ☑ does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this.

Where you consider this to be the case you should make a note on the script and be prepared to discuss the candidate's response with the moderators to ensure consistent application of the mark scheme.

SECTION A (all compulsory – 40%)

Question 1:	Explain what acceptance is and whether an offer can be accepted without acceptance being communicated.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Candidates should set out that for a valid contract the courts will look objectively to see if there is an agreement, e.g ***In order to be valid:*** A contract requires agreement, the intention to create legal relations, and consideration. **Agreement:** Is one of the key elements required to create a valid contract. English law has long recognised the use of an objective test for agreement, which seeks to identify a valid offer by one party that is accepted by the other. ***Acceptance:*** If an offer is accepted, a contract is formed at that point. ***Counter-offer:*** If the offeree, instead of rejecting or accepting the offer, makes a proposal of his/her own to the offeror, this is known as a 'counter-offer'. This places the offeree in the position of the offeror and the original offer is brought to an end as if it never existed.	Up to 2 marks
Candidates must explore further what is meant by an acceptance, e.g ***Unqualified and definite:*** Acceptance must be unqualified and definite. This essentially means that there must be nothing left to be negotiated by the parties. It must also match the terms of the offer, the offeree cannot accept an offer and add further terms while accepting. It the acceptance doesn't mirror the terms of the offer the purported acceptance would not in fact acceptance but a counter offer. ***The General rule:*** Is that acceptance must be communicated to the other party. When the offeror requires a specified method of acceptance, the general rule is that acceptance must be given in that way. However, should the offeree use a different form of communication to that which was specified by the offeror, this may be acceptable provided it is no more disadvantageous than the stipulated method of communicating acceptance.	Up to 6 marks A pass must refer to the characteristics and requirements of acceptance

Authority: Acceptance will only be validify the acceptor has authority to accept the offer. ***Timing:*** An offer does not last forever and an offeree must accept within a reasonable time frame. ***Credit reference to any applicable case authority, e.g:*** Neale v Merret [1930], Felthouse v Bindley [1862], Eliason v Henshaw [1819], Holwell Securities v Hughes [1974], Powell v Lee [1908] and Routledge v Grant [1828].	
Candidates may explain what is meant by a counter offer and the consequence on the original offer, e.g ***A counter offer:*** An offeree will make a counter-offer if it introduces a change in terms. A counter offer would amount to a rejection of an offer so an offer is terminated when the offeree communicates his rejection to the offeror. A counter offer destroys the original offer completely. No offer would exist if the claimant purported to go back to the original offer and accept. To be effective, the counter offer has to be a legally recognisable offer. ***Even a small variation in the terms:*** Of the original offer may result in a counter offer. ***A request for information:*** would not be a counter offer. If the offeree asks the offeror for more information, the original offer stands and the offeree has neither accepted or rejected the offer. ***Credit reference to any applicable case authority on counter offers, e.g:*** Hyde v Wrench [1840], Stevenson, Jacques & Co v McLean (1880) and DB UK Bank Ltd (t/a DB Mortgages) v Jacobs Solicitors [2016].	Up to 2 marks Candidates may be credited for a discussion on counter offers but should link back to the requirement of an acceptance mirroring the offer
Candidates should discuss the postal rule as an exception to communication, e.g ***The postal rule:*** Where post is considered to be a main means of communication within the contemplation of the parties then acceptance is communicated once it has been posted. This rule applies even if the letter has been destroyed, delayed or lost. It only applies in cases in which the parties could reasonably contemplate that communication would be by post. ***Exclusion of the rule:*** The postal rule can be excluded by the offeror - he can state that acceptance must be communicated in a specific way (fax, telephone etc.), or that postal acceptance must arrive in order to be binding. The postal acceptance rule is not absolute, however. ***Incorrectly addressing correspondence:*** If the offeree has incorrectly addressed the letter of acceptance, or been careless in some other	Up to 3 marks

manner which causes delay or failure to communicate, then the postal acceptance rule does not apply ***Instantaneous communication:*** The postal rule has lost its original force and scope as technological advancements have made methods of communicating more instantaneous. The postal acceptance rule has therefore not been extended to include instantaneous communication such as fax and email. ***Credit reference to any applicable case authority on the postal rule, e.g:*** Henthorn v Fraser [1892], Adams v Lindsell [1818], Household Fire insurance v Grant [1879], Getreide-Import GmbH v Contimar SA Compania Industrial, Comercial y Maritima [1953], Tenax Steamship Co v Owners of the Motor Vessel Brimnes [1974] and Entores v Miles Far East Corp [1955].	
Candidates should discuss the conduct as an exception to communication, e.g ***Conduct:*** Is a form of implied acceptance, the courts adopt an approach based on fairness, depending on the conduct of the parties. ***Unilateral contracts:*** The communication rule does not apply. Acceptance in such cases can be by conduct, or performance. This is because unilateral contracts feature an offer to pay another if a certain act is performed. Acceptance of the offer takes place through performance of the specified act. ***Credit reference to any applicable case authority on conduct, e.g:*** Brogden v Metropolitan Railway [1877] and Carlill v Carbolic Smoke Ball Company [1893].	Up to 2 marks

Question 2:	Distinguish between a statement made during pre-contractual negotiations and a term of a contract.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Required: Candidates should have distinguished between a representation and term, e.g ***A contractual term is:*** Any provision forming part of a contract, i.e a promise undertaking that is part of a contract.	Up to 3 Marks

Representation: It is a statement which may encourage one party to made a contract but not itself part of a contract. A representation is a statement of fact which does not amount to a term of the contract. This gives rise to no contractual obligation but may amount to a claim in misrepresentation.	
Candidates may also have explained the different categories of terms, e.g: ***Express Terms:*** These are the terms agreed between the parties or included within the bargain made by the parties. ***Implied Terms:*** These are terms that are not expressly agreed between the parties, but still included as part of the contract by operation of custom, practice or law. ***Conditions:*** The most important of terms, a term that goes to the root of the contract. If a condition of a contract is breached then the aggrieved party can choose to bring all contractual obligations to an end and will have the right to sue for damages. ***Warranties:*** Of less importance to the contract. The result of a breach of warranty is the innocent party can claim damages for that specific breach of contract but will not be able to bring the contract to an end. Contractual obligations will continue despite this breach.	Up to 4 Marks
Candidates may explain the factors the court will consider when differentiating between a representation and a term, e.g: ***Importance:*** The importance of the statement will be a factor. The more important the statement the more likely it is to be a term. If the individual relying on the statement makes it clear that the statement was of such importance that they would unlikely have contracted without that guarantee, the presumption is that the statement will be a term. ***Writing:*** Express terms may be incorporated into a contract by signature so if a statement is in writing, there will be a presumption that it will form a term of the contract. Even if there is a written contract, parties may claim there are other terms in the contract, perhaps ones in another document, or ones from an oral agreement. ***Timing:*** The timing of the statement will be a factor. If a party makes a statement and soon after the contract is reduced to writing without the inclusion of the statement in writing then it would be presumed that that statement would not form a term of the contract and would only be a representation. The longer the interval between the statement and the contract there is a greater presumption that the statement is not a term. The presumption can be rebutted if the parties' intentions are clear through another means.	Up to 8 Marks

Skill and Knowledge: The skill and knowledge of those making the statement will be a factor. If the individual making the statement has some specialist skill/knowledge of the contractual subject matter, or claims to have such knowledge, the presumption is that the statement is more likely to be a term. ***Credit reference to any applicable case authority on the factors, e.g:*** Bannerman v White [1861], L'Estrange v Graucob [1934], Routledge v McKay [1954], Inntrepreneur Pub Co v East Crown Ltd [2000], Oscar Whell Ltd v Williams [1957] and Dick Bentley v Harold Smith Motors Ltd [1965].	

Question 3:	Explain the tests for causation in fact and law.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Candidates must explain the tests of causation, e.g: ***Causation:*** There are two elements to establishing causation in respect of tort claims, with the claimant required to demonstrate that the defendant caused the damage in fact and in law. The claimant has the burden of establishing each. ***Causation in fact:*** Requires evidence of a direct causal link between the defendant's negligent act and the damage suffered by the claimant. This is known as the BUT FOR test i.e. 'but for' the defendant's breach of duty would the harm have occurred? ***Credit reference to any applicable case authority on the but for test, e.g:*** Cork v Kirby MacLean Ltd [1952] and Barnett v Chelsea & Kensington Hospital Management Committee [1969]. ***Causation in law:*** The damage should, as a matter of law, be recoverable from the defendant. Requires that there was no intervening act and that the damage is not too remote from the negligent act/omission.	Up to 4 Marks Candidates may not have been explicit in their explanation, but, they should have demonstrated knowledge of why causation is important in establishing negligence
Candidates should be credited for a discussion on causation in fact, e.g: ***Frustration of the but for test:*** There will often be scenarios in which there are multiple causes of the claimant's harm. There may be	Up to 6 marks To achieve more than a pass, candidates must not simply cite

concurrent causes (causes which happen at the same time) or successive causes (causes which take place one after the other). ***Concurrent Multiple Causes:*** Where two or more causes operate concurrently it may be factually impossible to determine which one was the cause. ***General Rule:*** Where there exists more than one possible cause of an injury or harm, the claimant does not have to show that the defendant's actions were the sole cause of the injury suffered. It must simply be shown that the defendant's actions materially contributed to the harm. It is enough to simply show that a defendant has made a substantial contribution to a claimant's injuries. However, the contribution must be substantial. ***Credit reference to any applicable case authority on material contribution, e.g:*** Bonnington Castings Ltd v Wardlaw [1956], Fitzgerald v Lane [1989] and Wilsher v Essex Area Health Authority [1988]. ***Exposure to risk:*** There are cases where claimants are unable to show that their harm has occurred as a result of the defendant's conduct but they are able to show that their employer has contributed materially to the risk of an injury occurring. ***The 'material increase in risk' test:*** There may be other factors but where the negligence has increased the risk of injury there will be liability. This principle has become important where cases involve multiple illegitimate exposures to a risk. Only a small contribution towards the increase in risk is necessary to establish causation, so long as that contribution is 'material'. ***Credit reference to any applicable case authority on material increase in risk, e.g:*** McGhee v NCB [1973], Fairchild v Glenhaven Funeral Services [2002] and Carder v Secretary of State for Health [2016]. ***Section 3 Compensation Act 2006:*** Placed the material increase in risk test on a statutory footing. This provision meant that a claimant could recover his/her losses in full against any employer, so long as it could be proved that the identified employer had materially increased the risk of exposure to the claimant. ***Successive Multiple causes:*** Where there are two causes occurring in succession it may be possible to identify the factual cause of the damage. ***Credit reference to any applicable case authority on successive multiple causes, e.g:*** Baker v Willoughby [1970] and Jobling v Associated Dairies [1982].	law but should show a greater depth to their knowledge base and apply the authority to the question posed
Candidates should be credited for a discussion on intervening acts, e.g:	Up to 3 marks

Novus actus interveniens: A new intervening act can 'break the chain' of causation between the defendant's breach and the claimant's loss or damage. ***Act of Third Party:*** If the act of a third party is not foreseeable this will break the chain of causation and the original D is not liable for the actions of the third party, against whom the C must direct a separate claim for all future losses. ***Credit reference to any applicable case authority on acts of third parties, e.g:*** Robinson v Post Office [1974], Knightly v Johns [1982], Barrett v Ministry of Defence [1995] and Webb v Barclays Bank plc and Portsmouth Hospitals NHS Trust [2001]. ***Act of the claimant:*** If the act was reasonable the chain of causation remains intact and the D is liable for the actions of the C. If it was not reasonable the chain of causation is broken and the D is not liable for the actions of the C. ***Credit reference to any applicable case authority on the claimants own act, e.g:*** Sayers v Harlow Urban District Council [1958] and McKew v Holland [1969].	To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed
Candidates should be credited for a discussion on causation in law and foreseeability, e.g: ***Foreseeability:*** In order to be recoverable, the kind of harm suffered must be reasonably foreseeable. Whilst the nature of the harm caused must be foreseeable, the exact series of events leading up to it need not be. As long as a type of damage is foreseeable, then defendants will not be able to argue that they did not foresee the extent of damage caused. ***Credit reference to any applicable case authority on foreseeability, e.g:*** Wagon Mound (No 1) [1961], Hughes v Lord Advocate [1963] and Vacwell Engineering Co v BDH Chemicals Ltd. [1971]. ***Thin skull rule:*** Take your victim as you find them. This rule applies not only to claimants themselves or their property, but also to the environment surrounding their property. ***Credit reference to any applicable case authority on the thin skull rule, e.g:*** Smith v Leech Brain [1962].	Up to 2 marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed

Question 4:	Describe the approach taken when the court assesses the standard of care.
Total Marks Attainable Fail = 0-7.4 Pass = 7.5+	10

Merit = 9+ Distinction = 10.5+	
Indicative Content	**Marks**
Required: Candidates must Identify the relevance of the standard of care and how courts will determine whether a defendant has breached their duty of care, e.g: ***Breach of duty requires two things:*** That the defendant failed to reach the appropriate legal standard required and as a matter of fact, the defendant's actions fell below the required standard. ***General Standard:*** The general standard of care is an objective one. Anyone who owes a duty of care is judged against the standard of a 'reasonably competent' person exercising their skill, no matter how experienced or inexperienced the person who owes the duty is. ***The factual standard:*** Is determined by the use of various factors to determine whether the defendant's actual behaviour reached the required standard. ***Reasonable foreseeability:*** The courts will seek to work out what the defendant ought to have foreseen. This means that cases which involve highly unlikely outcomes are not likely to be successful.	Up to 4 marks
Credit any attempt by candidates to explain the general standard of care in more depth with reference to authority, e.g: ***The general standard is:*** An objective test, people will be judged against the standard of a 'reasonably competent' person exercising their skill no matter how experienced or inexperienced the person who owes the duty is. In identifying the 'reasonable man', some guidance has been provided by describing him as 'the man in the street' or 'the man on the Clapham Omnibus'. The reasonable man should be considered as acting averagely meaning that defendants are not asked to act perfectly but are held to an average standard. Knowledge of medical conditions may be taken into account. If some defendants were held to be negligent then this would involve blaming them for accidents they had no reasonable way of preventing. However, where a defendant was aware of the risk their medical condition presented then liability may follow. ***Credit reference to any applicable case authority on the general standard, e.g:*** Blyth v Birmingham Waterworks [1856], Nettleship v Weston [1971], Hall v Brooklands Auto-Racing Club [1933], Roberts v Ramsbottom [1980] and Mansfield v Weetabix [1998].	Up to 3 marks
Credit any attempt by candidates to explain the general standard of care with reference to situations where D is exercising a special skill, e.g:	Up to 3 marks

Where D is exercising a special skill: Will need to reach the standard of care of the reasonable practitioner of the skill is claiming to have. The relevant standard of care in situations where somebody is acting as a professional is not that of the reasonable person. Instead, professionals are judged against the standards of their profession. In the case of the medical profession, the test is whether there was a responsible body of medical opinion which supported the treating doctor's actions and whether that opinion had a logical basis. ***Credit reference to any applicable case authority on the general standard, e.g:*** Phillips v Whiteley [1938], Wells v Cooper [1958], Bolam v Friern Hospital Management Committee [1957], Bolitho v City & Hackney Health Authority [1997], Luxemoore -May v Messenger May Baverstock (a firm) [1990] and Shakoor v Situ [2000].	
Credit any attempt by candidates to describe the factual standard with reference to the factors that will be considered, e.g: ***Use of the factual standard:*** There are often novel situations which cause problems with simply referencing the reasonable person due to their unique facts or circumstances. The courts have therefore created a framework which deals with the factors surrounding a given incidence of negligence. ***These factors include:*** There are two ways the magnitude of risk affects the relevant standard of care. The first of these is likelihood of risk, and the second is the seriousness of the risk involved. The courts will also take into account the cost of precaution when considering the applicable standard of care. Finally, the courts will apply a lesser standard of care to socially valuable activities. So, the factors the court will consider are the likelihood that damage will occur, the severity of the possible outcome, the cost of avoiding the breach of duty, and the importance of the defendants purpose. ***Factors are balanced:*** The first two factors are weighed up against the last two factors. If the weight of the first two factors outweighs the second two, this tends to suggest that the duty has been breached. If the reverse is true, this tends to suggest that there has been no breach of duty. ***Credit reference to any applicable case authority on the factual standard, e.g:*** Bolton v Stone [1951], Paris v Stepney Borough Council [1951], Latimer v AEC [1953] and Watt v Hertfordshire County Council [1954].	Up to 4 marks

SECTION B (choice of 3 out of 4 – 60%)

Question 5:	You work as a Paralegal in the Civil Litigation department at Marshall and Chaton LLP, a high street firm in Birmingham. Your firm acts for Tool and Equipment Hire Ltd ("TEH") who are market leaders in the tool hire industry in the UK and Ireland. They buy, sell and hire out machinery to members of the public and businesses. TEH have received a letter from Mrs Tabitha Davidson, a builder. She is complaining about their service and is arguing that she lost a £40,000 contract as a result of TEH procedures. She is threatening legal action. On the 12 September Mrs Davidson sent an email to the company enquiring about buying a Hawi TF 4500 AVR Heavy Duty Breaker, a jackhammer that could be used on big concrete demolition jobs. A sales representative from TEH emailed her straight back and said that they only had one Hawi TF AVR Heavy Duty Breaker in stock. It was a 3500 model. They indicated she could have it for £12,700 and was told to drop into the warehouse if she wanted it, but that they were very popular. On the 15 September, Mr Eric Harper, another builder, visited TEH to buy a jackhammer. TEH told him that they had one available, for £12,700, for delivery next week. Mr Harper agreed to buy it, and paid TEH. As Mr Harper was leaving the warehouse Mrs Davidson arrived. Mrs Davidson said to a TEH representative that she was accepting the terms of their email. The TEH representative told her that she was too late, the last jackhammer had been sold to Eric. Write the body of a letter of advice setting out whether TEH's email to Mrs Davidson was an offer and, if so, whether they were legally obliged to sell the Hawi TF AVR Heavy Duty Breaker to Mrs Davidson.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately.
Pass	10+	An answer which addresses MOST of the following points: there must be an offer that is accepted for there to be an agreement, an offer should be distinguished from an invitation to treat, how an offer may be terminated and what amounts to acceptance. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the law and impact of the law on the scenario) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.

Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of how the law applies to the facts of the scenario) with very good application and some analysis having regard to the facts. Candidates are likely to observe that IN THIS SCENARIO that the email appears to be certain, containing certain terms and a clear intention to be bound. Candidates may also identify that upon arrival at the shop it is apparent that there is no longer an intention to be bound and this may amount to revocation. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass and Merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content	Marks
Required: Candidates should set out what the courts would look for under the classical theory to identify if there is a contract, e.g: ***For a valid contract:*** the courts will look objectively to see if there is an agreement. A contract requires agreement, the intention to create legal relations, and consideration. ***Agreement:*** Is one of the key elements required to create a valid contract. English law has long recognised the use of an objective test for agreement, which seeks to identify a valid offer by one party that is accepted by the other.	Up to 4 Marks To pass candidates are required to demonstrate knowledge of what is required for there is be a contract
Candidates should have defined an offer and distinguished it from an invitation to treat, e.g: ***An offer distinguished from an invitation to treat:*** An offer is an expression of willingness to contract on certain terms, with the intention that it shall become binding upon acceptance, thus giving rise to a contract. An offer is a certain promise to be bound, with clear and specified terms. The conduct or words of the party making the offer show certainty and there is no room for negotiation. An invitation to treat, however, is merely an invitation for offers or to open negotiations. It does not meet the requirements to be an offer, so cannot be accepted so as to give rise to a binding agreement. When a statement is an invitation to treat there is room for negotiation, it is an invitation for offers or a request for information. An invitation to treat lacks certainty. A mere statement of price would only amount to a supply of information.	Up to 10 Marks

Credit reference to any authority cited distinguishing an offer from an invitation to treat, e.g: Carlill v Carbolic Smoke Ball Co [1893], Gibson v Manchester City Council [1979] and Harvey v Facey [1893]. ***Presumptions:*** There are a number of presumptions which are applied to certain types of conduct. The display of goods in a shop/self-service shop are an invitation to treat and it is the customer makes the offer to the cashier by presenting the goods at the service desk. The cashier accepts the offer by scanning the goods and requesting payment. The display of goods in a shop window is an invitation to treat. An advertisement is an invitation to treat. If an advertisement is considered an offer, theoretically, an unlimited amount of people could accept that offer, which causes obvious problems when the advertisement is for a limited amount of goods, as the seller would be in breach of contract to each individual whom they could not provide goods for. ***Credit reference to any authority cited on the presumptions, e.g:*** Gibson v Manchester City Council [1979], Pharmaceutical Society of Great Britain v Boots Cash Chemists [1953], Fisher v Bell [1961], Partridge v Crittenden [1968] and Grainger & Son v Gough [1896].	
Candidates should be credited for a discussion on the termination of an offer, e.g: ***Termination of an offer:*** An offer may be terminated by rejection (including implied rejection by a counter-offer), revocation or lapse. It may also be accepted. If the offeree, instead of rejecting or accepting the offer, makes a proposal of his/her own to the offeror, this is known as a 'counter-offer'. This places the offeree in the position of the offeror and the original offer is brought to an end as if it never existed. To be effective, the counter-offer has to be a legally recognisable offer. A variation in terms when purporting to be acceptance would amount to a counter offer, even where this is a small variation in the terms. An offer may be revoked any time before acceptance. Revocation of an offer must be communicated to the offeree but this may be by a reliable third party. An offer will lapse after a reasonable time. ***Credit reference to any authority cited on the termination of offer, e.g:*** Hyde v Wrench [1840], Stevenson, Jacques & Co v McLean [1880], DB UK Bank Ltd (t/a DB Mortgages) v Jacobs Solicitors [2016], Byrne v van Tienhoven [1880], Dickinson v Dodds [1876] and Ramsgate Victoria Hotel v Montefiore [1866].	Up to 5 Marks
Candidates should include a more detailed discussion on acceptance, e.g: ***Acceptance:*** Acceptance is the final and unqualified assent to the terms of an offer. It must 'mirror' the offer. Acceptance must be unqualified and definite and match the terms of the offer. The	Up to 5 Marks

purported acceptance was not in fact acceptance but a counter offer. The General rule is that acceptance must be communicated to the other party. When the offeror requires a specified method of acceptance, the general rule is that acceptance must be given in that way. Acceptance will only be valid if the acceptor has authority to accept the offer. The general rule is that acceptance must be communicated to be effective. ***Credit reference to any authority cited on acceptance, e.g:*** Entores v Miles Far East Corp [1955], Neale v Merret [1930], Felthouse v Bindley [1862), Eliason v Henshaw [1819] and Powell v Lee [1908].	

Question 6:	You work as a Paralegal in the Civil Litigation department at Yardley and Harrison LLP. The firm is based in Chester. You are advising Harriet Green, a mechanic from Shrewsbury. In December last year, Miss Green decided to sell her garage in Shrewsbury. It was one of the leading car repair garages in Shrewsbury, specialising in all areas of vehicle repair and servicing. On 14 December Mr Bennett visited the garage to inspect the business. Miss Green told him that the business was making a profit of £65,000 per annum. Happy with this level of profit, Mr Bennett was said he would like to agree terms to buy the business. The pair entered negotiations and discussed the inclusion of the tools. It was agreed that Mr Bennet would purchase the premises, the motorcycle lifts, the jacks, the axle stands and the air compressor. Miss Green promised that all of the tools were in excellent condition. They then signed a contract for the sale of the business. The negotiations around the sale took four months and during this time Miss Green was setting up a new business in Chester and stopped doing so many hours at the garage. As a result, by the time the deal was finalised, the annual profit had dropped to £35,000. If Miss Green had checked the books she would have noticed this. Six months later, Mr Bennett started to prepare the year-end accounts. He discovered that the annual profits of the business in the year before the purchase had been only £35,000. To make matters worse, the air compressor kept failing during the first year. Mr Bennett has sent a letter before action to Miss Green alleging misrepresentation. Miss Green wishes for you to advise her on what misrepresentation is, whether her statements amount to misrepresentation and the potential consequence if Mr Bennett is successful in his claim.

	Write the body of a letter to Miss Green advising what misrepresentation is, explain the types of misrepresentation and explain the remedies that may be available to Mr Bennett.
Total Marks Attainable	20

Fail	up to 9.9	This mark should be awarded to candidates whose papers fail to address any of the requirements of the question, or only touch on some of the more obvious points without dealing with them or addressing them adequately.
Pass	10+	An answer which addresses MOST of the following points: there must be a statement of fact, silence will not usually amount to misrepresentation, the statement must have been relied upon and induced a party into the agreement, there are three types of misrepresentation and the type of misrepresentation will determine the remedies available. Candidates will demonstrate a good depth of knowledge of the subject (i.e. a good understanding of the law and impact of the law on the scenario) with good application and some analysis having regard to the facts, although candidates may demonstrate some areas of weakness.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the practical implications and difficulties with proving fraudulent misrepresentation, there is nothing in the facts to support a claim for fraud and therefore, the answer will likely concentrate on negligent and innocent misrepresentation) with very good application and some analysis having regard to the facts. Candidates are likely to observe that IN THIS SCENARIO there may be grounds for a claim in misrepresentation. It may be concluded that the statements amounted to innocent misrepresentation. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass and Merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content:	**Marks**
Required: The definition of misrepresentation, e.g: ***Misrepresentation:*** A misrepresentation is a false statement of fact (or possibly law), made by one party of the contract to the other party, before the contract was made, with a view to inducing the other party to enter the contract, which does induce the other party to enter into the contract.	Up to 2 Marks To pass candidates are required to demonstrate knowledge of what

There are three kinds of misrepresentation: Fraudulent, negligent and innocent.	misrepresentation is
Credit a discussion on what a statement of fact is, e.g: ***Statement of Fact:*** The general rule is that a statement of opinion is not a fact and nor is an estimate. The position is different if the statement maker is in a position to know the true fact. If the statement is made with a reasonable belief and they have reasonable grounds to make this statement, it will amount to a statement of fact. Correspondingly, if the statement maker holds themselves out to have reasonably grounds to make a statement, when in fact this is not true, it will amount to a statement of fact for the purposes of proving misrepresentation. ***Credit reference to relevant case authority on statements of fact, e.g:*** Bisset v Wilkinson [1927], Esso Petroleum v Mardon [1976] and Smith v Land and House Property Corp [1884]. ***Ascertaining whether a statement is false:*** This is not a question of whether the statement is true or false, the degree of falsity is a relevant consideration. ***Credit reference to relevant case authority on false statements, e.g:*** Avon Insurance plc v Swire Fraser Ltd [2000].	Up to 3 Marks
Credit any discussion on silence, e.g: ***Silence:*** Silence does not usually amount to misrepresentation however the word 'statement' has been broadly interpreted. It has been held that conduct can amount to a statement for the purpose of misrepresentation. A misleading half-truth will amount to a misrepresentation. A misleading half-truth is a true statement which is misleading due to all relevant information not being revealed. Changes of circumstances are an exception to the general rule that silence may not amount to misrepresentation. If a statement is accurate when it is made but circumstances change before the contract is finally settled this must be disclosed. ***Credit reference to relevant case authority on silence, e.g:*** Sykes v Taylor-Rose [2004], Curtis v Chemical Cleaning & Dyeing co Ltd [1951], Nottingham Patent Brick & Tile Co v Butler [1886] and With v O'Fianagan [1936].	Up to 4 Marks
Candidates should include a discussion on inducement and reliance e.g: ***Being Aware:*** There can be no inducement or reliance if the representee was unaware of the false statement. If the representee or their agent checks out the validity of the statement they have not relied on the statement. The claimant was unsuccessful. By getting his own experts to check out the reports he had not relied on the accounts but his own judgment. If the representee is given the opportunity to check out the	Up to 4 Marks

statement but does not in fact check it out, they are still able to demonstrate reliance. ***Credit reference to relevant case authority on inducement and reliance, e.g:*** Horsfall v Thomas [1862], Attwood v Small [1838] and Redgrave v Hurd [1881].	
Credit any discussion on the types of misrepresentation and the remedies available, e.g: ***Fraudulent misrepresentation:*** Where a false representation has been made knowingly, or without belief in its truth, or recklessly as to its truth. ***Credit reference to relevant authority on fraudulent misrepresentation, e.g:*** Derry v Peek [1889], Doyle v Olby (Ironmongers) Ltd [1969]. ***Negligent misrepresentation:*** A representation made carelessly and in breach of duty owed by Party A to Party B to take reasonable care that the representation is accurate. If no "special relationship" exists, there may be a misrepresentation under section 2(1) of the Misrepresentation Act 1967 where a statement is made carelessly or without reasonable grounds for believing its truth. ***Burden of Proof:*** section 2(1) of the Misrepresentation Act 1967 effectively transfers the burden of proof to the defendant. The statute imposes an absolute obligation not to state facts which the representor cannot prove he had reasonable ground to believe. ***Credit reference to relevant authority on the burden of proof, e.g:*** Section 2(1) of the Misrepresentation Act 1967, Howard Marine and Dredging Co Ltd v A Ogden and Sons (Excavation) Ltd (1978) ***Remedies:*** The same (tortious) measure of damages will apply to both fraudulent and negligent misrepresentations. The award of rescission is subject to the court's discretion. ***Credit reference to relevant authority on the remedies for fraudulent and negligent, e.g:*** Royscot Trust Ltd v Rogerson [1991]. ***Innocent misrepresentation:*** A representation that is neither fraudulent nor negligent. The courts may award damages in lieu of rescission. This decision is entirely at the courts' discretion. Damages will be on the contractual basis. ***Credit reference to relevant authority on innocent misrepresentation, e.g:*** Section 2(2) Misrepresentation Act 1967.	Up to 8 Marks To achieve more than a pass, candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed
Credit any discussion on the factors the court will consider when differentiating between a representation and a term, e.g: ***Misrepresentation may be contrasted with:*** Breach of contract. Misrepresentation is independent of the contract, but attaches to it, only becoming actionable once the contract has been entered into. Liability	Up to 3 Marks

in tort is imposed by law; liability in contract arises as a matter of agreement. ***If not a term but a representation:*** The proper course of action would be for misrepresentation and not for breach of contract. ***Credit a discussion of any other relevant case authority on the distinction between a term and a representation, e.g:*** Routledge v McKay [1954], Bannerman v White [1861], L'Estrange v Graucob [1934], Dick Bentley v Harold Smith Motors Ltd [1965]	

Question 7:	You work for Smythson Solicitors in Eastbourne. Mrs Badderson is a Senior Solicitor at the firm and she has approached you to do some work on the files of Miss Jessica Thorne and Mr David Bister. Jessica Thorne went with her new boyfriend, David Bister, to Eastbourne Reservoir, where Eastbourne Watersports Centre is situated. They took Phillipa, Jessica's 9-year-old daughter. The Watersports Centre offers water-based leisure activities, including wakeboarding, jet skiing and windsurfing. On arrival at the Reservoir Jessica booked Phillipa a Beginner's Jet-ski lesson. The lesson was taken by a specialist jet-ski instructor, Megan. When Jessica met Megan she was a little anxious, but Megan reassured her and explained that she would drive the jet-ski with Phillipa on board. Megan piloted the jet-ski out to the middle of the reservoir. There was a 15 mile per hour speed limit, but Megan decided to ignore this to make the ride more exciting. She sped up to 25 miles per hour. While travelling at this speed, Megan lost control of the jet-ski, which turned on its side, throwing Phillipa off into the water. Megan had forgotten to do up Phillipa's lifejacket and when Phillipa hit the water the lifejacket came off. Phillipa sank underneath the water, much to the horror of Jessica, who was watching from the side of the lake. Luckily, a lifeguard witnessed the accident and was able to rescue Phillipa. David had returned to his car to get his phone, so he did not see the accident, but he was very upset when Jessica told him about it later. Jessica, David and Phillipa have all been diagnosed with post-traumatic stress disorder (PTSD) as a result of the accident. Prepare a summary of advice for Miss Thorne and Mr Bister on what

	must be demonstrated for a Claimant to be owed a duty of care as a primary or secondary victim in the context of psychiatric injury.

Total Marks Attainable Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with those requirements only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. The answer will be weak in its presentation of points and its application of the law to the facts.
Pass	10+	An answer which addresses MOST of the following points: Candidates must provide an explanation of what must be established for a claim in negligence, identify the relevant law on reasonable foresight, identify the relevant law on reasonable proximity, explain the difficulties with the third strand of the Caparo test and distinguish between primary and secondary victims. Candidates should refer to the developments in the common law. Some key case law may be included, but this may not be specifically applied or only superficially.
Merit	12+	An answer which includes ALL the requirements for a pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of the distinction between primary and secondary victims) with very good application and some analysis having regard to the facts. Candidates are likely to observe that the jet ski instructor owed a duty of care. Candidates should have identified that Jessica, David and Phillipa all suffered psychiatric harm, i.e a recognised medical condition. Consideration should have been given to the primary and secondary victims based on application to the facts of the scenario. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. Work should be written to an exceptionally high standard with few, if any, grammatical errors or spelling mistakes etc.

Indicative Content	**Marks**
Required: Candidates must explain what must be established in order to mount a successful claim in negligence, e.g: ***What must be established:*** the existence of a duty of care (based on the 'neighbour' principle); a breach of that duty; and loss or damage caused by that breach of duty. ***Establishing a duty is owed:*** The Caparo test only needs applying in new and novel cases and the courts should generally establish a duty by looking at existing duty situations and ones with clear analogy. ***Credit should be given where reference is made to cases on duty, e.g:*** Donoghue v Stevenson [1932], Caparo Industries v Dickman [1990] and Robinson v Chief Constable of West Yorkshire Police [2018].	Up to 4 Marks
Candidates should discuss claims for psychiatric harm, e.g:	Up to 4 Marks

Psychiatric harm: As a general rule, sadness, grief or general distress will not give rise to a valid claim. To claim for psychiatric injury the law states that the injury must manifest in a medically recognised psychiatric condition. Post-Traumatic Stress Disorder, Pathological Grief and Personality Disorder are all examples of psychiatric harm that may give rise to a claim in negligence. ***Credit should be given where reference is made to cases on a recognised psychiatric injury, e.g:*** Wilkinson v Downtown [1897], Hinz v Berry [1970], Leach v Chief Constable of Gloucestershire Constabulary [1999], Rothwell v Chemical and Insulating Co [2007], Leach v Chief Constable of Gloucestershire Constabulary [1999], Vernon v Bosley (No. 1) [1997] and Chadwick v British Railways Board [1967].	
Candidates should discuss the need for the shock to be caused by a sudden event, e.g: ***Sudden event:*** As a means of controlling the claims made under the heading of psychiatric injury, the courts have also stipulated that such injury must now be caused by a sudden event. The idea of 'suddenness' should not be taken to mean 'immediate'. ***Credit should be given where reference is made to authority cited ona sudden event, e.g:*** Alcock v Chief Constable of South Yorkshire [1992] and Walters v North Glamorgan NHS Trust [2002].	Up to 2 Marks
Candidates may have discussed the third strand of Caparo on reasonable foresight and identified the relevant law on reasonable proximity, e.g: ***This requirement of foreseeability:*** Requires consideration of whether it is foreseeable that the defendant's carelessness could cause damage to the claimant. ***Credit should be given where reference is made to cases on foresight, e.g:*** Fardon v Harcourt Rivington [1932] and Smith and Others v Littlewoods Organisation Ltd [1987] ***The requirement of proximity means:*** That the claimant must be sufficiently close to the defendant, whether as a matter of physical proximity or through a close and direct relationship, such that the acts of the defendant could affect the claimant. ***Credit should be given where reference is made to cases on proximity, e.g:*** Home Office v Dorset Yacht Co [1970] and West Bromwich Albion FC v El-Safty [2005] ***The third stage of Caparo:*** Involves establishing whether it would be fair, just and reasonable for the courts to find that the defendant owed a duty of care to the claimant.	Up to 8 Marks

Policy considerations may be considered: i.e wider factors outside the strict legal issues or facts of an individual case, which the courts may take into account when reaching a decision. ***Credit should be given where reference is made to cases on fair just and reasonable, e.g:*** L and Another v Reading Borough Council and Others [2007].	
Candidates should have explained the distinction between primary and secondary victims, e.g: ***Distinction between primary and secondary victims:*** The law makes a distinction between the duty a defendant has towards primary victims and the duty a defendant has towards secondary victims. ***A primary victim:*** Can be defined as a person to whom physical as well as psychological harm was caused, or to whom physical harm was foreseeable. This is sometimes referred to as being in the 'zone of danger'. ***A secondary victim:*** For a claimant to have a viable claim as a secondary victim, they must satisfy a number of criteria. There must be a close emotional link between the traumatic event and the claimant's psychiatric injury, i.e be closely related in some way to a primary victim. The secondary victim must be both close in terms of 'spatial and temporal proximity', i.e same time, same place. The secondary victim must see or hear the immediate aftermath of the instigating event. ***Credit should be given where reference is made to cases on primary and secondary victims, e.g:*** Page v Smith [1995], Alcock v Chief Constable of South Yorkshire [1992], White v Chief Constable of South Yorkshire Police [1999], Chadwick v British Railways Board [1967], McFarlane v EE Caledonia Ltd [1995] and McLoughlin v O'Brian [1983].	Up to 6 marks To achieve a merit or distinction, candidates should not simply cite the relevant rules and principles but must show an ability to apply the rules to the scenario.

Question 8:	You work as Legal Assistant at an SRA regulated firm specialising in personal injury, Tavistock and Belvoir LLP. The firm is based in Cambridge. You are working on the file of Miss Sarah Downing. At midday on the 5 May 2021, Miss Downing was driving on the A6 when she was involved in a road traffic accident. She was listening to the radio, but the service dropped off because she entered a 'black spot', so she decided to put a CD in her car stereo. While looking for a CD, she lost control of her car and swerved into the central reservation causing the car to spin in the road in front of the cars that were following her. Mr Dominic Little, who was following Miss Downing in his car at a safe distance, was unable to avoid her car. He was injured as a result and

	was taken by ambulance to Cambridge Royal Infirmary. At the hospital, Mr Little was examined by Dr Tory Thornton, a senior doctor at the hospital. Dr Thornton was distracted by fears over another patient, and she negligently failed to check Dominic for concussion. Checking for concussion after a road traffic accident is standard practice. Mr Little died during the night from a severe brain injury. It has since been discovered that the standard concussion check would not have revealed the fatal injury. Write the body of a letter of advice to Miss Downing setting out whether she may be liable for the death of Mr Little. The advice should cover what causation is and when the act of a third party may break the chain of causation.
Total Marks Attainable	20

Fail	up to 9.9	An answer which deals with the basic requirements of the question, but in dealing with this only does so superficially and does not address, as a minimum, all the criteria expected of a pass grade (set out in full below). The answer will only demonstrate an awareness of some of the more obvious issues. The answer will be weak in its presentation of points and its application of the law to the facts. There will be little evidence that candidates have any understanding of the framework governing third party funding, or any view expressed will be unsupported by evidence or authority.
Pass	10+	An answer which addresses MOST of the following points: An outline of the causation in fact, an outline of legal causation, a discussion of problems the courts have faced with causation, a discussion of when the act of a third party may break the chain of causation and a discussion of when the act of the claimant may break the chain of causation. Candidates should identify the relevant issues in the case and deal with the circumstances in their advice.
Merit	12+	An answer which includes ALL the requirements for a Pass (as set out above) PLUS candidates will demonstrate a very good depth of knowledge of the subject (i.e. a very good understanding of when medical negligence may break the chain of causation and the impact on liability) with very good application and some analysis having regard to the facts. Most views expressed by candidates should be supported by relevant authority and/or case law.
Distinction	14+	An answer which includes ALL the requirements for a pass and merit (as set out above) PLUS the candidates' answers should demonstrate a deep and detailed knowledge of law in this area and an ability to deal confidently with relevant principles. All views expressed by candidates should be supported by relevant authority and/or case law throughout. Candidates should be able to show critical assessment and capacity for independent thought on the topics. Work should be written to an exceptionally high standard taking into consideration that it is written in exam conditions.

Fail = 0-9.9
Pass = 10+
Merit = 12+
Distinction = 14+

Indicative Content	**Marks**
Required: Candidates must outline what is required for a successful action in negligence, e.g:	Up to 4 Marks

Donoghue v Stevenson [1932]: Is now the basis for all negligence actions in England & Wales, requiring a potential claimant to establish the 3 elements before a claim can succeed. ***What must be established:*** the existence of a duty of care (based on the 'neighbour' principle); a breach of that duty; and loss or damage caused by that breach of duty. ***Breach of duty requires two things:*** That the defendant failed to reach the appropriate legal standard required and as a matter of fact, the defendant's actions fell below the required standard. ***General Standard:*** The general standard of care is an objective one. Anyone who owes a duty of care is judged against the standard of a 'reasonably competent' person exercising their skill, no matter how experienced or inexperienced the person who owes the duty is. ***The factual standard:*** Is determined by the use of various factors to determine whether the defendant's actual behaviour reached the required standard. ***Reasonable foreseeability:*** The courts will seek to work out what the defendant ought to have foreseen. This means that cases which involve highly unlikely outcomes are not likely to be successful.	Better responses are likely to have contextualised there explanation of causation by explaining it is one of the elements to prove negligence
Candidates must explain the tests of causation, e.g: ***Causation:*** There are two elements to establishing causation in respect of tort claims, with the claimant required to demonstrate that the defendant caused the damage in fact and in law. The claimant has the burden of establishing each. ***Causation in fact:*** Requires evidence of a direct causal link between the defendant's negligent act and the damage suffered by the claimant. This is known as the BUT FOR test i.e. 'but for' the defendant's breach of duty would the harm have occurred? ***Credit reference to any applicable case authority on the but for test, e.g:*** Cork v Kirby MacLean Ltd [1952] and Barnett v Chelsea & Kensington Hospital Management Committee [1969]. ***Causation in law:*** The damage should, as a matter of law, be recoverable from the defendant. Requires that there was no intervening act and that the damage is not too remote from the negligent act/omission.	Up to 7 Marks
Candidates should be credited for a discussion on causation in fact, e.g: ***Frustration of the but for test:*** There will often be scenarios in which there are multiple causes of the claimant's harm. There may be concurrent	Up to 7 Marks

causes (causes which happen at the same time) or successive causes (causes which take place one after the other). ***Concurrent Multiple Causes:*** Where two or more causes operate concurrently it may be factually impossible to determine which one was the cause. ***General Rule:*** Where there exists more than one possible cause of an injury or harm, the claimant does not have to show that the defendant's actions were the sole cause of the injury suffered. It must simply be shown that the defendant's actions materially contributed to the harm. It is enough to simply show that a defendant has made a substantial contribution to a claimant's injuries. However, the contribution must be substantial. ***Credit reference to any applicable case authority on material contribution, e.g:*** Bonnington Castings Ltd v Wardlaw [1956], Fitzgerald v Lane [1989] and Wilsher v Essex Area Health Authority [1988]. ***Exposure to risk:*** There are cases where claimants are unable to show that their harm has occurred as a result of the defendant's conduct but they are able to show that their employer has contributed materially to the risk of an injury occurring. ***The 'material increase in risk' test:*** There may be other factors but where the negligence has increased the risk of injury there will be liability. This principle has become important where cases involve multiple illegitimate exposures to a risk. Only a small contribution towards the increase in risk is necessary to establish causation, so long as that contribution is 'material'. ***Credit reference to any applicable case authority on material increase in risk, e.g:*** McGhee v NCB [1973], Fairchild v Glenhaven Funeral Services [2002] and Carder v Secretary of State for Health [2016]. ***Section 3 Compensation Act 2006:*** Placed the material increase in risk test on a statutory footing. This provision meant that a claimant could recover his/her losses in full against any employer, so long as it could be proved that the identified employer had materially increased the risk of exposure to the claimant. ***Successive Multiple causes:*** Where there are two causes occurring in succession it may be possible to identify the factual cause of the damage. ***Credit reference to any applicable case authority on successive multiple causes, e.g:*** Baker v Willoughby [1970] and Jobling v Associated Dairies [1982].	
Candidates should be credited for a discussion on intervening acts, e.g:	Up to 3 Marks

Novus actus interveniens: A new intervening act can 'break the chain' of causation between the defendant's breach and the claimant's loss or damage. ***Act of the claimant:*** If the act was reasonable the chain of causation remains intact and the D is liable for the actions of the C. If it was not reasonable the chain of causation is broken and the D is not liable for the actions of the C. ***Credit reference to any applicable case authority on the claimants own act, e.g:*** Sayers v Harlow Urban District Council [1958] and McKew v Holland [1969]. ***Act of Third Party:*** If the act of a third party is not foreseeable this will break the chain of causation and the original D is not liable for the actions of the third party, against whom the C must direct a separate claim for all future losses. ***Credit reference to any applicable case authority on acts of third parties, e.g:*** Robinson v Post Office [1974], Knightly v Johns [1982], Barrett v Ministry of Defence [1995] and Webb v Barclays Bank plc and Portsmouth Hospitals NHS Trust [2001].	
Candidates should be credited for a discussion on causation in law and foreseeability, e.g: ***Foreseeability:*** In order to be recoverable, the kind of harm suffered must be reasonably foreseeable. Whilst the nature of the harm caused must be foreseeable, the exact series of events leading up to it need not be. As long as a type of damage is foreseeable, then defendants will not be able to argue that they did not foresee the extent of damage caused. ***Credit reference to any applicable case authority on foreseeability, e.g:*** Wagon Mound (No 1) [1961], Hughes v Lord Advocate [1963] and Vacwell Engineering Co v BDH Chemicals Ltd. [1971]. ***Thin skull rule:*** Take your victim as you find them. This rule applies not only to claimants themselves or their property, but also to the environment surrounding their property. ***Credit reference to any applicable case authority on the thin skull rule, e.g:*** Smith v Leech Brain [1962].	Up to 3 Marks