September 2022: 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 the exceptions to the principle that acceptance must be communicated.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Candidates should explore what is meant by an acceptance and the general rule on communication, 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. ***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. ***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	Up to 5 marks A pass must refer to the characteristics and requirements of acceptance

[1930], Felthouse v Bindley [1862], Eliason v Henshaw [1819], Holwell Securities v Hughes [1974], Powell v Lee [1908] and Routledge v Grant [1828].	
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 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].	Up to 7 marks
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:***	Up to 4 marks

Brogden v Metropolitan Railway [1877] and Carlill v Carbolic Smoke Ball Company [1893].	

Question 2:	Explain how terms are incorporated into a contract.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Candidates may have explained what a term is, e.g ***A contractual term is:*** Any provision forming part of a contract, i.e a promise undertaking that is part of a contract. ***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. ***Innominate term:*** Rather than classifying the terms themselves as conditions or warranties, the innominate term approach looks to the effect of the breach and questions whether the innocent party to the breach was deprived of substantially the whole benefit of the contract. Only where the innocent party was substantially deprived of the whole benefit, will they be able to treat the contract as at an end. ***Credit reference to any authority cited on breach of condition or warranty, e.g:*** Poussard v Spiers (1876), Bettini v Gye 1876 and Hong Kong Fir Shipping v Kawasaki Kisen Kaisha [1962]	Up to 3 Marks
Required: Candidates should explain the doctrine of notice (actual and constructive), e.g: ***Notice:*** Generally classified as either actual notice or constructive notice. Both actual notice and constructive notice are treated as	Up to 6 Marks

having equal legal effect. ***Actual notice:*** is when notice of an event or state of affairs is known by a person. The question is whether reasonable steps to draw the term to a parties attention has been taken. The position is different where a clause is onerous. The more unusual or onerous the clause, the more effort the court will expect from the person wishing to rely on it to draw it to the other party's attention. ***Constructive Notice:*** A legal presumption that a party has notice when it can discover certain facts by due diligence or inquiry into the public records. A party found to have constructive notice cannot deny knowledge of a fact because that party did not have actual knowledge, since there is a duty to conduct due investigation. Constructive notice is likely to be seen where the parties are in the same trade or where they have had previous dealings with each other. ***Credit reference to any applicable case authority on notice, e.g:*** Parker v South Eastern Railway Company (1877), Interfoto Picture Library v Stiletto Visual Programmes Ltd [1989], British Crane Hire Corporation Ltd. v Ipswich Plant Hire Ltd [1975] and Hollier v Rambler Motors Ltd [1972].	
Required: Candidates are required to have considered how the courts may impute terms into an agreement, e.g: ***Business efficacy test:*** If the contract was considered to be unworkable without the implied term, then the courts would imply a term necessary in order to give the contract 'business efficacy'. The business efficacy test was seen as a strict test and only used where the contract would be unworkable without the implied term. ***Credit reference to any applicable case authority on the business efficacy test, e.g:*** The Moorcock (1889) and Liverpool City Council v Irwin [1977]. **Officious bystander test:** Another test which the courts developed over the years is the 'officious bystander' test. "If, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in the agreement, they would testily suppress him with a common "Oh, of course"'. So, the proposed term will be implied if it is so obvious that, if an officious bystander suggested to the parties that they include it in the contract ***Credit reference to any applicable case authority on the business efficacy test, e.g:*** Shirlaw v Southern Foundries Ltd [1940]. ***The Belize test:*** Court has no power to improve an instrument or contract to make it fairer or more reasonable. The real question the court had to answer in every case was 'would the contended for implied term spell out what the instrument, read as a whole and	Up to 5 marks

against the relevant background, would reasonably be understood to mean'? The Supreme Court has since held that this formulation in *Belize* has been misinterpreted as suggesting that reasonableness is itself a sufficient ground for implying a term and suggested that the right course is for Lord Hoffmann's speech in *Belize* to be treated as a "characteristically inspired discussion rather than authoritative guidance on the law of implied terms." The court has confirmed that Belize did not dilute the traditional business efficacy and officious bystander tests and to the extent subsequent judgments suggested that it had, that approach was mistaken. ***Credit reference to any applicable case authority on the Belize test, e.g:*** AG of Belize v Belize Telecom [2009], Mediterranean Salvage & Towage Ltd v Seamar Trading & Commerce (The Reborn) [2009] and Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited [2015].	
Candidates may have considered how statute may impute terms into an agreement, e.g: ***Terms may be implied into contracts for the sale of goods and services (whether by the Supply of Goods and Services Act 1982 or the Consumer Rights Act 2015):*** That the goods are of satisfactory quality; that the goods are reasonably fit for purpose; that the goods correspond with any description by which they are sold.	Up to 2 marks

Question 3:	Explain the legal principles governing whether an intervening act may break the chain of causation.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	**Marks**
Candidates must explain the relevance of causation, e.g: ***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. ***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	Up to 3 Marks Candidates may not have been explicit in their explanation, but, they should have demonstrated knowledge of why causation is important in establishing

claimant has the burden of establishing each.	negligence
Candidates should be credited for a discussion on intervening acts, e.g: ***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]. ***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].	Up to 7 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
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 causes (causes which happen at the same time) or successive causes (causes which take place one after the other). ***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], McGhee v NCB [1973], Fairchild v Glenhaven Funeral Services [2002] and Carder v Secretary of State for Health [2016] and Baker v Willoughby [1970] and Jobling v Associated	Up to 3 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

Dairies [1982].	
Candidates should be credited for a discussion on causation in law and foreseeability, e.g: ***Causation in law:*** Requires that the damage is not too remote from the negligent act/omission. In order to be recoverable, the kind of harm suffered must be reasonably foreseeable. Originally this principle was a Privy Council decision and so persuasive rather than binding in English law. However, it was later given binding force and extended. The test is now: in order to be recoverable the broad kind of harm must be reasonably foreseeable. ***Thin skull rule:*** Take your victim as you find them. This principle prescribes that a defendant is liable for the full extent of the harm or loss to the claimant even where it is of a more significant extent than would have been expected, due to a pre-existing condition or circumstance of the claimant. ***Credit reference to any applicable case authority on remoteness of damage, e.g:*** Wagon Mound (No 1) [1961], Hughes v Lord Advocate [1963] and Smith v Leech Brain [1962].	Up to 3 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 what must be established in order to mount a successful claim in negligence.
Total Marks Attainable Fail = 0-7.4 Pass = 7.5+ Merit = 9+ Distinction = 10.5+	10
Indicative Content	**Marks**
Required: Candidates must outline what is required for a successful action in negligence, e.g: ***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.	Up to 2 marks
Candidates should outline what is required to establish there is a duty owed, e.g: ***Establishing a duty is owed:*** The courts should generally establish a duty by looking at existing duty situations and ones with clear analogy. The 'three-stage' test from *Caparo* is reasonable foreseeability of harm to the claimant if the defendant fails to fulfil	Up to 4 Marks

any duty that may exist; proximity of relationship between claimant and defendant (in time or space); and whether it is fair, just and reasonable to impose a duty of care in such circumstances. ***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].	
Candidates should outline what is required to establish there has been a breach of duty, 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. ***Credit reference to any applicable case authority on breach, e.g:*** Blyth v Birmingham Waterworks [1856], Nettleship v Weston [1971], Hall v Brooklands Auto-Racing Club [1933], Roberts v Ramsbottom [1980], Mansfield v Weetabix [1998], 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].	Up to 6 Marks
Credit a discussion on causation e.g: ***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? ***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.	Up to 4 Marks

If it was not reasonable the chain of causation is broken and the D is not liable for the actions of the C. ***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. ***Causation in law:*** Requires that the damage is not too remote from the negligent act/omission. ***Credit should be given where reference is made to cases on causation, e.g:*** Cork v Kirby MacLean Ltd [1952], Barnett v Chelsea & Kensington Hospital Management Committee [1969], Robinson v Post Office [1974], Knightly v Johns [1982], Barrett v Ministry of Defence [1995] and Webb v Barclays Bank plc, Portsmouth Hospitals NHS Trust [2001], Sayers v Harlow Urban District Council [1958] and McKew v Holland [1969].	

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

Question 6:	You work as a Paralegal in the Civil Litigation department at Manches and Trevors LLP in Oxford. Your firm is acting for Roger Speedy who is seeking advice in relation to a potential claim for breach of contract. David, a keen motorcyclist decides that it is time to give up motorcycling. On 1st August he telephoned a motorcycle dealer, Speedys, to enquire whether they were interested in buying his bikes. He told them he had a Ducati 2000 XS and a Triumph 350 for sale. He also told them that the Triumph 350 had been raced by Trevor Revor, a famous Grand Prix racer. Mr Speedy said he was interested and to bring the bikes to the dealership the following week for him to look at. David then, unsuccessfully, searched the internet for pictures of Trevor Revor racing the Triumph which he wanted to frame as a memento. It was then that he realised that Trevor Revor had never in fact raced the Triumph. On 9 August David took his two motorcycles to Speedys. Mr Speedy was busy, so David left the bikes for him to inspect later. Later, Mr Speedy gave the bikes a quick look over but did not inspect the registration documents left by David which David had never read. The following Saturday David returned to the dealership and Mr Speedy offered him £25,000 for the Triumph and £10,000 for the

	Ducati. David accepted. The bikes were in Speedys showroom for six weeks but there was little interest in either bike. Mr Speedy decided to look more closely at both bikes. Although the Ducati was badged with a 'Ducati 2000 XS' emblem his mechanic discovered that it is a less valuable Ducati 1600 TC model that has a less powerful engine. Mr Speedy then looked at the registration documents which confirmed that it is the 1600 TC model. Mr Speedy then investigated the previous owners of the Triumph and discovered that it had never been raced by Trevor Revor. The value of the bikes was much lower than he paid. Write the body of a letter to Mr Speedy advising what misrepresentation is, whether you believe the representations made by David may amount to misrepresentation and the potential remedies available should a successful claim for misrepresentation be brought against David.
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, candidates may discuss whether there is anything in the facts to support a claim for fraud) 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 and candidates are likely to have explained there may be a duty to explain where there has been a change in circumstances. 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. ***There are three kinds of misrepresentation:*** Fraudulent, negligent and innocent.	Up to 2 Marks To pass candidates are required to demonstrate knowledge of what 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	Up to 4 Marks

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].	
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 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].	Up to 4 Marks
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***	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

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.	
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 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]	Up to 3 Marks

Question 6:	You work as a Paralegal in the Civil Litigation department at an SRA regulated firm in London. Your friend, Leonardo DiMarco, knows you work in law and has emailed you asking for your advice in relation to a contact problem he has. Leonardo, who owns a vineyard in Tuscany, is a wine merchant. He has a special consignment of an Italian Barolo wine which he thinks Lixin, one of his best customers, might be interested in for his wine bar which is based in Soho. Leonardo emailed Lixin from his phone telling him that he had 2,000 bottles for £20,000, an offer which he will keep open for him until 6:00 pm that day. Lixin immediately typed a reply to the email saying he would like the wine, but he failed to notice that his phone instead of saying 'sent' said 'saved in drafts'. Not hearing from Lixin, Leonardo emailed Sofia who he knows has just opened a new Italian restaurant, San Marco, and will be looking to stock her cellar. He offered the same 2,000 bottles to her for the same price. Sofia replied immediately by email saying she is looking forward to doing business with Leonardo and could she have the wine delivered in five instalments on credit terms. Unfortunately, the email was automatically directed into Leonardo's spam filter and

	subsequently deleted. That evening Leonardo met Lixin at his bar. Lixin told Leonardo how much he was looking forward to receiving the new wine. Leonardo then text Sofia to say that the wine has been sold elsewhere and that he hopes to be able to do business with her in the future. Leonardo has asked you to advise whether he had formed a binding agreement with Lixin or Sofia. He has also asked you to advise that if a contract had been formed what remedies would be available to Lixin and Sofia. Write the body of an email to Leonardo advising whether any contracts have been formed and setting out the remedies available for breach of contract.
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 it is likely that initially there is no communication of acceptance and therefore no binding contract with Lixin, that Sofia makes a counter offer although that wasn't in contemplation and therefore could not have been accepted and that a contract is formed when Lixin accepts the terms in the bar. Candidates should then identify that it is likely there is a binding agreement to provide the wine to Lixin and then outline the consequence of breach where both a warranty and condition are breached. 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 2 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. ***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].	Up to 8 Marks

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 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].	Up to 5 Marks
Candidates should include a discussion on breach of term, e.g: ***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	Up to 4 marks

end. Contractual obligations will continue despite this breach. ***Innominate term:*** Rather than classifying the terms themselves as conditions or warranties, the innominate term approach looks to the effect of the breach and questions whether the innocent party to the breach was deprived of substantially the whole benefit of the contract. Only where the innocent party was substantially deprived of the whole benefit, will they be able to treat the contract as at an end. ***Credit reference to any authority cited on breach of condition or warranty, e.g:*** Poussard v Spiers (1876), Bettini v Gye 1876 and Hong Kong Fir Shipping v Kawasaki Kisen Kaisha [1962]	

Question 7:	You work for Johnsons' Solicitors in Bicester. Mr Johnson is a Senior Partner at the firm and he has approached you to do some work on the file of Aero Namics Ltd, a recent incident has led Aero Namics Ltd to seek advice for your firm on any potential liability. During a routine take off from Bicester Aerodrome a small single seater plane, flown by Donald, got into difficulty as a result of mechanical problems. Shortly after take off the plane crashed in the airfield. The plane had just been serviced by Aero Namics Ltd. During the take-off Donald was in contact with Raj, an aircraft flight controller. Raj realised Donald was in difficulty and heard the crash on his radio. He did not see the aftermath of the accident. Raj now suffers from flashbacks and nightmares about the event and has been signed off sick from work. Shumi is part of the Fire crew that attended the crash site. She entered the burning plane to retrieve Donald. Unfortunately, he died at the scene. Alisha, a keen plane spotter, watched the events unfold from a location just outside the airfield. She saw the crash but did not see Donald or the aftermath of the incident. Both Shumi and Alisha suffer nightmares and psychological ill health following the accident. Donald's wife, Daisy, heard about the crash on the radio and although her husband is not identified she feared for his safety. She later discovered from the police that he was involved and had died. She suffered a breakdown as a result of his death. You have been asked to advise Aero Namics Ltd on any claims that may exist and, if so, against whom. Prepare a summary of advice for Aero Namics Ltd 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. 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: ***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	Up to 4 Marks

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. ***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.	Up to 8 Marks

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 for Donald and Rufus LLP in Blackpool. You are a Paralegal in the Civil Litigation department and your firm is acting for Charlene Murphy. Miss Murphy is a teacher at a local primary school, she is getting married in December. You have been instructed by Charlene that she and her best friend, Louise, spent the day in Blackpool looking at wedding dresses. Following a long and emotional day, before going home, they decided to go to a new roof top cocktail bar to celebrate finding 'the one'. Later, Louise offered Charlene a lift home in her car. She assured Charlene that she was fine to drive because she was 'probably only just over the drink-drive limit'. On the journey home Louise lost control of the car and crashed into a tree. Charlene suffered minor cuts and bruises but was taken to hospital for a check-up. At the hospital Charlene contracted an infection in a cut to her right arm. Dr Parnell, the doctor on duty, decided not to treat the infection

	with antibiotics immediately as he has recently read a report in a little-known medical journal which suggested that it is better to allow the body 'time to heal' following a trauma. Charlene's right arm became partially paralysed. Write the body of a letter of advice to Charlene advising whether she has a claim against Louise and the Doctor.
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 liability for negligence, 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 requirements of a successful claim in negligence, an exploration of the required standard expected of both Louise and the Doctor, a discussion about 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. 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: ***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.	Up to 4 Marks

Candidates should explain how a duty is established, e.g: ***Establishing a duty is owed:*** The courts should generally establish a duty by looking at existing duty situations and ones with clear analogy. The 'three-stage' test from *Caparo* is reasonable foreseeability of harm to the claimant if the defendant fails to fulfil any duty that may exist; proximity of relationship between claimant and defendant (in time or space); and whether it is fair, just and reasonable to impose a duty of care in such circumstances. ***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].	
Candidates must explain the tests on establish breach, 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. ***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]. ***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]. ***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].	
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]. ***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 causes (causes which happen at the same time) or successive causes (causes which take place one after the other). ***Causation in law:*** The damage should, as a matter of law, be	Up to 7 Marks

recoverable from the defendant. Requires that there was no intervening act and that the damage is not too remote from the negligent act/omission.	
Candidates should be credited for a discussion on intervening acts, e.g: ***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].	Up to 7 Marks
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
Candidates should be credited for further discussion on causation in fact, e.g:	Up to 3 marks

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].	