

February 2023: 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 requirement that acceptance must mirror the offer and discuss the general rule that acceptance must be communicated.
Total Marks Attainable Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+	10
Indicative Content	Marks
<p>Candidates should set out that for a valid contract the courts will look objectively to see if there is an agreement, e.g</p> <p>In order to be valid: A contract requires agreement, the intention to create legal relations, and consideration.</p> <p>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.</p> <p>Acceptance: If an offer is accepted, a contract is formed at that point.</p> <p>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.</p>	Up to 2 marks
<p>Candidates must explore further what is meant by an acceptance, e.g</p> <p>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. If the acceptance doesn't mirror the terms of the offer the purported acceptance would not in fact acceptance but a counter offer.</p>	Up to 6 marks A pass must refer to the characteristics and requirements of acceptance.

<p>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.</p> <p>Authority: Acceptance will only be validify the acceptor has authority to accept the offer.</p> <p>Timing: An offer does not last forever and an offeree must accept within a reasonable time frame.</p> <p>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].</p>	
<p>Candidates should explain what is meant by a counter offer and the consequence on the original offer, e.g</p> <p>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.</p> <p>Even a small variation in the terms: Of the original offer may result in a counter offer.</p> <p>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.</p> <p>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].</p>	<p>Up to 2 marks</p> <p>Candidates may be credited for a discussion on counter offers but should link back to the requirement of an acceptance mirroring the offer.</p>
<p>Candidates should discuss the postal rule as an exception to communication, e.g</p> <p>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.</p>	<p>Up to 3 marks</p>

<p>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.</p> <p>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</p> <p>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.</p> <p>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].</p>	
<p>Conduct: Is a form of implied acceptance, the courts adopt an approach based on fairness, depending on the conduct of the parties.</p> <p>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.</p> <p>Credit reference to any applicable case authority on conduct, e.g:</p> <p>Brogden v Metropolitan Railway [1877] and Carill v Carbolic Smoke Ball Company [1893].</p>	Up to 2 marks

Question 2:	Explain the factors the court will consider when differentiating between a representation and a term
<p>Total Marks Attainable</p> <p>Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+</p>	10

Indicative Content	Marks
<p>Required: Candidates should have distinguished between a representation and term, e.g</p> <p>A contractual term is: Any provision forming part of a contract, i.e a promise undertaking that is part of a contract.</p> <p>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.</p>	Up to 3 Marks
<p>Required: Candidates must explain the factors the court will consider when differentiating between a representation and a term, e.g:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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].</p>	Up to 8 Marks

<p>Candidates may also have explained the different categories of terms, e.g:</p> <p>Express Terms: These are the terms agreed between the parties or included within the bargain made by the parties.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>Up to 4 Marks</p>
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<p>Question 3:</p>	<p>Identify when an intervening act may break the chain of causation between the Defendant's breach and the Claimant's loss or damage.</p>
<p>Total Marks Attainable</p> <p>Fail = 0-4.9 Pass = 5+ Merit = 6+ Distinction = 7+</p>	<p>10</p>
<p>Indicative Content</p>	<p>Marks</p>
<p>Candidates must explain the relevance of causation, e.g:</p> <p>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.</p> <p>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.</p>	<p>Up to 2 Marks</p> <p>Candidates may not have been explicit in their explanation, but, they should have demonstrated knowledge of why causation is important in establishing negligence.</p>
<p>Candidates should be credited for a discussion on intervening acts, e.g:</p>	<p>Up to 6 marks</p> <p>To achieve more than a pass,</p>

<p>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.</p> <p>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.</p> <p>Credit reference to any applicable authority on acts of third parties, e.g: Knightly v Johns [1982]</p> <p>Medical treatment: Where medical treatment received was in accordance with accepted medical practice it will not break the chain of causation. Where there is sub-standard treatment that is a material cause of this may break the chain of causation. However, the negligent treatment must eclipse the original wrongdoing.</p> <p>Credit reference to any applicable authority on medical treatment, e.g: Robinson v Post Office [1974], Barrett v Ministry of Defence [1995] and Webb v Barclays Bank plc and Portsmouth Hospitals NHS Trust [2001].</p> <p>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.</p> <p>Credit reference to any applicable authority on acts of the claimant, e.g: Sayers v Harlow Urban District Council [1958] and McKew v Holland [1969].</p>	<p>candidates must not simply cite law but should show a greater depth to their knowledge base and apply the authority to the question posed</p>
<p>Candidates should be credited for a discussion on causation in fact, e.g:</p> <p>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?</p> <p>Credit reference to any applicable authority on the But For test, e.g: Cork v Kirby MacLean Ltd [1952] and Barnett v Chelsea & Kensington Hospital Management Committee [1969]</p> <p>Successive Multiple causes: Where there are two causes occurring in succession it may be possible to identify the factual cause of the damage.</p>	<p>Up to 4 marks</p> <p>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.</p>

<p>Concurrent Multiple Causes: Where two or more causes operate concurrently it may be factually impossible to determine which one was the cause.</p> <p>Credit reference to any applicable authority on the multiple causes contribution, e.g: Baker v Willoughby [1970] and Jobling v Associated Dairies [1982]</p> <p>Material Contribution: Where there is more than one possible cause the claimant must show that the defendant's actions materially contributed to the harm.</p> <p>Credit reference to any applicable authority on the material contribution, e.g: Bonnington Castings Ltd v Wardlaw [1956] and Fitzgerald v Lane [1989].</p> <p>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. The material increase in risk test is on a statutory footing. The provision means 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.</p> <p>Credit reference to any applicable authority on the material increase in risk test, e.g: McGhee v NCB [1973], Section 3 Compensation Act 2006, Fairchild v Glenhaven Funeral Services [2002] and Carder v Secretary of State for Health [2016].</p>	
<p>Candidates should be credited for a discussion on causation in law and foreseeability, e.g:</p> <p>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.</p> <p>Thin skull rule: Take your victim as you find them.</p> <p>Credit reference to any applicable case authority on causation in law, e.g: Wagon Mound (No 1) [1961], Hughes v Lord Advocate [1963] and Smith v Leech Brain [1962].</p>	<p>Up to 3 marks</p> <p>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.</p>

<p>Question 4:</p>	<p>Explain the relevance of the standard of care and how courts will determine whether a defendant has breached their duty of care.</p>
<p>Total Marks Attainable</p> <p>Fail = 0-7.4 Pass = 7.5+</p>	<p>10</p>

Merit = 9+ Distinction = 10.5+	
Indicative Content	Marks
<p>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:</p> <p>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.</p> <p>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.</p> <p>The factual standard: Is determined by the use of various factors to determine whether the defendant's actual behaviour reached the required standard.</p> <p>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.</p>	Up to 4 marks
<p>Credit any attempt by candidates to explain the general standard of care in more depth with reference to authority, e.g:</p> <p>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.</p> <p>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].</p>	Up to 3 marks
<p>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:</p>	Up to 3 marks

<p>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.</p> <p>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], Luxmoore -May v Messenger May Baverstock (a firm) [1990] and Shakoor v Situ [2000].</p>	
<p>Credit any attempt by candidates to describe the factual standard with reference to the factors that will be considered, e.g:</p> <p>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.</p> <p>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 defendant's purpose.</p> <p>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.</p> <p>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].</p>	Up to 4 marks

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

Question 5:

You work as a trainee legal executive in London. You are currently working in the Civil Litigation department at Trebor and Larkin LLP. Your friend, Joshua Hench, knows you work in law and has emailed you asking for your advice in relation to a problem he has.

Joshua, who lives in Epsom, is selling his Ford Focus and puts an advert in the Epsom Post. The advert included the details of the vehicle, the mileage, his home address, telephone number, and email address. It stated that the Ford Focus is for sale for £8,995.

George lives in East Sussex and on his way through London saw the advert in a copy of the Epsom Post. He immediately called Joshua. George told Joshua that he is willing to buy the Ford Focus for £7,000. Joshua decided to accept it but told George that he wants him to put it in writing. George agrees to do this as soon as he can.

Five days later Joshua received an email from Lilli. Lilli wrote that she is willing to buy the car. George has not been in touch since he last spoke to Joshua so he writes back to Lilli and says that for £8,995 the Ford Focus is hers. Lilli wrote back saying she was willing to pay £6,000. Joshua replied to the email saying that he is not willing to sell for that amount. Lilli was disappointed but later that day she decided to buy the car anyway and wrote an email saying she accepts the initial price Joshua quoted and will buy the car for that money.

In the meantime, George is still very willing to buy the Ford Focus. He had however forgotten to send a letter to Joshua. He therefore decides that instead of sending a statement in writing he will just take the money and go to Epsom himself and meet Joshua there.

Joshua has now checked his email and has seen Lilli's email. Shortly after he read Lilli's email, George showed up at his door with the money.

Write the body of an email to Joshua advising

		whether any contracts have been formed.
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: what the courts will look for to determine if there is a contract, a definition of offer, the rules on invitations to treat, an exploration of the rules on how an offer may be terminated and a discussion on the rules on 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. 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.
<p>Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+</p>		
Indicative Content		Marks
<p>Required: Candidates should set out what the courts would look for under the classical theory to identify if there is a contract, e.g:</p> <p>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.</p> <p>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.</p>		<p>Up to 2 Marks</p> <p>To pass candidates are required to demonstrate knowledge of what is required for there is be a contract.</p>
<p>Candidates should include an explanation of what on how an offer may be distinguished from an invitation to treat, e.g:</p> <p>Offer distinguished from an invitation to treat: An offer is an expression of willingness to contract on certain terms,</p>		Up to 8 Marks

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].

The relevant 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 include a discussion on the ways an offer may be terminated, e.g:

An offer may be terminated by: rejection (including implied rejection by a counter-offer), revocation or lapse or time. 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

Up to 7 Marks

'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].

Candidates should include a discussion on the rules that govern acceptance, e.g:

Up to 7 Marks

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].

Question 6:

You work as a trainee legal executive in the Civil Litigation department at Maurice and Parker LLP. The firm is based in Bournemouth. You are advising Lorenzo Rossi, a marine mechanic who owns a marine service and repairs business in Bournemouth. Last January, Mr Rossi decided that he wished to retire and decided to sell his business, Rossi Marine Services Ltd. The business

	<p>had a very good reputation in the local area, it specialised in all areas of outboard engine servicing and repair.</p> <p>On 26 January Mr Rossi had a telephone call from Mrs Julie Garner, who was interested in buying Rossi Marine Services Ltd. Mrs Garner arranged to meet Mr Rossi at his business premises on 30 January so that she could have a look around. During the visit Mr Rossi told Mrs Garner that Rossi Marine Services Ltd was making a profit of £80,000 per annum. Happy with this level of profit, Mrs Garner said she would like to agree terms to buy the business. The pair entered negotiations. It was agreed that Mrs Garner would purchase the premises, the two outboard motor stands and the outboard motor lifting tool. Mr Rossi promised that the tools were in excellent condition. They then signed a contract for the sale of the business.</p> <p>The negotiations around the sale took six months and during this time Mr Rossi went on an eight-week tour of New Zealand with his wife. As a result, by the time the deal was finalised, the annual profit had dropped to £60,000. If Mr Rossi had checked the books he would have noticed this. Six months later, Mrs Garner started to prepare the year-end accounts. She discovered that the annual profits of the business in the year before the purchase had only been £60,000. To make matters worse, the outboard motor lifting tool keeps failing. Mrs Garner has sent a letter before action to Mr Rossi alleging misrepresentation.</p> <p>Mr Rossi wishes for you to advise him on what misrepresentation is, whether his statements amount to misrepresentation and the potential consequence if Mrs Garner is successful in her claim.</p>	
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. 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
<p>Required: The definition of misrepresentation, e.g:</p> <p>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.</p> <p>There are three kinds of misrepresentation: Fraudulent, negligent and innocent.</p>	<p>Up to 2 Marks</p> <p>To pass candidates are required to demonstrate knowledge of what misrepresentation is</p>
<p>Credit a discussion on what a statement of fact is, e.g:</p> <p>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</p>	<p>Up to 3 Marks</p>

<p>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.</p> <p>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].</p> <p>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.</p> <p>Credit reference to relevant case authority on false statements, e.g: Avon Insurance plc v Swire Fraser Ltd [2000].</p>	
<p>Credit any discussion on silence, e.g:</p> <p>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.</p> <p>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].</p>	Up to 4 Marks
<p>Candidates should include a discussion on inducement and reliance e.g:</p> <p>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.</p>	Up to 4 Marks

<p>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].</p>	
<p>Credit any discussion on the types of misrepresentation and the remedies available, e.g:</p> <p>Fraudulent misrepresentation: Where a false representation has been made knowingly, or without belief in its truth, or recklessly as to its truth.</p> <p>Credit reference to relevant authority on fraudulent misrepresentation, e.g: Derry v Peek [1889], Doyle v Olby (Ironmongers) Ltd [1969].</p> <p>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.</p> <p>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.</p> <p>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)</p> <p>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.</p> <p>Credit reference to relevant authority on the remedies for fraudulent and negligent, e.g: Royscot Trust Ltd v Rogerson [1991].</p> <p>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.</p>	<p>Up to 8 Marks</p> <p>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</p>

<p>Credit reference to relevant authority on innocent misrepresentation, e.g: Section 2(2) Misrepresentation Act 1967.</p>	
<p>Credit any discussion on the factors the court will consider when differentiating between a representation and a term, e.g:</p> <p>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.</p> <p>If not a term but a representation: The proper course of action would be for misrepresentation and not for breach of contract.</p> <p>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]</p>	<p>Up to 3 Marks</p>

<p>Question 7:</p>	<p>You work for Masons and Spinks Solicitors in Cheltenham. Mr Spinks is a Senior Partner at the firm, and has approached you to do some work on the file of Hancock Logistics PLC. Recently one of their drivers was involved in an RTA and the company has admitted liability to anyone that they owed a duty to in relation to that accident.</p> <p>Late one afternoon, Rufus, a delivery driver for Hancock Logistics PLC was driving his lorry in rush hour traffic. Rufus was tired and just wanted to get home. That afternoon, because of extreme weather conditions, there was a recommendation issued that high-sided vehicles should not use the motorway. However, Rufus took the motorway because he only had one junction to travel. He also drove over the speed limit to get off the motorway quicker. As he was driving, a gust of wind blew the lorry over resulting in a multi-car pile-up.</p> <p>Luis was watching the news at home. His nephew Jerome, who Luis has raised from a young boy, uses that road to drive home. Luis thought he saw a car similar to</p>
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	<p>Jerome's on the screen. Luis rushed to the hospital to see if Jerome was there. Two hours after seeing the incident on TV, Luis is informed that Jerome has been killed and is asked to identify the body. Owing to the number of patients, Jerome's body has not been cleaned up. Upon seeing Jerome, Luis suffers a nervous breakdown.</p> <p>Raj is a nurse at the hospital. On the day of the crash, having complained of already being on duty for 20 hours due to a previous emergency, Raj was told he had to stay on shift and help with the accident victims. However, after working several more hours in such difficult conditions, Raj collapsed and has been signed off work since with a stress-related mental illness.</p> <p>Write the body of a letter of advice to Hancock Logistics PLC advising whether you believe Luis and Raj could make a claim in these circumstances.</p>
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Total Marks Attainable	20
Fail = 0-9.9 Pass = 10+ Merit = 12+ Distinction = 14+	

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. 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.
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
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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 3 Marks

Candidates may have identified how the 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.

Credit should be given where reference is made to cases on breach and general standard, e.g: Blyth v Birmingham Waterworks [1856], Roberts v Ramsbottom [1980], Mansfield v Weetabix [1998], Nettleship v Weston [1971].

The factual standard: Is determined by the use of various factors to determine whether the defendant's actual behaviour reached the required standard.

These factors are as follows: 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 defendant's purpose.

Up to 4 Marks

<p>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.</p> <p>Credit should be given where reference is made to cases on the factual standard skill, e.g: Bolton v Stone [1951], Paris v Stepney Borough Council [1951], Latimer v AEC [1953, Watt v Hertfordshire County Council [1954].</p> <p>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.</p> <p>Credit should be given where reference is made to cases on special skill, e.g: Phillips v Whiteley [1938], Wells v Cooper [1958], Bolam v Friern Hospital Management Committee (1957), Bolitho v City & Hackney Health Authority [1997], Luxmoore -May v Messenger May Baverstock (a firm) [1990], Shakoor v Situ [2000].</p>	
<p>Candidates must explain the tests of causation, e.g:</p> <p>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.</p> <p>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?</p> <p>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].</p> <p>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.</p>	Up to 2 marks
<p>Candidates should discuss claims for psychiatric harm, e.g:</p>	Up to 4 Marks

<p>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.</p> <p>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].</p>	
<p>Candidates should discuss the need for the shock to be caused by a sudden event, e.g:</p> <p>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'.</p> <p>Credit should be given where reference is made to authority cited on a sudden event, e.g: Alcock v Chief Constable of South Yorkshire [1992] and Walters v North Glamorgan NHS Trust [2002].</p>	Up to 2 Marks
<p>Candidates may have discussed the third strand of Caparo on reasonable foresight and identified the relevant law on reasonable proximity, e.g:</p> <p>This requirement of foreseeability: Requires consideration of whether it is foreseeable that the defendant's carelessness could cause damage to the claimant.</p> <p>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]</p> <p>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</p>	Up to 4 Marks

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.

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

Up to 3 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.

Board [1967], McFarlane v EE Caledonia Ltd [1995] and McLoughlin v O'Brian [1983].	
<p>Candidates should be credited if they discussed any relevant defence, e.g:</p> <p>Contributory negligence: Contributory Negligence is conduct by the Claimant which contributes to his/her own harm.</p> <p>Section 1(1) Law Reform (Contributory Negligence) Act 1945: Where a person suffers damage as a result partly of his own fault and partly the fault of another(s), a claim shall not be defeated by reason of the fault of the person suffering damage. Apportionment of liability and damages, partial and C cannot be 100% to blame, may reduce damages where contribution is to causation not liability.</p> <p>Credit should be given where reference is made to cases on Contributory Negligence, e.g: Fitzgerald v Lane [1989], Anderson v Newham College [2002], Belka v Prosperini [2011], Davies v Swan Motors Co [1949] and O'Connell v Jackson [1972].</p>	Up to 2 marks

<p>Question 8:</p>	<p>You work for Robert and Lyle LLP in Luton. You are a Paralegal in the Civil Litigation department and your firm is acting for Mr Terry Frascati.</p> <p>Terry had been unemployed for several months. However, he had been learning to drive believing that would help improve his chances of finding a job. Three weeks ago, he passed his driving test and, subsequently, he obtained an interview which he had to drive to.</p> <p>The mixture of driving and the prospect of the interview made Terry feel quite nervous. On his way to the interview he suffered a large anxiety attack during which he overran a red light and struck Sarah at high speed as she was crossing the road using a pedestrian crossing. Sarah was rushed to Luton General Infirmary where her condition was stabilised after being diagnosed with internal bleeding, a collapsed lung and multiple bone fractures.</p>
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	<p>Part of Sarah's post-operative care was undertaken by a junior nurse, Pascal, who was working his first shift. Pascal forgot to check the records to establish whether Sarah was allergic to anything before administering any medication. As a result Sarah was given medication which she was highly allergic to and she consequently suffered a massive heart attack and ended up paralyzed.</p> <p>Write the body of a letter of advice to Terry setting out his liability, if any, for Sarah's injuries.</p>
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Total Marks Attainable	20
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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.
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
<p>Required: Candidates must outline what is required for a successful action in negligence, e.g:</p> <p><i>Donoghue v Stevenson [1932]</i>: Is now the basis for all negligence actions in England & Wales, requiring a</p>	<p>Up to 4 Marks</p> <p>Better responses are likely to have contextualised there explanation of causation by</p>

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.

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

Up to 7 Marks

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 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).

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].

Up to 7 Marks

<p>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.</p> <p>Successive Multiple causes: Where there are two causes occurring in succession it may be possible to identify the factual cause of the damage.</p> <p>Credit reference to any applicable case authority on successive multiple causes, e.g: Baker v Willoughby [1970] and Jobling v Associated Dairies [1982].</p>	
<p>Candidates should be credited for a discussion on intervening acts, e.g:</p> <p>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.</p> <p>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.</p> <p>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].</p> <p>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.</p> <p>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].</p>	Up to 3 Marks
<p>Candidates should be credited for a discussion on causation in law and foreseeability, e.g:</p> <p>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.</p>	Up to 3 Marks

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].