



GCSE

Law

41602 Law in Action
Mark scheme

4160
June 2016

Version 1.0: Final Mark Scheme

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Assessment Writer.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from aqa.org.uk.

Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the Indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

1	(a)	Consider ATC’s liability for public nuisance with regard to the various complaints from local residents.	[5 marks]
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Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

- Definition of public nuisance
- Application with respect to the annoyance felt + section of the public*
- Conclusion – that public nuisance is likely to be present on the facts
- Recognition of the alternative ways of dealing with public nuisance cases, ie civil and/or criminal enforcement
- Recognition of an appropriate remedy – probably an injunction
- Authority in support, eg *A/G v PYA Quarries**.

Notes

Note - Credit reasoned alternative conclusion and/or method of enforcement

*Note – Content marked with an * is required content for max marks.*

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

1	(b)	Discuss ATC's liability for nuisance with regard to Bev.	[6 marks]
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

- Recognition of potential liability under private nuisance*
- Definition and key factors, especially health, convenience, locality, time and repetition
- Application to the noise and parking issue*
- Conclusion – that private nuisance is likely to be present on the facts
- Recognition of an appropriate remedy – damages and/or injunction can be justified
- Authority in support*, eg Bliss v Hall.

Alternative approach based on:

- Recognition of potential liability under public nuisance*
- Definition and key factors, especially that Bev is suffering particular damage more than suffered by the neighbours generally
- Application to the noise and parking issue + particular effect on Bev*
- Conclusion – that public nuisance may well be present on the facts
- Recognition of an appropriate remedy – damages and/or injunction can be justified
- Authority in support*, eg Castle v St Augustine's Links.

Notes

*Note – content marked with an * is required content for max marks*

Note – either approach can achieve maximum marks

Note – answer based on both versions of nuisance – credit fully with appropriate allowance for breadth rather than depth

[AO1:2, AO2:4, AO3:0]

1 (c) (i) Cal proceeds with a claim in negligence. Outline **both** of the following:

- how he would prove that he was owed a duty of care

and

- how he would prove that the duty was breached.

marks]

[6

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

- **Duty of care** – some development based on the neighbour test and/or Caparo tests + application
- **Breach of duty of care** – some development based on the reasonable man test/risk factors
 - + application
- Case/example*, eg Donoghue v Stevenson, Caparo, etc.

Notes

*Note – Content marked with an * is required content for max marks.*

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

Note – no application, max 4 marks

Note – application only, max 3 marks

[AO1:2, AO2:4, AO3:0]

1 (c) (ii) Briefly discuss **both** of the following:

- whether Cal would have a valid claim for negligence against Dipak’s employer, ATC
- and**
- whether Cal would be able to successfully claim full damages under these circumstances, or whether his damages be reduced.

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Cal’s claim against ATC

- Recognition of vicarious liability
- Employee acting in the course of his employment
- Application and conclusion – that Cal would have a valid claim against ATC
- Case/example, eg *Limpus v LGO**.

Cal’s claim for full damages

- Recognition of contributory negligence
- Discussion of whether a 7-year-old would be contributorily negligent in these circumstances
- Application and conclusion (either way)
- Case/example, eg *Sayers v Harlow UDC**.

Notes

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

*Note – max marks only if at least **one** of the two aspects is supported by authority*

[AO1:2, AO2:4, AO3:0]

- 1 (d)** Compare, contrast **and** briefly comment on the **remedies** available in nuisance and negligence cases. **(Answer in continuous prose.)** **[6 marks]**

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 4 marks), then assess the QWC on the following basis:

- Average performance for a notional 16-year-old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0
Band 1	marks Basic awareness. The student spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	
Band 2	2 marks	1-
Band 3	Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	3-
	4 marks Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5-6 marks

Potential Content

Comparison may include:

- that damages are available for both torts.

Contrast may include:

- that an injunction is only available in nuisance, not negligence, cases
- brief explanation of why this is so.

Comments may include:

- that damages are an effective remedy in terms of rectifying a loss already incurred
- that damages are an ineffective remedy in terms of an ongoing issue
- that an injunction provides an effective remedy in terms of an ongoing issue
- that an injunction cannot recompense for damage already incurred
- that a combination of both remedies may be the only effective solution
- possible reference to delays and cost associated with civil action
- possible reference to alternative methods of dealing with nuisance type cases.

Notes

Note - Credit any other credible comparisons/contrasts

Note – Credit any other sensible comments

Note – Comments only – max 5 marks (including QWC)

Note – No comments – max 4 marks (including QWC)

[AO1:0, AO2:0, AO3:6]

1	(e)	Consider ATC's liability to Erik under the Occupiers Liability Act 1957.	[6 marks]
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

- Recognition of Erik's position as a lawful visitor
- Recognition of the common duty of care under the Occupiers Liability Act 1957
- Recognition of the dangerous state of the premises/breach
- Application to the faulty safety bar
- Conclusion – that ATC are almost certain to be liable for damages for Erik's injuries
- Case/example*, eg Young v Kent County Council.

Note – content marked with an * is required content for max marks

Note – answers based only on negligence, max 2 marks

[AO1:1, AO2:5, AO3:0]

1 (f) (i) Both Gavin and Hal were trespassing but they have been advised to make claims against ATC regarding their injuries.

Discuss whether these **two** claims are likely to succeed.

**[6
marks]**

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Gavin

- Recognition of the relevance of the Occupier’s Liability Act 1984
- Recognition of the duty of ‘common humanity’ and its implications
- Application to a 19-year-old trespasser, especially as there were warning signs
- Conclusion – either way, but probably favouring ATC on the basis that the signs were a reasonable way of protecting an adult from the danger
- Case/example*, eg White v St Albans.

Hal

- Recognition of the relevance of the Occupier’s Liability Act 1984
- Recognition of the duty of ‘common humanity’ and its implications
- Application to a 5-year-old trespasser, especially as the playground was an obvious allurement and the signs were ineffective for a child of this age. Possible reference as to whether Gavin was a responsible adult.
- Conclusion – either way, but probably favouring Hal on the basis that the signs were ineffective and there was no barrier protection
- Case/example*, eg Glasgow Corporation v Taylor, Herrington.

Notes

Note - Gavin or Hal only – max 4 marks for a good answer

*Note – Max marks only if at least **one** of the two aspects is supported by authority*

[AO1:2, AO2:4, AO3:0]

1	(f)	(ii)	Comment on whether occupiers of land should be held liable for injuries to trespassers.	[4 marks]
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Mark Bands

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

Potential Content

Comments may include, for example:

- recognition that the duty is fixed at a lower level than for lawful visitors
- recognition that the occupier does have defences available, eg independent contractor at fault, consent
- recognition that the trespasser’s damages are often reduced because of contributory negligence
- recognition of the need to take extra care when children are involved
- recognition that the occupier should not have to protect a person who is not known to be on the premises
- adult trespassers should know better, etc.

Notes

Note – Credit any other sensible points raised

Note – Max marks can be obtained with a one-sided answer, though greater depth will be expected

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

2 (a) Consider the criminal liability of the following:

(i) Len, for what he said to Kevin.

(ii) Kevin, for what he did to Len.

[6 marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

(i)

- Recognition of the crime of assault / S.39 Criminal Justice Act 1988
- Definition
- Application + conclusion – that an assault is clear on the facts
- Case/example*, eg Logdon.

(ii)

- Recognition of the crime of battery / S.39 Criminal Justice Act 1988 (alternative of abh / S.47 Offences Against the Person Act 1861 is equally creditworthy)
- Definition
- Application + conclusion – that a battery is clear on the facts (abh is arguable but more questionable because the injury is very minor)
- Case/example*, eg Collins v Wilcock.
- Possible reference to self-defence by Kevin
-

Notes

*Note – Max marks only if at least **one** of the two aspects is supported by case-law authority*

Note – One aspect only – max 4 marks for a good answer

[AO1:2, AO2:4, AO3:0]

2 (b) Discuss Mick’s criminal liability for the incident with Kevin. Your answer should include any defence he may be able to plead.

[8 marks]

Mark Bands

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

Potential Content

- Recognition of the crime of grievous bodily harm
- Recognition of the serious nature of the injury
- Recognition of the mens rea requirements with particular reference to the S.18/S.20 distinction
- Application to the headbutt + injury caused
- Conclusion (could be argued either for a S.18 or S.20, but the S.20 looks more likely)
- Authority* – Offences Against the Person Act 1861 and/or case/example, eg Belfon
- Recognition of the defence of (voluntary) intoxication
- Application of the defence to S.18 and S.20 (specific + basic intent)
- Case in support, eg Majewski.

Notes

*Note - Content marked with an * is required content for max marks.*

Note – No defence addressed – max 6 marks for a very good answer

Note – defence only addressed – max 3 marks for a good answer

Note – abh only, max 4 marks

Note – abh and intoxication, max 7 marks

Note – self-defence is not pleadable on the facts and not credit worthy if suggested to be pleadable. Limited credit if suggested and rejected

[AO1:2, AO2:6, AO3:0]

2 (c) Discuss Ivan’s criminal liability for the incident with Mick. Your answer should include any defence he may be able to plead.

[8 marks]

Mark Bands

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

Potential Content

- Recognition of the crime of grievous bodily harm
- Recognition of the serious nature of the injury
- Recognition of the mens rea requirements with particular reference to the S.18/ S.20 distinction
- Application to the use of a weapon + force employed + where the blow was struck + injury caused
- Conclusion – almost certainly a S.18 gbh, given the application above
- Authority* – Offences Against the Person Act 1861 and/or case/example,
- eg Belfon
- Recognition of the defence of self-defence/defence of others
- Subjective + objective test with particular reference to the use of reasonable force
- Application of the defence to the S.18 charge
- Conclusion – that the force used looks beyond reasonable
- Case in support*, eg. Clegg, Martin
- Possible reference to duress of circumstances – credit fully

Notes

*Note – Content marked with an * is required content for max marks*

Note – No defence addressed – max 5 marks for a very good answer

Note – defence only addressed – max 4 marks for a good answer

[AO1:2, AO2:6, AO3:0]

2 (d) (i) Consider the criminal liability of Norris for taking the money from the till.

[5 marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

- Recognition of the crime of burglary*
- Recognition of the distinction between S.9(1)(a) and S.9(i)(b)
- Recognition of the key elements of one or both offences
- Application to the entry as a trespasser behind the bar and subsequent theft of the money
- Conclusion (could be argued either for a S. 9(1)(a) and S.9(i)(b), but the S.9(1)(b) looks very provable)
- Authority* – S.9 Theft Act 1968 and/or case/example, eg Walkington

Notes

*Note - Content marked with an * is required content for max marks*

Note – Theft only – max 2 marks

[AO1:2, AO2:3, AO3:0]

2 (d) (ii) Consider the criminal liability of Olive for taking Mick's wallet.

[4

marks]

Mark Bands

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

Potential Content

- Recognition of the crime of theft*
- Definition of both the actus reus and mens rea of theft
- Application of the elements of theft to the taking of the wallet
- Conclusion (difficult to argue that Olive would not be guilty of theft)
- Authority* – S.1 Theft Act 1968 and/or case/example, eg Morris & Burnside, Ghosh

Note - content marked with an * is required content for max marks

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

2 (d) (iii) Consider the criminal liability of Penny for leaving the pub without paying for her meal.

[4 marks]

Mark Bands

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

Potential Content

- Recognition of the crime of making off without payment*
- Definition of both the actus reus and mens rea of making off
- Application of the elements of making off to leaving the restaurant without paying for her meal
- Conclusion (difficult to argue that Penny would not be guilty of making off)
- Authority* – (S.3) Theft Act 1978 and/or case/example, eg DPP v Ray

Notes

*Note - content marked with an * is required content for max marks*

Note – answer based upon theft - max 1 mark (because of the difficulties of proving dishonest intent initially + the ‘property’ issue)

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

2 (e) Comment on any problems relating to the law of theft. **(Answer in continuous prose.)**

[5 marks]

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 4 marks), then assess the QWC on the following basis:

- Average performance for a notional 16-year-old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

Mark Bands

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0
Band 1	marks Basic awareness. The student spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	
Band 2	mark Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	1
Band 3	marks Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	2-3 4-5 marks

Potential Content

Comments could include any of the following:

- problems with the definition/application of ‘appropriates’ eg rights or right of the owner, theft without touching, continuing appropriation, etc
- problems with ‘property’, eg confidential information
- problems with ‘belonging to another’ eg stealing one’s own property
- problems with ‘dishonesty’, eg objective standard (Ghosh) test
- problems with ‘intention to permanently deprive’, eg dishonest borrowing, meaning of ‘dispose’ etc

Notes

Note – credit any other credible comments relating to any of the problems relating to the law on theft

Note – credit fully any relevant cases used to illustrate the commentary

Note – no balance required for max marks, though a conclusion might be expected

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

2 (f) Comment on the problems relating to **either** of the following defences:

- self-defence
- or
- intoxication.

[5 marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

Self-defence

Comments could include any of the following:

- Recognition of the problems associated with the defendant's perception of the need to use force, eg Gladstone Williams
- Recognition of the issue relating to pre-emptive force, eg Beckford
- Recognition of the problem of the jury fixing the limits on reasonable force when they were not in the defendant's position
- Recognition of the difficulty of determining what is reasonable force, eg Clegg
- Recognition of the particular problems faced by householders when confronting intruders, eg Martin, etc.

Intoxication

Comments could include any of the following:

- Recognition of the problems associated with the 'definitions' of basic and specific intent, eg Majewski
- Recognition of the difficulty of applying that distinction, eg Heard
- Recognition of the harsh nature of the rule on drunken mistakes, eg O'Grady
- Recognition of the difficulty of applying the rules on involuntary intoxication, eg Hardie, Kingston, etc.

Notes

Note – credit any other credible comments relating to the law on self-defence / intoxication, including those of a more positive nature

Note – credit fully any relevant cases used to illustrate the commentary

Note – no balance required for max marks, though a conclusion might be expected

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

3 (a) (i) Identify the basic requirements of a valid will.

[3 marks]

Potential Content

- In writing
- Signed (by the testator)
- Witnessed (by two competent witnesses present at the same time)
- 1 mark each

Note – *credit can also be given for full age (18+) and/or sound mind and/or freewill*

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

3 (a) (ii) Discuss the validity of Una’s will. Take into account the following:

- what the will was written on
- Una’s signature
- Una’s choice of witnesses.

[8 marks]

Mark Bands

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

Potential Content

What the will was written on

- Will must be in writing
- No requirement as to what it is written on
- Possible reference to ‘eggshell’ case
- Will is valid based on this requirement.

Una’s signature

- Will must be signed by the testator
- Signature ought to be at the end of the will
- Reference to S.17 Administration of Justice Act 1982 – validity of position of signature depends on the intention of the testator
- Page 2 of Una’s will may fail or whole will may be valid, depending on the decision of the court
- Possible reference to Wood v Smith (1993).

Una’s choice of witnesses

- Zoe is an invalid witness because she is blind (Re Gibson) and because she is alone
- Alan is a valid witness
- Bella may be a valid witness if she is old enough to understand the implications
- Will may or may not be valid depending on Bella.
-

Notes

Note – notional 3:3:3 marks per part of question – check Band at end

Note – only one aspect addressed – max 3 marks for a good answer

Note – only two aspects addressed – max 6 marks provided both aspects are well dealt with

[AO1:0, AO2:8, AO3:0]

3 (b)	<p>If Una’s will is declared valid, her entire estate will be left in trust for her baby daughter, Yasmin. Briefly explain both of the following:</p> <ul style="list-style-type: none"> • what is meant by ‘in trust’ • and • Wesley’s possible rights under the Inheritance (Provision for Family and Dependents) Act 1975. 	[5 marks]
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Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content
‘in trust’

- Recognition that Yasmin cannot inherit the estate directly as she is too young
- A trustee will have been appointed by Una under her will
- Role of trustee
- Yasmin will assume control of the estate at 18 or at the age stipulated by Una.

Wesley’s rights

- Recognition of the right to contest a will under the 1975 Act
- Criteria under the Act – “reasonable financial provision”/reasons given for excluding potential beneficiary
- Wesley as a current surviving spouse has a strong claim
- Una thinking of leaving Wesley is only relevant to the amount he may be awarded under the Act.

Note – *only one aspect – max 3 marks for a good answer*

[AO1:2, AO2:3, AO3:0]

3 (c) Outline what will happen to Una’s estate if her will is declared invalid. **[4 marks]**

Mark Bands

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

Potential Content

- Recognition of the application of the intestacy rules
- Wesley, as surviving spouse, will inherit personal chattels, £250,000 + half the remainder (£50,000) absolutely
- Yasmin will inherit the balance (£50,000) on the statutory trusts
- Statutory reference* - Administration of Estates Act 1925 (as amended by the Inheritance and Trustees Powers Act 2014)

Notes

*Note – content marked with an * is required content for max marks.*

Note – answers based on the ‘old’ law – max 2 marks (max 3 marks if supported by authority)

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

3 (d) Briefly explain the legal effect on a will of **each** the following:

- destruction of a will
- and
- how a divorce will affect the rights of the ex-spouse.

[5 marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

Destruction of the will

- Recognition of the potential to revoke a will
- Destruction must be deliberate + intended to revoke the will*
- Accidental destruction will not revoke the will
- Possible reference to authority (Wills Act 1837, Re Adams)

Divorce

- Recognition that the will is not revoked*
- Ex spouse removed as executor
- Ex spouse removed as beneficiary/intestacy or partial intestacy created
- Possible statutory reference (Wills Act 1837)
-

Notes

*Note – content marked with an * is required content for max marks*

Note - only one aspect – max 3 marks for a good answer

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

3 (e) Briefly explain what will happen to both Quinn **and** Rosie's estates in the circumstances set out in the problem.

[6 marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 mark
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Quinn

- Assuming that Quinn's will was in writing, properly signed and witnessed, his estate will pass under the terms of his will
- Application which recognises the death of his initial primary beneficiary and the alternative bequests to his 'children'
- Recognition that his 'children' includes both natural and adoptive children
- £400,000 estate will be split four ways (£100,000 each)
- Una, Vic + Samantha likely to receive their bequests now. Tim's bequest likely to be held in trust until 18 or other nominated age. Una's share on her subsequent death will pass under the provisions relevant to her estate.

Rosie

- Recognition of deliberate + intentional destruction of her will – will revoked
- Recognition of the need to apply the intestacy rules
- Rosie is not survived by her spouse, but has (at her death) four surviving children (no distinction between natural and adoptive children)
- £400,000 estate will be split four ways (£100,000 each)
- Una, Vic + Samantha will receive their bequests now. Tim's share will be held on the statutory trusts (18 or earlier marriage). Una's share on her subsequent death will pass under the provisions relevant to her estate.

Note – *One aspect only: max 4 marks for a good answer*

[AO1:0, AO2:6, AO3:0]

3 (f) (i) Discuss Colin’s possible rights in these circumstances under the Inheritance (Provision for Family and Dependents) Act 1975.

[4 marks]

Mark Bands

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

Potential Content

- Recognition of the right to contest a will under the 1975 Act*
- Criteria under the Act – “reasonable financial provision”*/any reasons given for excluding potential beneficiary (none here)
- Colin, as a person who immediately before the death was being maintained by the deceased, has a strong claim*
- Application to the High Court
- Lump sum or periodical payments.

Notes

*Note – content marked with an * is required content for max marks.*

Note – credit alternative reasoned conclusion, eg Colin may have access to other funding

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

3 (f) (ii) Both Wesley and Colin have a right under the Inheritance (Provision for Family and Dependents) Act 1975 to contest the terms of a will.

Discuss whether or not these rules are fair. **(Answer in continuous prose.)**

[6 marks]

Mark Bands

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 4 marks), then assess the QWC on the following basis:

- Average performance for a notional 16-year-old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Band 0 Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately. **0 marks**

Band 1 Basic awareness. The student spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.

Band 2 **1-2 marks**
Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.

Band 3 **3-4 marks**
Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly. **5-6 marks**

Potential Content

Discussion could include any of the following:

- Under family provision rules, testators wishes can be overridden
- Interests of the original beneficiary can be reduced/removed
- Protects legitimate interests of close family/2+ year cohabitantes + dependents
- Those with clear financial dependency may not receive sufficient from the estate to meet needs
- Friends are ignored under the rules, etc.
- Possible reference to case-law, such as *Ilott v Mitson* (2015).

Credit any sensible comment around these issues.

Alternatively, students may choose to apply their comments instead of or in addition to the general points above by using the facts of the problem. Fully credit any of these approaches.

Application could include:

- the fact that Wesley can apply under the 1975 Act even though Una has deliberately disinherited him for good reason
- Colin may be left effectively homeless if he was not able to apply + be awarded part of the estate.

Notes

Note - unbalanced answer can still get max marks

Note – application is not required for max marks, but does offer an alternative or additional way of illustrating discussion. Fully credit any of these approaches.

Note – credit any other sensible issues raised

[AO1:0, AO2:0, AO3:6]

3 (g) The recent changes to the intestacy rules are designed to protect the succession rights of any surviving spouse and children of the deceased.

Comment on whether these changes are fair to the whole family.

[4 marks]

Mark Bands

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

Potential Content

Comments could include any of the following:

- Surviving spouse is the primary beneficiary and the new rules have increased the amounts they will receive under an intestacy (entire estate if there are no children, no life interest on half estate balance where there are children) – comment could be for or against
- Children are still protected as secondary beneficiaries where there is a surviving parent but will no longer receive the capital from the life interest when that parent dies – comment could be for or against
- Children are fully protected when there is no surviving parent to the extent of the whole estate, equally divided on the statutory trusts – comment could be for or against
- Intestacy rules do not distinguish between family members who are close and those who may have cut family ties – comment could be for or against
- Parents, brothers + sisters etc are now excluded as secondary beneficiaries where there is a surviving spouse – comment could be for or against
-

Notes

Note – unbalanced answer can still get max marks

Note – no application required, but credit fully if candidates do apply their comments to the problem

Note – credit any other sensible issues raised

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

4 (a) (i) Grant is aware that The Courier is planning to print the story relating to the waste disposal company. He has been advised that he may be able to sue for defamation.

Outline what Grant would need to prove in order to successfully sue The Courier for defamation.

[5 marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

That the statement was defamatory

- Definition of defamatory
- Application to Grant's case
- Conclusion – potential claim/potential defence if the article is true
- Case / example in support*, eg *Byrne v Deane*

That the statement referred to the claimant

- Understanding that the public would have to know to whom the statement referred
- Application + conclusion – not an issue in this case as Grant will be named
- Case / example in support*, eg *Newstead v Express Newspapers*

That the statement was published

- Recognition of the need for the article in The Courier to be seen by someone other than the claimant
- Application + conclusion – not an issue in this case once the article is published
- Possible case/example in support.

Notes

Note – credit any relevant reference to damage/actionable per se as this is a libel

Note – credit any relevant reference to remedy, ie injunction/damages

Note – only one aspect: max 2 marks

Note – any two aspects: max 4 marks

*Note – **one** of the parts of content marked with an * is required content for max marks.*

[AO1:2, AO2:3, AO3:0]

4 (a) (ii) Article 8 of the Human Rights Act contains the right to ‘privacy’. Article 10 of the Human Rights Act contains the principle of freedom of speech which includes freedom of the press.

Comment on how well the law deals with the conflicting ‘rights’ contained in Article 8 and Article 10 of the Human Rights Act. **(Answer in continuous prose.)**

[6 marks]

Mark Bands

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 4 marks), then assess the QWC on the following basis:

- Average performance for a notional 16-year-old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

Band 0 Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately. **0 marks**

Band 1 Basic awareness. The student spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.

Band 2 **1-2 marks**

Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.

Band 3 **3-4 marks**

Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly. **5-6 marks**

Potential Content

Comments could include any of the following:

- recognition that these rights are justifiably part of English law
- recognition that rights can rarely be absolute because that would inevitably conflict with the same right being exercised by another in a different way, eg freedom of the press set against the right of privacy
- recognition that this conflict is not unique and exists elsewhere within the Act, eg freedom of expression and national security

- recognition that most restrictions under the HRA were already established law, eg tort of defamation
- recognition that restrictions exist only to protect the rights of others, eg defamation to protect the reputation of individuals
- recognition that the conflict can sometimes lead to difficult decisions for the courts, especially where the press target a particular individual, eg phone hacking
- recognition of the difficulty of distinguishing between the public life of 'famous' people and the need to protect the private lives of those same people, eg paparazzi photographs.

Notes

Note – credit any other credible comments relating to how the HRA is applied in this area

Note – students may approach this answer in a variety of ways, eg a broad approach which covers lots of points but lacking depth, or a narrower answer which focuses on one or two issues. Both approaches are equally creditworthy.

Note – no examples used: max 5 marks (3 law, 2 QWC)

[AO1:0, AO2:0, AO3:6]

4 (b) Discuss whether Freddie has any legal rights with respect to the golf clubs.

marks]

[5

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

Recognition of the following points;

- that Freddie's rights (if any) can only exist in contract*
- that the advert was merely an invitation to treat*
- that Freddie's reply was an offer*
- that Freddie's offer was never accepted
- conclusion – that there was no contract between Freddie and Ernie and that therefore Freddie has no contractual rights against Ernie* (and no basis for any claim against The Courier)
- case/example in support*, e.g. Fisher v Bell, Boots case, Partridge v Crittenden

Note – content marked with an * is required content for max marks.

[AO1:2, AO2:3, AO3:0]

4 (c) (i) Discuss the liability of The Courier as a result of the incident between Ian and Kalini. **[4 marks]**

Mark Bands

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

Potential Content

Recognition of the following points:

- that Ian is an employee of the newspaper
- that Ian was acting in the course of his employment when the collision occurred
- that The Courier is therefore almost certain to be found vicariously liable for Ian's actions
- that The Courier (insurers) will have to pay Kalini's damages
- case/example in support*, eg *Limpus v LGO*.

Note – *that content marked with an * is required content for max marks.*

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

4 (c) (ii) Discuss the liability of The Courier as a result of the incident between Janis and Len.

[4 marks]

Mark Bands

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

Potential Content

Recognition of the following points:

- that Janis is an employee of the newspaper
- that Janis was not acting in the course of her employment/on a 'frolic of her own' when the collision occurred
- that The Courier is therefore almost certainly not going to be found vicariously liable for Janis's actions
- that The Courier will not have to pay damages to Len (but Janis will be personally liable to Len for the damage caused by her negligence)
- case/example in support*, eg Beard v LGO.

Note – content marked with an * is required content for max marks.

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

4 (c) (iii) Briefly discuss the advantages **and** disadvantages of an employer being found liable for any tort committed by an employee.

[4 marks]

Mark Bands

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

Potential Content

Recognition and discussion of the following points, for example:

Advantages

- employer's profit, should be employer's loss
- employee may be a man of straw
- insurance position, etc.

Disadvantages

- employer may have specifically prohibited activity but irrelevant if employee is doing his job
- potential for undeserved loss to company/shareholders, etc.

Notes

Note – credit any other sensible points raised

Note – only one aspect dealt with – max 3 marks

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

4 (d) Janis is clearly convinced that she has not been treated fairly by The Courier.

Outline the legal implications of any unfair treatment arising from:

- the fact that she is a woman
- **and**
- the fact that she is black.

[6 marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

- Recognition of discrimination on the grounds of sex
- Application to The Courier's actions in treating two employees differently (discrimination or a fair reflection of the circumstances?)
- Authority – Equality Act 2010*
- Conclusion – potential claim to an Employment Tribunal
- Case/example in support*, e.g. Garland v British Rail Engineering

- Recognition of discrimination of the grounds of race
- Application to The Courier's actions with respect to the two road traffic incidents (discrimination or reflective of Janis's employment breach? Previous breaches? Against company rules? Have other drivers also done the same? Level of damage caused?)
- Authority – Equality Act 2010*
- Conclusion – potential claim to an Employment Tribunal
- Case(s)/example(s) in support*, e.g. Johnson v Timber Tailors

Notes

Note – only one aspect (sex or race): max 4 marks

*Note – **one** mention of Act **and** case marked with an * is required content for max marks.*

[AO1:1, AO2:5, AO3:0]

4 (e)

Any of the above ‘cases’ could eventually need a hearing in court or elsewhere.
State where **each** of the following cases would be heard **and** briefly explain your answers:

- Grant’s case against The Courier
- Kalini’s case against The Courier
- Janis’s case against The Courier

[5 marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

Grant

- Civil action would require a judge + possibly a jury (much rarer these days)
- Case would be heard in the County Court or High Court* **(1 mark)**

Kalini

- Recognition of damage of about £500 – certainly below £10,000
- Case would be heard in the County Court* **(1 mark)**, using the Small Claims Track

Janis

- Janis would be claiming unfair dismissal on the grounds of discrimination
- Case would have to be heard by an employment tribunal* **(1 mark)**

Notes

*Note – content marked with an * is required content for max marks.*

Note – credit any other sensible development

Note – only one aspect briefly explained – max 2 marks

Note – only two aspects briefly explained – max 4 marks for two good answers with appropriate explanation for both

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

4	(f)	Article 6 of the Human Rights Act contains the right to a fair trial. Discuss the different ways in which the right to a fair trial is protected under English law.	[6
			marks]

Mark Bands

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 mark
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Possible answers include discussion of any of the following:

- Human Rights Act/common law provisions relating to the right to a fair trial, eg presumption of innocence, open court, right to advice and assistance, right to an interpreter if needed, right to cross-examine, etc.
- protection at the police station, eg taped/videotaped interviews, duty solicitor, etc
- right to bail
- presence of lay people to judge the case (trained magistrates or jury) or an independent judge
- rules of natural justice, ie both sides must be heard, unbiased decision-makers
- rights of appeal
- additional protections for young people e.g. at a police station, relative informality in court, guarantee of representation, press + public gallery restrictions, special measures for giving evidence, etc.

Notes

Note – credit any other sensible points raised

Note – minimum two areas discussed for sound understanding, minimum three areas discussed for maximum marks

Note - no application required for max marks, but can be credited in whatever context it arises

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

ASSESSMENT GRID - 41602

	Maximum Mark	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3
Question 1	45	a) 1 b) 2 c) 4 d) 0 e) 1 f) 2 (10)	4 6 6 9 0 0 (25)	0 0 0 6 0 4 (10)
Question 2	45	a) 2 b) 2 c) 2 d) 4 e) 0 f) 0 (10)	4 6 6 9 0 0 (25)	0 0 0 0 5 5 (10)
Question 3	45	a) 3 b) 2 c) 0 d) 5 e) 0 f) 0 g) 0 (10)	8 3 4 0 6 4 0 (25)	0 0 0 0 0 6 4 (10)
Question 4	45	a) 2 b) 2 c) 2 d) 1 e) 0 f) 3 (10)	3 3 6 5 5 3 (25)	6 0 4 0 0 0 (10)
TOTAL	90	20	50	20

ASSESSMENT GRID OVERALL (41601 & 41602)

AO1 Target 30%-40% Achieved 36.6%

AO2 Target 20%-30% Achieved 27.8%

AO3 Target 35%-40% Achieved 35.6%

Note – Achieved targets take into account that Paper 1 matches the same assessment pattern as the Specimen Paper and previous examinations.