

Question 1	Points
An summary of the essay that discusses the main differences between contract and tort law by comparing their objectives, purposes and remedies	1.5
Generally, contract law creates obligations/liabilities and rights between parties that are fixed by the agreement of the parties concerned’.	1.0
Contracts arise when a duty does or may come into existence, because of a promise made by one of the parties. Requirement of consideration and a simultaneous ‘meeting of the minds’ – no past consideration.	1.0
In contrast, tort law liability ‘independent of any previous consent of the wrongdoer to bear the loss occasioned by an act’. A general harm caused by a person for acts or omissions – elaborate the discussion	0.5
Tort law has a ‘moral connotation’ – by using terms to impose liability such as ‘malice’, ‘fraud’, ‘intent’, but also ‘answerable’ for all consequences of his acts, irrespective of his state of conscience’. Such as trespass and negligence.	1.0
Holmes quote (‘The Common Law’): ‘The liabilities incurred by way of contract are more or less expressly fixed by the agreement of the parties concerned, but those arising from a tort are independent of any previous consent of the wrongdoer to bear loss occasioned by his act.’ (or some paraphrase of this statement ok).	1.5X
Contract law based on promises that the law will enforce. The law provides remedies if a promise is breached or recognizes the performance of a promise as a duty.	1.0
Contracts may override many of the rules otherwise established by state law	1.0X
Important elements of tort law	
Torts can arise from different activities. Intentional harm to plaintiff – assault and battery and deceit to obtain property under false pretence, and physical intrusion or meddling with property owned by someone else – ie., conversion of personal property.	1.5
Unintentional harm - voluntary act resulting in damage to property or person. ‘Trespass on the case’ – or any voluntary act that leads to unintentional harm to another party. <i>Case of Thorns</i>	1.0
Negligence – standard of care, duty to maintain standard of care, breach of duty that causes foreseeable damages to plaintiff.	1.0
Remedies/redress	
Torts	
Compensation includes Damages, specific performance, injunction	1.0
Punitive damages available in US	.5
Threat of punishment to regulate society	1.0
Proof: on balance of probabilities	1.0
Limitations on redress: comparative v contributory negligence	1.5
In contrast, remedies for breach of contract include (mention them and also elaborate on each of them):	
Consequential damages, arising directly from breach of contract - actual	1
Reliance damages - costs incurred justifiably by relying on counterparty’s promise or acts	1
General damages – actual damages, ie., health costs	1
Specific performance – perform a specific act	1
Right of victims to receive redress regarded as a right of an Englishman. Blackstone’s <i>Commentaries</i> and US constitution requires that no state may make a law that infringes on contractual rights.	1.0
In torts, he who acts takes the risk, whereas in contract law the scope of liability is fixed by the contract.	0.5
Structure of the essay – coherence – IRAC or other sound structure followed for formulating the answer	4

Question 2	
Discuss important roles of judges in common law courts	1
<i>Common law pre-existing and determined through application of accepted principles to facts of case</i>	2
Sir Edward Coke v the King (1640s) – the King prevails by acting in Parliament to adopt legislation to curb judicial powers	1
Implications for ‘rule of law’, ‘rechtstaat’	1
Ratio decidendi	1
Stare decisis – binding law precedent	1
Discuss how common law judges may lose some of their power to shape common law principle with impact of international and European human rights law	2
Judge’s powers to decide factual and legal issues. In US, judges decided legal issues in most civil cases, while juries decide factual issues. The importance of the jury trial in criminal law and how judges powers constrained to interpreting and applying the law to the case at hand while juries decide factual issues.	1.5 1.5
Judges interpret common law principles of crime Murder, Theft-Fraud, attempted murder, conspiracy	1
Cardozo’s discussion of inference and deductive role of judicial reasoning	3
Rise of equity and the Judges’ interpretation of equitable principles to circumscribe powers of King’s law courts. Chancellor’s courts that use equitable principles to overrule Law courts rulings	2
Judge’s role to interpret statutes and how that develops common law	1
Some discussion of the Literal Rule, Golden Rule and/or Purposive Rule	2
Judicial presumptions when interpreting statutes: territorial jurisdiction, no retrospective effect, no breach of international obligations no exclusion of court jurisdiction from hearing legal claim (right to access to courts). All support the overarching power of the common law judges to interpret statutes by respecting existing common law principles. But sometimes judges must interpret statutes to derogate from common law principles.	2x
Structure of the essay – coherence – IRAC or other sound structure followed for formulating the answer	4
Question 3	
Sources of common law – which is most significant. The essay summarises the main sources and suggest which one is most significant.	1
Sources: Generally uncodified (ie no comprehensive compilation of legal sources)	1
Largely based on precedent (authoritative judicial decisions) – judicial case law	1
Blackstone commentaries importance for common law jurisdictions; or Matthew Hale	.5
Common Law rules (tort, contract, property & criminal) v Equity (Trusts, remedies – a more incomplete system). In conflict, Equity prevails	1
Both product of judicial precedents	.5x
Advantages / Disadvantages of judicial precedent	2
Statutes are important for modifying the common law and/or filling gaps in legal framework where rights and obligations not clearly defined.	1.5
Acts of Parliament; Delegated Legislation (secondary legislation) including statutory instruments and statutory orders. Also, Orders in Council	2
Bye-laws	.5X
Transnational law or international law	1
Treaties – <i>lex specialis</i> rule	2
General principles of law	1

Three basic types of EU legislation: Regulations, Directives, Decisions. Some discussion	2
Conflicts between English law and EU law EU Treaty free movement principle	1
European/international human rights law	2
Example of how European human rights implemented with direct affect through statute (UK Human Rights Act 1998)	2
Structure of the essay – coherence – IRAC or other sound structure followed for formulating the answer	4
Question 4 -	
The essay states that it will discuss the main elements of the Trust and its role in developing the common law	1.0
3 components of the trust <u>Settlor</u> – establishes the trust. Trust deed transfers ownership (legal title) of property to a Trustee, who disposes of the property in the interest of beneficiaries.	1.0
Settlement document provides for duties of trustee in managing property for beneficiaries (ie. Investment trusts, compensation for trustee)	0.5
<u>Trustee</u> – has legal title to property, but has responsibility to use property for interests of beneficiaries. Discuss who can be trustee.	1
<u>Beneficiaries</u> – equitable interests’ – enforceable in court of equity. Today can be enforced in both law courts and equity courts	1.0
Important for development of common law because provided a flexible device to manage property and circumvent unfair or unjust rules of the common law courts	2
Importance of the trust for providing remedies for gaps in common law	1
Some discussion of the historical development that includes some (not all) of the following	4
<ul style="list-style-type: none"> • Medieval England – land ownership rules • Transfer of ownership • But beneficial use of property allocated to beneficiaries. • Enforcement of beneficiary rights – equitable action • King’s courts only enforced actions at ‘law’ – contract, tort, property rights. • Chancellor’s court – enforcing equitable claims. • Override the Courts of law • Courts of Equity – ‘Bleak House’ <i>Charles Dickens</i> • 1873 Judicature Acts – merge courts of law and equity from 1875 onwards 	
Trusts were important in common law because of their flexibility in creation and lack of rigid rules for maintaining them and enforcing rights/obligations	1.0
Discuss aspects of the trust that relate to its flexibility	
Power of appointment (Powers at law – power of attorney can authorise transfer or conveyance of real property)	1
Powers are discretionary – Trust imposes a duty on Trustee;	1
Court can intervene to compel exercise of equitable duties	1
Trustee used to need full list of beneficiaries. Not today necessary for exercise of legal powers. Discussion of ‘discretionary’ trusts.	
Applies in family law for creating trusts for benefit of family members and for inheritance/estate tax purposes	1.0X
Remedies for breach of trust – compensation, specific performance and injunctions. Broad scope of remedies to do justice.	2
Constructive trust – regulation and enforcement – discuss some of these remedies	
<ul style="list-style-type: none"> • Knowing receipt or dealing • Knowing assistance • Profit from the trust • Tracing of proprietary interests in property. For example, tracing the proceeds of crime through bank accounts and in other transactions • Personal rights (contractual rights) not traceable 	2

<ul style="list-style-type: none"> Trusts and their application grew with common law – Trusts affects everything in English property law. Trust can apply to all property - commercial property and insolvency, and intellectual property 	1.5
Structure of the essay – coherence – IRAC or other sound structure followed for formulating the answer	4

Total	100
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