



For teaching from 2017
For award from 2018

GCE AS and A LEVEL LAW

SAMPLE ASSESSMENT
MATERIALS

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GCE AS

LAW

UNIT 1

**The Nature of Law and the Welsh and English
Legal Systems**

SAMPLE ASSESSMENT MATERIALS

1 hour 45 minutes

ADDITIONAL MATERIALS

In addition to this examination paper, you will need a 12 page answer book.

INSTRUCTIONS TO CANDIDATES

Answer **three** questions from Section A plus **one** question from Section B.

Use black ink or black ball-point pen.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets at the end of each question or part-question.

You are advised to spend approximately:

- 60 minutes on **Section A**
- 45 minutes on **Section B**

Section A

*In Section A, you must answer **three** questions. Answer questions 1 and 2 plus **either** question 3 **or** question 4.*

Questions 1 and 2 require you to demonstrate knowledge and understanding of legal rules and principles.

Credit will be given for the use of relevant supporting case law and authority.

Answer questions 1 and 2.

1. Explain the stages a Bill must go through to become an Act of Parliament. [10]

2. Explain the role of the Law Commission. [10]

Questions 3 and 4 require you to demonstrate knowledge and understanding of legal rules and principles, and apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.

Credit will be given for the use of relevant supporting case law and authority.

Answer **either** question 3 **or** question 4.

EITHER

3. The Welsh Government has recently been concerned by the number of Welsh language protesters in and around the Senedd in Cardiff Bay. Some of the Welsh language protesters have also been defacing buildings and property around the area with Welsh graffiti and posters. The Welsh Government is asking for additional powers to be given by Parliament to enable the Senedd to introduce controls over protesters.

Louisa Jones is a passionate protester in favour of increased use of the Welsh language and is seeking to challenge the delegated powers by way of judicial review so that she can continue protesting.

Advise Louisa on the ways in which the delegated powers could be controlled. [28]

OR

4. *Read the fictitious statute and the scenario below, and answer the question that follows.*

Environmental Protection (Fictitious) Act 2016

Section 1:

“Any person who leaves anything whatsoever for the purposes of prostitution in such circumstances as to cause or contribute to or tend to lead to the defacement of any place to which this section applies shall be guilty of an offence.”

One of the categories to which this section applies is a public open place, which is defined in section 2.

Section 2:

“Public open space means a place in the open air to which the public are entitled or permitted to have access without payment; and any covered place open to the air on at least one side and available for public use shall be treated as a public open place.”

Jemima pinned cards advertising “special services” on the free advertising board of her local supermarket which was located outside the supermarket, under a covered entrance. Jemima is being prosecuted under the Act.

Using the rules of statutory interpretation, advise Jemima as to whether an offence has been committed in this situation. [28]

Section B

Answer **one** question from this section.

You will need to answer both part (a) and part (b) of your chosen question.

Part (a) requires you to demonstrate knowledge and understanding of legal rules and principles.

Part (b) requires you to analyse and evaluate legal rules, principles, concepts and issues.

Credit will be given for the use of relevant supporting case law and authority.

5. (a) Explain the role of the jury in criminal trials in Wales and England. [8]
(b) Analyse and evaluate whether trial by jury is reliable. [24]
6. (a) Explain the main forms of alternative dispute resolution (ADR). [8]
(b) Analyse and evaluate the advantages and disadvantages of tribunals. [24]

UNIT 1: The Nature of Law and the Welsh and English Legal Systems

Mark scheme

Marking guidance for examiners

Summary of assessment objectives for Unit 1

The questions in Section A and Section B assess all three assessment objectives - AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology, and the ability to analyse and evaluate legal rules, principles, concepts and issues.

The structure of the mark scheme

The mark scheme for both Section A and Section B has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1, AO2 and AO3.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner. Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

Section A

1. Explain the stages a Bill must go through to become an Act of Parliament. [10]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the stages a Bill must go through to become an Act of Parliament, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the procedure for enacting a statute. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question and not simply give a general answer on the role of Parliament.

The response might consider issues such as:

- The different types of Bill – Public, Private and Private Members’
- The stages a Bill goes through to become an Act. House of Commons – first reading, second reading, committee stage, report stage, third reading, House of Lords, Royal Assent
- Commencement
- ‘Ping pong’ between the two Houses of Parliament
- Relevant example to demonstrate – e.g. the Parliament Acts 1911-1949, the Hunting Act

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	9 - 10	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the statutory process.
3	6 - 8	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to the statutory process.
2	3 - 5	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to the statutory process.
1	1 - 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to the statutory process.
	0	Response not creditworthy or not attempted.

2. Explain the role of the Law Commission. [10]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the role of the Law Commission, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the role of the Law Commission. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question and not simply give a general answer on the methods of law reform.

The response might consider issues such as:

- Law Commission Act 1965 – main full time law reform body
- Role under s.3 Law Commission Act – to keep under review ‘all of the law’
- Composition of the Law Commission – chairperson, Law Commissioners, support staff
Chairperson to be a High Court or Court of Appeal judge (Tribunals, Courts and Enforcement Act 2007)
- Role in repealing, consolidating and codifying law
- Examples of areas where they have helped reform the law

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	9 - 10	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the role of the Law Commission.
3	6 - 8	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to the role of the Law Commission.
2	3 - 5	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to the role of the Law Commission.
1	1 - 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to the role of the Law Commission.
	0	Response not creditworthy or not attempted.

3. The Welsh Government has recently been concerned by the number of Welsh language protesters in and around the Senedd in Cardiff Bay. Some of the Welsh language protesters have also been defacing buildings and property around the area with Welsh graffiti and posters. The Welsh Government is asking for additional powers to be given by Parliament to enable the Senedd to introduce controls over protesters.

Louisa Jones is a passionate protester in favour of increased use of the Welsh language and is seeking to challenge the delegated powers by way of judicial review so that she can continue protesting.

Advise Louisa on the ways in which the delegated powers could be controlled. [28]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising Louisa candidates are expected to demonstrate knowledge and understanding of the controls on delegated legislation. Candidates are expected to apply the full range of legal rules and principles that affect the control of delegated legislation. In this case they will apply both parliamentary and judicial controls to the given scenario in order to present a legal argument, using appropriate legal terminology.

The response might consider issues such as:

- Why control of delegated legislation is necessary – to maintain Parliamentary Sovereignty and so that devolved bodies do not exceed their powers
- Control by Parliament:
 - Scrutiny committee
 - Enabling Act
 - Negative resolution
 - Affirmative resolution
 - Super Affirmative Resolution
 -
- Control by courts:
 - Judicial review
 - *Ultra vires* – substantive - Strickland
 - *Ultra vires* - procedural - Aylesbury Mushroom
 - Unreasonableness – Wednesbury, *R (on the application of Rogers) v Swindon NHS Primary Care Trust 2006*
- The limitations on the legislative competence of the Senedd under the Government of Wales Act 2006 including the role of the Secretary of State for Wales, the Counsel General for Wales, Attorney General for England and Wales and the Presiding Officer.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	4	<ul style="list-style-type: none"> Excellent, detailed knowledge and understanding of the controls on delegated legislation.
3	3	<ul style="list-style-type: none"> Good knowledge and understanding of the controls on delegated legislation.
2	2	<ul style="list-style-type: none"> Satisfactory knowledge and understanding of the controls on delegated legislation.
1	1	<ul style="list-style-type: none"> Basic knowledge and understanding of the controls on delegated legislation.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	18 - 24	<ul style="list-style-type: none"> Excellent, detailed application of legal rules and principles to Louisa's situation. Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the ways in which delegated legislation is controlled.
3	12 - 17	<ul style="list-style-type: none"> Good application of legal rules and principles to Louisa's situation. Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the ways in which delegated legislation is controlled.
2	7 - 11	<ul style="list-style-type: none"> Satisfactory application of legal rules and principles to Louisa's situation. Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the ways in which delegated legislation is controlled.
1	1 - 6	<ul style="list-style-type: none"> Basic application of legal rules and principles to Louisa's situation. Basic presentation of a legal argument, using minimal legal terminology relating to the ways in which delegated legislation is controlled.
	0	Response not creditworthy or not attempted.

4. Read the fictitious statute and the scenario below, and answer the question that follows.

Environmental Protection (Fictitious) Act 2016

Section 1:

“Any person who leaves anything whatsoever for the purposes of prostitution in such circumstances as to cause or contribute to or tend to lead to the defacement of any place to which this section applies shall be guilty of an offence.”

One of the categories to which this section applies is a public open place, which is defined in section 2.

Section 2:

“Public open space means a place in the open air to which the public are entitled or permitted to have access without payment; and any covered place open to the air on at least one side and available for public use shall be treated as a public open place.”

Jemima pinned cards advertising “special services” on the free advertising board of her local supermarket which was located outside the supermarket, under a covered entrance. Jemima is being prosecuted under the Act.

Using the rules of statutory interpretation, advise Jemima as to whether an offence has been committed in this situation. [28]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising Jemima candidates are expected to demonstrate knowledge and understanding of statutory interpretation. Candidates are expected to apply the full range of legal rules and principles that affect the application of the rules of statutory interpretation to Jemima’s situation. In this case candidates may apply the literal, golden, mischief and purposive rules, plus other aids of interpretation, including both intrinsic and extrinsic aids, to the given scenario in order to present a legal argument, using appropriate legal terminology.

The response might consider issues such as:

- Applying the four rules of statutory interpretation to the scenario:
 - **Literal:** gives words the natural and grammatical meaning, even if the result is absurd – *Whitely v Chappel, Lees v Secretary of State, Fisher v Bell, London LNER v Berriman*. Application of the rule to the scenario: for instance, would a supermarket’s covered entrance fall under section 2?
 - **Golden:** allows words in a statute to be modified in order to avoid an absurdity or repugnant result – *Sweet v Parsley, Adler v George, Re Sigsworth, R v Allen*. Application of the rule to the scenario: for instance, are there any absurdities or repugnancies when the statute is interpreted?
 - **Mischief:** looks at the gap in the law Parliament intended to fill. Established in *Heydon’s Case*. Used in *Smith v Hughes, Royal College of Nursing v DHSS, Pepper v Hart*. Application of the rule to the scenario: for instance, how would the Act be interpreted if it was introduced with the purpose of filling a gap in the Common Law?

- **Purposive:** looks at the 'spirit of the law' and looks to see what Parliament intended, favoured approach of interpretation of EU Law – *Magor v St Mellons, Quinaville, Jones v Tower Boot Company*. Application of the approach to the scenario: for instance, are there any indications as to the intention of Parliament?
- Applying other methods of interpretation:
 - Intrinsic aids (short title, long title, preamble interpretation sections, margin notes, Rules of Language)
 - Extrinsic aids (Hansard, dictionaries, textbooks, Human Rights Act 1998, international conventions)
 - Presumptions

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	4	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of statutory interpretation.
3	3	<ul style="list-style-type: none"> • Good knowledge and understanding of statutory interpretation.
2	2	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of statutory interpretation.
1	1	<ul style="list-style-type: none"> • Basic knowledge and understanding of statutory interpretation.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	18 - 24	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to Jemima's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation.
3	12 - 17	<ul style="list-style-type: none"> • Good application of legal rules and principles to Jemima's situation. • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation.
2	7 - 11	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to Jemima's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation.
1	1 - 6	<ul style="list-style-type: none"> • Basic application of legal rules and principles to Jemima's situation. • Basic presentation of a legal argument, using minimal legal terminology, relating to the rules of statutory interpretation.
	0	Response not creditworthy or not attempted.

Section B

5. (a) Explain the role of the jury in criminal trials in Wales and England. [8]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the role of the jury in trials in Wales and England, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the role of the jury. In demonstrating this knowledge and understanding candidates are required to give an answer which is focused on the role of the jury and not issues such as selection, qualifications or the reliability of the jury.

The response might consider issues such as:

- Jury independence – Bushell’s case, *R v Wang*, Magna Carta
- Deciders of fact
- Role in criminal trials – present in the Crown Court. Decide guilt or innocence ‘beyond reasonable doubt’.
- Usually 12 jurors present who must all be in agreement on the verdict (unanimous). Judge can instruct them to reach a majority verdict of 10:2 or 11:1 after a ‘reasonable’ period of time. Criminal Justice Act 2003 allows trial by judge alone where evidence of jury tampering exists – *R v Twomey*

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the role of the jury in criminal trials in Wales and England.
2	3 - 5	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to the role of the jury in criminal trials in Wales and England
1	1 - 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to the role of the jury in criminal trials in Wales and England.
	0	Response not creditworthy or not attempted.

5. (b) Analyse and evaluate whether trial by jury is reliable. [24]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates will offer an analysis and evaluation of the legal rules, principles concepts and issues in order to analyse and evaluate whether trial by jury is reliable. In order to analyse and evaluate these aspects, candidates must understand that trial by jury is a feature of the Welsh and English legal system but is not without criticism. Overall candidates will offer a debate and come to a substantiated judgement regarding the reliability of jury trial in the justice system of Wales and England.

The response might consider aspects such as:

- Trial by jury mentioned in Magna Carta
- Jury reliability strengthened by increasing those eligible – Criminal Justice Act 2003. However, cases such as *R v Abdoukoff* and *R v Khan* question whether this increased eligibility (police officers, CPS, judges) is appropriate
- Trial by jury has a number of advantages, including (but not limited to):
 - Open system of justice
 - Secrecy of the jury room
 - Jury equity
 - Public participation in the legal system
- Trial by jury has a number of disadvantages, including (but not limited to):
 - Perverse verdict
 - Secrecy
 - No reasons for verdicts given
 - Distress to jury members

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	18 - 24	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the reliability of trial by jury in Wales and England. • Excellent evaluation of the reliability of trial by jury in Wales and England, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities.
3	12 - 17	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the reliability of trial by jury in Wales and England. • Good evaluation of the reliability of trial by jury in Wales and England, including reference to a judgement. • Good use of supporting case law and legal authorities.
2	7 - 11	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to the reliability of trial by jury in Wales and England. • Satisfactory evaluation of the reliability of trial by jury in Wales and England, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities.
1	1 - 6	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the reliability of trial by jury in Wales and England. • Basic evaluation of the reliability of trial by jury in Wales and England. • Basic use of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

6. (a) Explain the main forms of alternative dispute resolution (ADR). [8]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the main forms of ADR, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the main forms of ADR. In demonstrating this knowledge and understanding, candidates are required to give an answer which is focused on the forms of ADR and not tribunals or the civil courts, for example.

The response might consider issues such as:

- Definition of ADR – alternative to litigation. Aimed at getting parties to settle dispute without the need for court action
- Increased use of ADR since the Woolf reforms, particularly with Rule 1.4 of the Civil Procedure Rules
- 4 main forms of ADR though candidates may mention others such as Ombudsmen
 - Negotiation – informal. With or without a solicitor
 - Mediation – third party mediator helps parties reach a solution. Third party plays a facilitative role. Examples of mediation – Mediation, Information and Assessment Meetings (MIAMs), small claims mediation, etc.
 - Conciliation – third party conciliator plays a more active role and will suggest areas of compromise. Examples of conciliation – ACAS, pre-claim conciliation
 - Arbitration – governed by the Arbitration Act 1996. Formal, binding decision known as an ‘award’. Adjudicative – arbitrator imposes decision on the parties. *Scott v Avery* clauses. Examples of arbitration – sports arbitration

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of the legal rules and principles relevant to the forms of ADR.
2	3 - 5	<ul style="list-style-type: none"> • Good knowledge and understanding of the legal rules and principles relevant to the forms of ADR.
1	1 - 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of the legal rules and principles relevant to the forms of ADR.
	0	Response not creditworthy or not attempted.

6. (b) Analyse and evaluate the advantages and disadvantages of tribunals. [24]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates will offer an analysis and evaluation of the advantages and disadvantages of tribunals. In order to reach a substantiated judgement about this issue, candidates may argue that tribunals play a central role in providing claimants in dispute with the state an avenue for redress. Candidates might consider challenging this by arguing that employment tribunals, which have introduced fees, have seen a drop in claims which leads to the conclusion that some are being denied access to justice. Overall, candidates will offer a debate and come to a substantiated judgement regarding the advantages and disadvantages of tribunals.

The response might consider issues such as:

- Advantages:
 - Cost – parties encouraged to represent themselves
 - Speed – Tribunal Judges take on case management duties
 - Expertise – at least one member of the tribunal will be an expert
 - Informality – much less formal than court. Less intimidating
 - Independence – Judicial Appointments Commission (JAC) appoint Tribunal Judges. Tribunal Service now unified
- Disadvantages:
 - Lack of funding – some cannot afford to take case to a tribunal
 - Delay – particularly if the case is complex
 - Intimidated parties – may want to hire legal representation which in turn increases costs
 - Lack of precedent – can lead to inconsistencies and unpredictability

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	18 - 24	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the advantages and disadvantages of tribunals. • Excellent evaluation of the advantages and disadvantages of tribunals, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities.
3	12 - 17	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the advantages and disadvantages of tribunals. • Good evaluation of the advantages and disadvantages of tribunals, including reference to a judgement. • Good use of supporting case law and legal authorities.
2	7 - 11	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to the advantages and disadvantages of tribunals. • Satisfactory evaluation of the advantages and disadvantages of tribunals, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities.
1	1 - 6	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the advantages and disadvantages of tribunals. • Basic evaluation of the advantages and disadvantages of tribunals. • Basic use of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.



GCE AS

LAW

UNIT 2

The Law of Tort

SAMPLE ASSESSMENT MATERIALS

1 hour 30 minutes

ADDITIONAL MATERIALS

In addition to this examination paper, you will need a 12 page answer book.

INSTRUCTIONS TO CANDIDATES

Answer **all** questions.

Use black ink or black ball-point pen.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets at the end of each question or part-question.

The quality of your written communication, including appropriate use of punctuation and grammar, will be assessed in your answer to question 5.

Answer **all** questions.

Questions 1, 2 and 3 require you to demonstrate knowledge and understanding of legal rules and principles.

Question 4 requires you to apply legal rules and principles to the given scenario in order to present a legal argument using appropriate legal terminology.

Question 5 requires you to analyse and evaluate legal rules, principles, concepts and issues.

1. Explain how the law decides whether a duty of care is owed in negligence. [8]
2. Explain the principle of causation in the law of tort. [8]
3. Explain the differences between primary and secondary victims. [8]
4. Johnny is driving his car and remembers he needs to text his mother to tell her he will not be coming home for tea that day. He manages to text his mother by holding his mobile telephone in his left hand while using his right to steer the car. As he turns the corner of the road he sees Alan coming towards him in a van. Johnny drops his mobile telephone and breaks hard but the car skids into Alan's van severely damaging the fronts of both vehicles. Alan suffers serious head injuries.

Advise Johnny as to whether he is liable for Alan's injuries. [18]
5. Analyse and evaluate the different types of damages in the law of negligence. [18]

UNIT 2: The Law of Tort

Mark scheme

Marking guidance for examiners

Summary of assessment objectives for Unit 2

The questions assess all three assessment objectives - AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology, and the ability to analyse and evaluate legal rules, principles, concepts and issues.

The structure of the mark scheme

The mark scheme for each question has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1, AO2 and AO3.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner. Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

1. Explain how the law decides whether a duty of care is owed in negligence. [8]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining how the law decides whether a duty of care is owed, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying a duty of care. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply to give a general answer on all elements of negligence.

The response might consider issues such as:

- History of test for duty of care – *Donoghue v Stevenson*
 - A person must take reasonable care to avoid acts or omissions which could be reasonably foreseen to likely injure a neighbour
 - Test of reasonable foreseeability
 - Who is ‘neighbour’? – persons who are so closely and directly affected by the defendant’s act that they ought to have them in their contemplation
- Possible illustrative examples such as the duty of care owed by drivers to pedestrians and other road users
- Test redefined in *Caparo v Dickman*. Three elements must be proved:
 - Reasonable foreseeability that a person in the claimant’s position would be injured
 - There was sufficient proximity between the parties
 - It is fair, just and reasonable to impose liability on the defendant

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the principle of duty of care.
2	3 - 5	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to the principle of duty of care.
1	1 - 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to the principle of duty of care.
	0	Response not creditworthy or not attempted.

2. Explain the principle of causation in the law of tort.

[8]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the principle of causation in the law of tort, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying the principle of causation. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on negligence.

The response might consider issues such as:

- Definition of causation – defendant’s acts or omissions must have caused the loss complained of
- Both factual and legal causation must be proved
- Factual causation:
 - ‘But for’ test – *Barnett v Chelsea and Kensington Hospital Management Committee*
 - Intervening events may break the chain of causation – *novus actus interveniens*
 - Victim’s own act
 - Medical intervention
- Legal causation:
 - Operating and substantial cause
 - Remoteness of damage
 - Take your victim as you find them
 - Cases such as *Wagon Mound*

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to causation.
2	3 - 5	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to causation.
1	1 - 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to causation.
	0	Response not creditworthy or not attempted.

3. Explain the differences between primary and secondary victims. [8]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In explaining the differences between primary and secondary victims, candidates are expected to demonstrate knowledge and understanding of legal rules and principles underlying victims. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on negligence.

The response might consider issues such as:

- A primary victim is where the claimant is involved, immediately in time, as a participant, e.g. a person who feared for their own safety, injured rescuers or an involuntary participant. They would be present at scene and usually (but not always) have suffered physical injury. It does not matter if the victim is more susceptible to shock.
- A secondary victim is where the claimant has suffered some type of psychiatric injury. To be classified as a secondary victim there must be a proximity in terms of relationship with a primary victim and the secondary victim must have witnessed the accident with his/her own unaided senses.
- Candidates may refer to case law such as *Hambrook v Stokes Bros*; *McCloughlin v O'Brien*; *Page v Smith*; *Alcock v Chief Constable of South Yorkshire Police*.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
3	6 - 8	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the differences between primary and secondary victims.
2	3 - 5	<ul style="list-style-type: none"> • Good knowledge and understanding of the legal rules and principles relating to the differences between primary and secondary victims.
1	1 - 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of the legal rules and principles relating to the differences between primary and secondary victims.
	0	Response not creditworthy or not attempted.

4. Johnny is driving his car and remembers he needs to text his mother to tell her he will not be coming home for tea that day. He manages to text his mother by holding his mobile telephone in his left hand while using his right to steer the car. As he turns the corner of the road he sees Alan coming towards him in a van. Johnny drops his mobile telephone and breaks hard but the car skids into Alan's van severely damaging the fronts of both vehicles. Alan suffers serious head injuries.

Advise Johnny as to whether he is liable for Alan's injuries.

[18]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In assessing the extent to which Johnny is liable for Alan's injuries, candidates are expected to apply legal rules and principles to the scenario in order to present a legal argument using appropriate legal terminology.

The response might consider issues such as:

- For Alan to succeed in an action in negligence against Johnny, it must first be established that Johnny owed Alan a duty of care. The basis of whether or not a duty of care is owed is determined on a three-part test as laid out in *Caparo Industries PLC v Dickman*.
- Johnny does not owe a duty to the whole world but only to those persons that could be reasonably foreseen to be affected by his actions or omissions as determined in *Donoghue v Stevenson*. It could reasonably be foreseen that Johnny's decision to use his mobile telephone while driving around a corner could lead to other persons being affected.
- If it is established that a degree of foreseeability exists, then the proximity of the parties involved must be considered. Proximity is determined on the basis of the relationship of the parties involved. There is a clear proximity of relationship between Johnny and other road users such as Alan.
- The courts will also consider if it is reasonable to impose a duty of care on Johnny on the basis of fairness or policy. It is both fair and in the interests of public policy to impose a duty of care on drivers who drive while using their mobile telephones.
- Alan has suffered damage as a result of Johnny's breach of his duty of care.
- There was no evidence of *novus actus interveniens* that could negate Johnny's liability for the accident and responsibility for the injuries suffered by Alan.
- Using appropriate case law in similar situations such as *Bonnington Castings Ltd v Wardlaw*

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	14 - 18	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to the situation involving Johnny and Alan. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.
3	9 - 13	<ul style="list-style-type: none"> • Good application of legal rules and principles to the situation involving Johnny and Alan. • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.
2	5 - 8	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to the situation involving Johnny and Alan. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence.
1	1 - 4	<ul style="list-style-type: none"> • Basic application of legal rules and principles to the situation involving Johnny and Alan. • Basic presentation of a legal argument, using minimal legal terminology relating to the elements of the tort of negligence.
	0	Response not creditworthy or not attempted.

5. Analyse and evaluate the different types of damages in the law of negligence. [18]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the award of damages in tort. Candidates will offer an analysis and evaluation of the purpose of both general and special damages. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding their adequacy.

The response might consider issues such as:

- Damages in a negligence case are compensatory
- Purpose is to put the claimant in the position he/she would have been in had the negligent event not occurred
- Actual losses and future losses can be compensated
- Mitigation of loss must be considered
- Two types of damages:
 - Special damages
 - Compensation for the financial losses incurred up to the date of the trial
 - Things that can be given an exact figure: medical expenses, prescriptions, loss of earnings
 - Deductions made so claimant does not profit
 - Calculation for special damages
 - Evaluation of the extent to which this compensates adequately
 - General damages
 - Pain, suffering and loss of amenity
 - Non-pecuniary damages
 - Judicial guidelines
 - Awards where victim is a child – *Giambrone v JMC Holidays 2002*
 - Loss of future earnings
 - Evaluation of the extent to which this compensates adequately
- Methods of payment of damages

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	14 - 18	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the award of damages in negligence. • Excellent evaluation of the purpose of the award of damages in negligence, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
3	9 - 13	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the award of damages in negligence. • Good evaluation of the purpose of the award of damages in negligence, including a valid judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates reasonably accurate grammar, punctuation and spelling.
2	4 - 8	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to the award of damages in negligence. • Satisfactory evaluation of the purpose of the award of damages in negligence, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 4	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the award of damages in negligence. • Basic evaluation of the purpose of the award of damages in negligence. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.



GCE A LEVEL

LAW

UNIT 3

The Practice of Substantive Law

SAMPLE ASSESSMENT MATERIALS

1 hour 45 minutes

ADDITIONAL MATERIALS

In addition to this examination paper, you will need a 12 page answer book.

INSTRUCTIONS TO CANDIDATES

Answer **two** questions in total, each question from a different section.

Section A – Human Rights Law

Section B – Law of Contract

Section C – Criminal Law

Use black ink or black ball-point pen.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets at the end of each question or part-question.

Answer **two** questions in total.

Section A

Human Rights Law

Answer **one** question from this section if you have studied this area of law.

The questions which follow require you to:

- demonstrate knowledge and understanding of legal rules and principles;
- apply legal rules and principles to the scenario; and
- present a legal argument using appropriate legal terminology.

Credit will be given for the use of relevant supporting case law and authority

EITHER

1. Bethan, a wealthy young socialite, became a popular guest on television talk shows because of her willingness to express controversial opinions on any subject. One evening when Bethan was having a drink in a bar with a group of friends, the conversation turned to whether sick and disabled people should be allowed to claim state benefits. Bethan said, "You just have to be firm with these people. My au pair has terrible back trouble, but she never misses a day's work because she knows we'd kick her out." One of the other members of the group, Ralph, used his tablet computer to film Bethan's speech and sent the recording to Owain, the editor of the Daily Slur. Owain printed Bethan's comments word for word on the front page, together with a photo of Bethan eating caviar in the restaurant, and topped it off with the headline: "Little Madam Slams Sick Servant". Bethan is very hurt by what she considers to be Ralph's breach of confidence, and feels that Owain's article was defamatory. [50]

In light of reported case law and other sources of law, consider whether Bethan has any legal redress against the Daily Slur and/or Ralph.

OR

2. PC Smith and PC Walker were sitting in their police car when Llyr walked past wearing a hoodie and carrying a full plastic shopping bag. PC Smith said, "Let's get him," and shouted to Llyr "Stop now; thief!" PC Walker grabbed Llyr's arm roughly, took the plastic bag from him and opened it. Within the bag were several tablet computers and a few mobile phones. PC Smith said to Llyr, "Get in the car, you're coming with us". Llyr complied, and was driven to the police station. On the way in the car, Llyr explained that members of the tennis club he was a member of were donating their old technology products to raise money for the refugee crisis in Syria and that he had been helping out. When they arrived at the police station, Llyr asked to be allowed to contact his fiancée, who would be worried, and consult a solicitor. The custody officer said that he was not able to contact his fiancée and would have to wait to speak to a solicitor until the police had finished questioning him. Llyr was then detained for 52 hours, during which time he was interviewed for lengthy periods without a break and with no food or water. The police took Llyr's fingerprints and a mouth swab which they informed him would be kept indefinitely on police records. At the end of that time, the police told Llyr that he would be bailed pending further enquiries.

In light of reported case law and other sources of law, advise Llyr as to the legality of the actions of the police. [50]

Section B

Law of Contract

Answer **one** question from this section if you have studied this area of law.

The questions which follow require you to:

- demonstrate knowledge and understanding of legal rules and principles;
- apply legal rules and principles to the scenario; and
- present a legal argument using appropriate legal terminology.

Credit will be given for the use of relevant supporting case law and authority.

EITHER

3. Evan is a famous seascape artist. He completed a masterpiece entitled 'Tenby the Seafront' and on 1 September 2016 advertised it for sale in a local magazine for £4,000 or very nearest offer. Megan, a long standing admirer of Evan's works, decided that afternoon that in order to secure the painting she would offer £3,950 for the painting: she posted a letter, including the offer, on the afternoon of 1 September. In the meantime, David, an amateur collector of paintings, phoned Evan and offered £3,000. Evan rejected this on 2 September by text. David immediately texted back and offered Evan the full asking price. Before Evan replied to David, he received the letter from Megan.

Advise Megan as to whether she has a contract with Evan for the sale of the painting, applying your knowledge of legal rules and principles. [50]

OR

4. Fiona bought a battery power pack because the battery on her mobile phone did not last longer than a day. The purchase of the battery power pack included access to a website from which she could download a program for her mobile phone to extend her phone's battery by 8 hours. Instead of extending her phone's battery by 8 hours as expected, it turned out that the program corrupted her phone's operating software causing her to lose all her photographs and videos that had been saved on her phone. In addition, the casing on the battery power pack had become very loose and hot when in use. After persevering for two weeks, she complained to Sam, the owner of "Batteries 4 Life" where she had bought the power pack. Sam referred Fiona to clauses in the contract of supply which purported to restrict liability to the purchase price of the goods bought for breach of satisfactory quality and that subject to this, there was "no liability whatsoever" for any other breach.

Advise Fiona as to whether she is entitled to recover the losses incurred, applying your knowledge of legal rules and principles. [50]

Section C

Criminal Law

Answer **one** question from this section if you have studied this area of law.

The questions which follow require you to:

- demonstrate knowledge and understanding of legal rules and principles;
- apply legal rules and principles to the scenario; and
- present a legal argument using appropriate legal terminology.

Credit will be given for the use of relevant supporting case law and authority

EITHER

5. A charity which helps ex-offenders began renovating an old house in an affluent suburb and turning it into a hostel for former prisoners. Many of the people who lived nearby were opposed to the hostel, as they feared that its presence would affect the value of their own houses and make them harder to sell. One local resident, David, decided to take matters into his own hands. Under cover of darkness, he broke into the hostel and began to damage the renovation work and throw paint over the walls. Suddenly one of the charity workers Mary appeared with her mobile phone in her hand, ready to call the police. To stop her, David punched her as hard as he could, knocking her unconscious. Thinking he had killed her, David tried to make it look as if Karen had died in an arson attack, setting fire to a heap of rags before running from the burning building. It so happened that Mary's phone had already connected with the emergency services before she fell unconscious, and the ambulance and fire brigade were there within minutes. Mary was brought out alive from the building, but died when the ambulance taking her to hospital was involved in a serious road accident.

Advise David as to whether he may be criminally liable for the death of Mary, applying your knowledge and understanding of legal rules and principles. [50]

OR

6. Peter's girlfriend Sara was injured in a bike accident and had to spend a few days in hospital. To cheer her up, Peter and his friend, James, went to the hospital to visit her, taking with them some cans of cider. It was a warm day, and by the time they reached the hospital they had drunk all the cider. Peter thought he knew which room Natasha was in, and flung open the door with a shout of "Hello, gorgeous!" The eighty-two year old woman in the bed got a severe fright, and had to be given treatment for the shock. Peter and James apologised and were shown to Sara's room. Sara was in a bad mood, having been told that she would have a permanent scar on her leg from the bike accident. When Peter admitted that he had no cider for her, she picked up her water jug meaning to throw the contents over him, but threw the jug as well. Peter ducked, and the jug hit James, cutting his forehead. At that moment a female police officer, PC Walters, entered the room to interview Sara about the accident. Peter, who by now was rather drunk from all the cider he had consumed, jumped to the conclusion that PC Walters had come to arrest him for frightening the old woman. Peter ran for the door, knocking PC Walters to the ground and causing her to suffer permanent damage to her back.

Advise Peter and Sara as to whether they have committed any offences, applying your knowledge and understanding of legal rules and principles. [50]

Unit 3: The Practice of Substantive Law

Mark scheme

Marking guidance for examiners

Summary of assessment objectives for Unit 3

The questions assess AO1 and AO2. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; and the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology.

The structure of the mark scheme

The mark scheme for each question has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1 and AO2.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band
- The second stage is to decide how firmly the characteristics expected for that band are displayed
- Thirdly, a mark for the question is awarded

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner. Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

Section A

1. Bethan, a wealthy young socialite, became a popular guest on television talk shows because of her willingness to express controversial opinions on any subject. One evening when Bethan was having a drink in a bar with a group of friends, the conversation turned to whether sick and disabled people should be allowed to claim state benefits. Bethan said, "You just have to be firm with these people. My au pair has terrible back trouble, but she never misses a day's work because she knows we'd kick her out." One of the other members of the group, Ralph, used his tablet computer to film Bethan's speech and sent the recording to Owain, the editor of the Daily Slur. Owain printed Bethan's comments word for word on the front page, together with a photo of Bethan eating caviar in the restaurant, and topped it off with the headline: "Little Madam Slams Sick Servant". Bethan is very hurt by what she considers to be Ralph's breach of confidence, and feels that Owain's article was defamatory. [50]

In light of reported case law and other sources of law, consider whether Bethan has any legal redress against the Daily Slur and/or Ralph.

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising Bethan candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of defamation. Candidates are expected to apply the full range of legal rules and principles to Bethan's situation, including the Defamation Act 2013 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- The meaning of defamation under the Defamation Act 2013. Defamation Act s.1 imposes a requirement of serious harm to the reputation of the claimant. A statement is not defamatory unless its publication has caused, or is likely to cause, serious harm to the claimant's reputation. Almost certainly the damage to reputation would be considered serious. Further support can be provided by reference to *Sim v Stretch*, *Byrne v Dean*
- Cases on what can amount to defamation such as *Cassidy v Daily Mirror*, *Charlesworth v MGN* on the impact of photos
- Applying the elements of defamation to Bethan's case: the statement must be defamatory; it must refer to the claimant, and it must have been published
- Mistaken identity, citing cases like *Hulton v Jones* or *O'Shea v MGN*; for a mistaken identity case to succeed now, the claimant would have to show serious harm to his/her reputation
- Applying the possible defences that may be used by the Daily Slur including "honest opinion" under the Defamation Act 2013; defence of Publication on a matter of public interest, under s.4 of the Defamation Act 2013

- The Defamation Act 2013 – the defence of justification has been abolished and replaced by the defence of truth: s.2, which is substantially the same as the old defence
- A court will consider Bethan's right to privacy, Ralph's freedom of expression and the newspaper's freedom of expression.
- Applying the law on 'breach of confidence' to Ryan: is the communication made in circumstances where there is a reasonable expectation of privacy? Arguably, a private dinner albeit in a restaurant would give rise to a reasonable expectation of privacy
- Case law on breach of confidence: *Douglas v Hello!*, *Campbell v MGN*, *Murray v Express*.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the law of defamation.
3	11 - 15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to the law of defamation.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to the law of defamation.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to the law of defamation.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to Bethan's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the law of defamation.
4	19 - 24	<ul style="list-style-type: none"> • Very good application of legal rules and principles to Bethan's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the law of defamation.
3	13 - 18	<ul style="list-style-type: none"> • Good application of legal rules and principles to Bethan's situation. • Good presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the law of defamation.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to Bethan's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the law of defamation.
1	1 - 6	<ul style="list-style-type: none"> • Basic application of legal rules and principles to Bethan's situation. • Basic presentation of a legal argument, using minimal legal terminology relating to the law of defamation.
	0	Response not creditworthy or not attempted

2. PC Smith and PC Walker were sitting in their police car when Llyr walked past wearing a hoodie and carrying a full plastic shopping bag. PC Smith said, "Let's get him," and shouted to Llyr "Stop now; thief!" PC Walker grabbed Llyr's arm roughly, took the plastic bag from him and opened it. Within the bag were several tablet computers and a few mobile phones. PC Smith said to Llyr, "Get in the car, you're coming with us". Llyr complied, and was driven to the police station. On the way in the car, Llyr explained that members of the tennis club he was a member of were donating their old technology products to raise money for the refugee crisis in Syria and that he had been helping out. When they arrived at the police station, Llyr asked to be allowed to contact his fiancée, who would be worried, and consult a solicitor. The custody officer said that he was not able to contact his fiancée and would have to wait to speak to a solicitor until the police had finished questioning him. Llyr was then detained for 52 hours, during which time he was interviewed for lengthy periods without a break and with no food or water. The police took Llyr's fingerprints and a mouth swab which they informed him would be kept indefinitely on police records. At the end of that time, the police told Llyr that he would be bailed pending further enquiries.

In light of reported case law and other sources of law, advise Llyr as to the legality of the actions of the police. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising Llyr candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of police powers. Candidates are expected to apply the full range of legal rules and principles to Llyr's situation, including the Police and Criminal Evidence Act 1984 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Police and Criminal Evidence Act 1984
- Power to stop and search: ss 1-3 and Code A
- Applying the requirement for reasonable suspicion to the scenario: Code A – should not be based on personal factors alone.
- Applying the requirements for a valid search to the search of Llyr: information to be given under s.2; failure renders search invalid: Osman
- Procedure following search: s.3
- Applying the power of arrest to the actions of PC Smith and PC Walker: s.24 as amended by the Serious Organised Crime and Police Act 2005, S.110, and code G police may arrest anyone who is, or is reasonably suspected to be, about to commit an offence; or in the act of committing an offence; or is guilty of committing an offence; or is reasonably suspected to be guilty of having committed an offence
- Arrest power must only be exercised if PC Smith and PC Walker have reasonable grounds to believe it is necessary (s.24(5) the grounds are: to enable the name and address of the person to be ascertained if it is not known, or the police believe it to be false; to prevent the person causing physical injury to himself or another, suffering physical injury, causing loss or damage to property, committing an offence against public decency, or causing unlawful obstruction of the highway; to protect a child or other vulnerable person; to allow the prompt and effective investigation of the offence of the conduct of the person; to prevent any prosecution for the offence being hindered by the disappearance of the person

- Applying the procedural requirements of a valid arrest: Llyr should be informed of the fact he is under arrest and also the ground for arrest (s.28) and he should be cautioned
- Treatment of Llyr in police custody: Code C
- Llyr's right to have someone informed of his arrest: s.56
- Llyr's right to legal advice: s.58
- Llyr's time limits on detention: s.41 allows police to authorise detention up to 36 hours but further detention up to 96 hours requires authorisation by magistrates
- Llyr's detention should be reviewed after 6 hours and then every 9 hours by a review officer not involved in the case
- Bail is given to Llyr pending further enquiries
- Right of police to take Llyr's fingerprints and non-intimate samples

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to police powers.
3	11-15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to police powers.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to police powers.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to police powers.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to Llyr's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the powers of the police.
4	19 - 24	<ul style="list-style-type: none"> • Very good application of legal rules and principles to Llyr's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the powers of the police.
3	13 - 18	<ul style="list-style-type: none"> • Good application of legal rules and principles to Llyr's situation. • Good presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the powers of the police.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to Llyr's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the powers of the police.
1	1 - 6	<ul style="list-style-type: none"> • Basic application of legal rules and principles to Llyr's situation. • Basic presentation of a legal argument, using minimal legal terminology relating to the powers of the police.
	0	Response not creditworthy or not attempted.

Section B

3. Evan is a famous seascape artist. He completed a masterpiece entitled 'Tenby the Seafront' and on 1 September 2016 advertised it for sale in a local magazine for £4,000 or very nearest offer. Megan, a long standing admirer of Evan's works, decided that afternoon that in order to secure the painting she would offer £3,950 for the painting and posted a letter, including the offer, on the afternoon of 1 September. In the meantime, David, an amateur collector of paintings, phoned Evan and offered £3,000. Evan rejected this on 2 September by text. David immediately texted back and offered Evan the full asking price. Before Evan replied to David, he received the letter from Megan.

Advise Megan as to whether she has a contract with Evan for the sale of the painting, applying your knowledge of legal rules and principles. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising Megan, candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of contract formation. Candidates are expected to apply the full range of legal rules and principles to Megan's situation, including the elements of contract formation: offer, acceptance, postal rule acceptance and the modern rules relating to immediate methods of communication such as texting, in order to present a legal argument.

The response might consider issues such as:

- Requirements of a valid offer: must be communicated indicating the terms, in this case, the price of the painting. An offer can be to the public at large – *Carlill v Carbolic Smoke Ball Co*
- Difference between offers and invitations to treat: an advertisement which specifies goods at a certain price is usually an invitation to treat – *Partridge v Crittenden*. This is on the basis that potential buyers might want to negotiate the price. Therefore Evan's advertisement in the magazine was an invitation to treat, to which both Megan and David made an offer. Other cases include *Pharmaceutical Society of Great Britain v Boots the Chemist* and *Fisher v Bell*
- Rules relating to acceptance: remaining silent cannot amount to acceptance, so Evan would have to communicate his acceptance of Megan or David's offer – *Felthouse v Bindley*
- The postal rule: in relation to Megan posting her offer, the general rule is that acceptances take effect when they are posted, rather than when they are communicated. It is easier to prove a letter has been posted, rather than received – *Adams v Lindsell*
- Is the use of the postal service in this case reasonable? *Henthorn v Fraser*
- Instant methods of communication: in relation to David, does his offer and Evan's subsequent acceptance override Megan's? When an acceptance is made by an instant mode of communication, the postal rule does not apply. The case of *Thomas v BPE Solicitors* confirmed that the postal rule would not apply to a contract made by email, as was the case with telex messaging, the issue considered in *Entores v Miles Far East Corporation*. Therefore, the ordinary rules of offer and acceptance apply and the contract will be formed when the acceptance is received

- Candidates may also consider Electronic Communications Act 2000 s.11 which establishes that electronic contracts are concluded when the customer has both (i) received an acknowledgement that their acceptance has been received, and (ii) confirmed their receipt of that acknowledgement
- As Evan had not replied to David when he received Megan's letter, Megan's letter was posted before the text was sent; therefore Megan's offer is the valid offer, which Evan is at liberty to accept or reject

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to the formation of a contract.
3	11 - 15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to formation of a contract.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to formation of a contract.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to formation of a contract.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to Megan's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to contract formation.
4	19 - 24	<ul style="list-style-type: none"> • Very good, detailed application of legal rules and principles to Megan's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to contract formation.
3	13 - 18	<ul style="list-style-type: none"> • Good application of legal rules and principles to Megan's situation. • Good presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to contract formation.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to Megan's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to contract formation.
1	1 - 6	<ul style="list-style-type: none"> • Basic application of legal rules and principles to Megan's situation. • Basic presentation of a legal argument, using minimal legal terminology relating to contract formation.
	0	Response not creditworthy or not attempted.

4. Fiona bought a battery power pack because the battery on her mobile phone did not last longer than a day. The purchase of the battery power pack included access to a website from which she could download a program for her mobile phone to extend her phone's battery by 8 hours. Instead of extending her phone's battery by 8 hours as expected, it turned out that the program corrupted her phone's operating software causing her to lose all her photographs and videos that had been saved on her phone. In addition, the casing on the battery power pack had become very loose and hot when in use. After persevering for two weeks, she complained to Sam, the owner of "Batteries 4 Life" where she had bought the power pack. Sam referred Fiona to clauses in the contract of supply which purported to restrict liability to the purchase price of the goods bought for breach of satisfactory quality and that subject to this, there was "no liability whatsoever" for any other breach.

Advise Fiona as to whether she is entitled to recover the losses incurred, applying your knowledge of legal rules and principles. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising Fiona, candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the area of consumer contracts, and specifically implied terms and exclusion clauses. Candidates are expected to apply the full range of legal rules and principles to Fiona's situation, including the Consumer Rights Act 2015, other relevant statutory provision and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Identification of the law relevant to Fiona's case. The Consumer Rights Act 2015 became law in October 2015 and replaced the Sale of Goods Act 1979, Unfair Terms in Consumer Contracts Regulation 1999 and the Supply of Goods and Services Act 1982. The new Act also applies to digital content and goods that have a digital element
- Applying the Consumer Rights Act provisions to Fiona's situation
 - s9: satisfactory quality:** goods should not be faulty or damaged when received. The test is what would a reasonable person consider satisfactory for the goods in question? For example, bargain bucket products would not be held to as high a standard as luxury products.
 - s10: fit for purpose:** goods should be fit for the purpose they are supplied for, as well as any specific purposes made known to the retailer before it was agreed to buy the goods
 - s11: as described:** goods supplied must match any description given to the buyer, or any models or samples shown to the buyer at the time of purchase
- Applying remedies available to Fiona's situation
 - s20** gives Fiona a legal right to reject goods that are of an unsatisfactory quality, unfit for purpose or not as described and get a full refund within 30 days from the date the product is bought
 - s23** allows the retailer one opportunity to repair or replace any good which are of unsatisfactory quality, unfit for purpose or not as described if they are out of the 30 day right to reject. If the attempt at repair or replacement is unsuccessful, a refund can then be claimed or a price reduction if the buyer wishes to keep the product
- The Consumer Rights Act 2015 applies to digital content. Fiona's rights as to her remedies for both the faulty power pack and computing program need to be considered

- Fiona could seek alternative dispute resolution such as negotiation and arbitration
- In terms of limiting liability to the purchase price, it may be appropriate to advise Fiona to consider the Unfair Contract Terms Act 1977 where **s12** states that the party to the contract has to be 'dealing as a consumer' – which Fiona clearly is
- The exclusion clause Sam refers to will be subject to the reasonableness test laid down by the Unfair Contract Terms Act 1977 – *George Mitchell Ltd v Finney Lock Seeds Ltd*. The main issue to be considered when testing reasonableness is whether the contract is made between two businesses of equal bargaining power, or a business and vulnerable customer. This can be seen in *Watford Electronics Ltd v Sanderson CFL Ltd* which concerned a contract to supply software

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to unfair terms and exclusion clauses.
3	11-15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to unfair terms and exclusion clauses.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to unfair terms and exclusion clauses.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to unfair terms and exclusion clauses.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25-30	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to Fiona's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to unfair terms and exclusion clauses.
4	19-24	<ul style="list-style-type: none"> • Very good application of legal rules and principles to Fiona's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to unfair terms and exclusion clauses.
3	13-18	<ul style="list-style-type: none"> • Good application of legal rules and principles to Fiona's situation. • Good presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to unfair terms and exclusion clauses.
2	7-12	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to Fiona's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to unfair terms and exclusion clauses.
1	1-6	<ul style="list-style-type: none"> • Basic application of legal rules and principles to Fiona's situation. • Basic presentation of a legal argument, using minimal legal terminology relating to unfair terms and exclusion clauses.
	0	Response not creditworthy or not attempted.

Section C

5. A charity which helps ex-offenders began renovating an old house in an affluent suburb and turning it into a hostel for former prisoners. Many of the people who lived nearby were opposed to the hostel, as they feared that its presence would affect the value of their own houses and make them harder to sell. One local resident, David, decided to take matters into his own hands. Under cover of darkness, he broke into the hostel and began to damage the renovation work and throw paint over the walls. Suddenly one of the charity workers Mary appeared with her mobile phone in her hand, ready to call the police. To stop her, David punched her as hard as he could, knocking her unconscious. Thinking he had killed her, David tried to make it look as if Karen had died in an arson attack, setting fire to a heap of rags before running from the burning building. It so happened that Mary's phone had already connected with the emergency services before she fell unconscious, and the ambulance and fire brigade were there within minutes. Mary was brought out alive from the building, but died when the ambulance taking her to hospital was involved in a serious road accident.

Advise David as to whether he may be criminally liable for the death of Mary, applying your knowledge and understanding of legal rules and principles. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising David candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of homicide. Candidates are expected to apply the full range of legal rules and principles to David's situation, including relevant case law, concepts such as *actus reus* and *mens rea* of murder and manslaughter, causation and possible defences available to David, in order to present a legal argument.

The response might consider issues such as:

- Applying the *actus reus* of murder to David's case: that the defendant must cause the death of a human being. Causation – both factual and legal causation can be explained. Further advice in this area can include factual causation – ‘but for’ test, e.g. *White Dalloway* and legal causation, operating and substantial cause
- Applying *mens rea* of murder to David's case: the intention to kill or cause grievous bodily harm to Mary. Advice should include reference to both direct and oblique intention. Support may come from discussion of virtual certainty test: *Woolin*; *Nedrick*
- Is there coincidence of *actus reus* and *mens rea* in David's case (i.e. the application of the 'same transaction' principle)? Reference to *Thabo Meli*, *Church*, *Le Brun*
- Applying *Novus actus interveniens* to David's case: consideration of circumstances which would be sufficient to break the chain of causation – act of a third party which is “free, deliberate and informed” (*Pagett*); unforeseeable natural events either could cover the situation of an ambulance crashing
- In the event that the chain of causation is not broken, David may be liable to be convicted of involuntary manslaughter. Two possibilities:
 - Unlawful act manslaughter: *Franklin*, *Lamb*, or (perhaps less likely)
 - Gross negligence manslaughter on the *Miller* principle: a duty to act where D has created a situation that puts V in danger

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to homicide.
3	11 - 15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to homicide.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to homicide.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to homicide.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to David's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to homicide.
4	19 - 24	<ul style="list-style-type: none"> • Very good application of legal rules and principles to David's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to homicide.
3	13 - 18	<ul style="list-style-type: none"> • Good application of legal rules and principles to David's situation. • Good presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to homicide.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to David's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to homicide.
1	1 - 6	<ul style="list-style-type: none"> • Basic application of legal rules and principles to David's situation. • Basic presentation of a legal argument, using minimal legal terminology relating to homicide.
	0	Response not creditworthy or not attempted

6. Peter's girlfriend Sara was injured in a bike accident and had to spend a few days in hospital. To cheer her up, Peter and his friend, James went to the hospital to visit her, taking with them some cans of cider. It was a warm day, and by the time they reached the hospital they had drunk all the cider. Peter thought he knew which room Natasha was in, and flung open the door with a shout of "Hello, gorgeous!" The eighty-two year old woman in the bed got a severe fright, and had to be given treatment for the shock. Peter and James apologised and were shown to Sara's room. Sara was in a bad mood, having been told that she would have a permanent scar on her leg from the bike accident. When Peter admitted that he had no cider for her, she picked up her water jug meaning to throw the contents over him, but threw the jug as well. Peter ducked, and the jug hit James, cutting his forehead. At that moment a female police officer, PC Walters, entered the room to interview Sara about the accident. Peter, who by now was rather drunk from all the cider he had consumed, jumped to the conclusion that PC Walters had come to arrest him for frightening the old woman. Peter ran for the door, knocking PC Walters to the ground and causing her to suffer permanent damage to her back.

Advise Peter and Sara as to whether they have committed any offences, applying your knowledge and understanding of legal rules and principles. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

In advising Peter and Sara candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of non-fatal offences. Candidates are expected to apply the full range of legal rules and principles to Peter and Sara's situation, including the Offences Against the Person Act 1861 and relevant case law and possible defences available to Peter and Sara, in order to present a legal argument.

The response might consider issues such as:

- Assault and battery at common law: summary offences – Criminal Justice Act 1988, s.39
- Peter may be guilty of assault against the old lady, by analogy with *Smith v Superintendent of Woking Police Station*. But the prosecution would have to show that he intended to cause fear or was reckless in so doing
- Offences Against the Person Act 1861: sections 47, 20 and 18
- Elements of aggravated assaults under s.47, s.20 and s.18 of the Offences Against the Person Act 1861
- Applying Section 47 to Peter and Sara's case: actual bodily harm – *actus reus* is an assault which causes actual bodily harm, any injury calculated to interfere with the health or comfort of the victim (Miller) – under the CPS Charging Standards it includes temporary loss of consciousness, minor cuts and grazes and scalds, broken bones without complications. *Mens rea* is intention to commit assault/battery or recklessness. Foresight of the degree of harm is not necessary: Roberts; Savage; Parmenter
- Applying Section 20 to Peter and Sara's case: *actus reus* is unlawful wounding or unlawful infliction of grievous bodily harm. GBH means serious harm: Smith. The wounds received must break the inner and outer skin: C v Eisenhower. *Mens rea* intention or reckless – Peter and Sara must foresee a degree of harm, but not necessarily the degree of harm which occurred: Mowatt, Savage; Parmenter

- The facts of Peter and Sara's case are very similar to Savage; Parmenter. Sara can only be convicted of s.20 if she intended or foresaw some harm. If all she intended or foresaw was to throw water on Peter then she is guilty of the s.47 offence
- The principle of transferred malice can be applied to Peter and Sara's case: Latimer
- Section 18: *actus reus* is wounding or causing grievous bodily harm. *Mens rea* requires intention to wound or cause GBH, or to resist or prevent a lawful arrest. Here, Peter intends to evade arrest
- Applying the rules on intoxication to Peter and Sara's case: Majewski; distinction between crimes of basic and specific intention; Kingston

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to non-fatal offences.
3	11 - 15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to non-fatal offences.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to non-fatal offences.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to non-fatal offences.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed application of legal rules and principles to Peter and Sara's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person.
4	19 - 24	<ul style="list-style-type: none"> • Very good application of legal rules and principles to Peter and Sara's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person.
3	13 - 18	<ul style="list-style-type: none"> • Good application of legal rules and principles to Peter and Sara's situation. • Good presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory application of legal rules and principles to Sara's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person.
1	1 - 6	<ul style="list-style-type: none"> • Basic application of legal rules and principles to Peter and Sara's situation. • Basic presentation of a legal argument, using minimal legal terminology relating to non-fatal offences against the person.
	0	Response not creditworthy or not attempted.



GCE A LEVEL

LAW

UNIT 4

Substantive Law Perspectives

SAMPLE ASSESSMENT MATERIALS

2 hours

ADDITIONAL MATERIALS

In addition to this examination paper, you will need a 12 page answer book.

INSTRUCTIONS TO CANDIDATES

Answer **two** questions in total, each question from a different section.

Section A – Human Rights Law

Section B – Law of Contract

Section C – Criminal Law

Use black ink or black ball-point pen.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets at the end of each question or part-question.

The quality of your written communication, including appropriate use of punctuation and grammar, will be assessed in all answers.

Answer **two** questions in total.

Section A

Human Rights Law

Answer **one** question from this section if you have studied this area of law.

The questions which follow require you to:

- demonstrate knowledge and understanding of legal rules and principles;
- analyse and evaluate legal rules, principles, concepts and issues.

Credit will be given for the use of relevant supporting case law and authority.

EITHER

1. Analyse and evaluate the extent to which the protection of human rights in the United Kingdom would be affected if the Human Rights Act 1998 were abolished. [50]

OR

2. Analyse and evaluate the extent to which the law relating to obscenity amounts to a justifiable restriction upon the right to freedom of expression. [50]

Section B

Law of Contract

Answer **one** question from this section if you have studied this area of law.

The questions which follow require you to:

- demonstrate knowledge and understanding of legal rules and principles;
- analyse and evaluate legal rules, principles, concepts and issues.

Credit will be given for the use of relevant supporting case law and authority.

EITHER

3. Analyse and evaluate whether the remedies available for a breach of contract provide adequate satisfaction for consumers. [50]

OR

4. Analyse and evaluate the extent to which the Misrepresentation Act 1967 protects buyers against negligent statements made by sellers. [50]

Section C

Criminal Law

Answer **one** question from this section if you have studied this area of law.

The questions which follow require you to:

- demonstrate knowledge and understanding of legal rules and principles;
- analyse and evaluate legal rules, principles, concepts and issues.

Credit will be given for the use of relevant supporting case law and authority.

EITHER

5. Analyse and evaluate the extent to which the law accepts duress as a defence to a criminal charge. [50]

OR

6. Analyse and evaluate the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability. [50]

Unit 4: Substantive Law Perspectives

Mark scheme

Marking guidance for examiners

Summary of assessment objectives for Unit 4

The questions assess assessment objectives AO1 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles, and the ability to analyse and evaluate legal rules, principles, concepts and issues.

The structure of the mark scheme

The mark scheme for each question has two parts:

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1 and AO3.

Stage 1 - Deciding on the band

Beginning at the lowest band, examiners should look at the learner's answer and check whether it matches the descriptor for that band. If the descriptor at the lowest band is satisfied, examiners should move up to the next band and repeat this process for each band until the descriptor matches the answer.

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

- The first stage for an examiner is to use both the indicative content and the assessment grid to decide the overall band.
- The second stage is to decide how firmly the characteristics expected for that band are displayed.
- Thirdly, a mark for the question is awarded.

Stage 2 - Deciding on the mark

During standardising (marking conference), detailed advice from the Principal Examiner on the qualities of each mark band will be given. Examiners will then receive examples of answers in each mark band that have been awarded a mark by the Principal Examiner. Examiners should mark the examples and compare their marks with those of the Principal Examiner.

When marking, examiners can use these examples to decide whether a learner's response is of a superior, inferior or comparable standard to the example. Examiners are reminded of the need to revisit the answer as they apply the mark scheme in order to confirm that the band and the mark allocated is appropriate to the response provided.

Indicative content is also provided for banded mark schemes. Indicative content is not exhaustive, and any other valid points must be credited. In order to reach the highest bands of the mark scheme a learner need not cover all of the points mentioned in the indicative content but must meet the requirements of the highest mark band. Where a response is not creditworthy, that is contains nothing of any significance to the mark scheme, or where no response has been provided, no marks should be awarded.

Section A

1. Analyse and evaluate the extent to which the protection of human rights in the United Kingdom would be affected if the Human Rights Act 1998 were abolished. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the protection of human rights. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the protection of human rights under the Human Rights Act 1998. Candidates are expected to consider and debate the full range of issues and limits of the Human Rights Act 1998, including an analysis and evaluation of the European Convention on Human Rights (ECHR), the impact of the Human Rights Act 1998 and the arguments surrounding the replacing of the Human Rights Act 1998 (HRA) with a Bill of Rights. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding whether the protection of human rights would be strengthened if the HRA were abolished and replaced with a Bill of Rights.

The response might consider issues such as:

- Scope of the European Convention on Human Rights. Residual rights - *Malone*
- HRA 1998 incorporates the rights given in the European Convention on Human Rights into UK law, with a few exceptions
- The HRA 1998 provides positive rights and not just residual liberties
- Rights under the European Convention on Human Rights are directly enforceable in the UK without need to apply to the European Court of Human Rights in Strasbourg
- Section 6 imposes a duty on all public authorities, including the courts, to act in a way which is compatible with Convention rights
- Section 2 imposes an obligation upon the courts to take account of Strasbourg jurisprudence
- Section 3 requires that all UK legislation must be interpreted in a way which is compatible with Convention rights so far as is possible to do so
- The courts have no power to overrule or refuse to apply primary legislation if it proves impossible to interpret it in a way which is compatible with Convention rights
- The higher courts have power to issue a declaration of incompatibility under s.4
- Section 10 provides a fast-track procedure whereby legislation which is not compatible can be amended
- The government must include a statement that all proposed legislation is compatible with Convention rights, or state that it is not compatible but that the government intends to proceed with the Bill anyway: s.19. Credit for relevant citation
- Evaluation: HRA 1998 reflects the limitations as the European Convention on Human Rights e.g., only really protects civil and political rights; doesn't provide the kinds of rights people need in today's society such as right to housing, income, etc
- Bill of Rights – scope, formation, proposals
- Evaluation: would it be better to have a Bill of Rights? Current debates

- Only really protects people from actions of state and public authorities – the narrow scope of public authorities – today, the need for protection is often against powerful private institutions like the banks
- The powers of the courts are circumscribed so that in the last analysis, government is not constrained by the HRA 1998
- Alternatively, the powers of the courts allow them too much scope to interfere with the will of democratically elected bodies
- The HRA 1998 cannot prevent any government from acting in violation of the rights it enshrines or even abolishing the HRA 1998 itself
- Reference to cases such as Malone V&T, McCann

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to protection of human rights.
3	11 - 15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to protection of human rights.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to protection of human rights.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to protection of human rights.
	0	Response not creditworthy or not attempted

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998. • Excellent evaluation of the debates surrounding the Human Rights Act 1998 and whether it should be abolished, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	<ul style="list-style-type: none"> • Very good analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998. • Very good evaluation of the debates surrounding the Human Rights Act 1998 and whether it should be abolished, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998. • Good evaluation of the debates surrounding the Human Rights Act 1998 and whether it should be abolished, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998. • Satisfactory evaluation of the debates surrounding the Human Rights Act 1998 and whether it should be abolished, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the protection of human rights under the Human Rights Act 1998. • Basic evaluation of the debates surrounding the Human Rights Act 1998 and whether it should be abolished. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

2. Analyse and evaluate the extent to which the law relating to obscenity amounts to a justifiable restriction upon the right to freedom of expression. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the law on obscenity. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the restrictions on freedom of expression under obscenity laws. Candidates are expected to consider and debate the full range of issues and arguments surrounding obscenity laws, including an analysis and evaluation of Article 10, its scope as a qualified right and the restrictions on freedom of expression under obscenity laws. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding whether the law on obscenity is a justifiable restriction on freedom of expression.

The response might consider issues such as:

- The Obscene Publications Act 1959 (as amended) establishes the criteria for what is regarded as obscene
- The meaning of 'obscene': "tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it"
- The types of publications covered by the Obscene Publications Act 1959
- The defence of 'in the public good' under Section 4 provides some freedom of expression
- Article 10 of the European Convention on Human Rights permits restrictions that 'are necessary in a democratic society' such as for the protection of morals
- Case law suggests that the Obscene Publications Act does not breach Article 10
- Crown Prosecution Service's Legal Guidance on Obscene Publications indicates when prosecutions are likely to be brought
- The Crown Prosecution Service has lost some prosecutions such as in the Walker case and Peacock case and there seems to be difference between what they believe is obscene and what a jury believes
- The number of prosecutions under the Obscene Publications Act 1959 has been falling and the Crown Prosecution Service have managed to gain convictions by prosecuting under other Acts such as the Protection of Children Act 1978, the Criminal Justice and Immigration Act 2008 and the Video Recordings Act 2010
- Other evaluation points include the argument that the control over obscenity is important in order to protect vulnerable groups who might gain access to it
- Some argue that the law should reflect society's moral rules and values
- Cases including Handyside, Walker, Peacock

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	<ul style="list-style-type: none"> Excellent, detailed knowledge and understanding of the legal rules and principles relating to the principle of freedom of expression and the law on obscenity.
3	11-15	<ul style="list-style-type: none"> Good knowledge and understanding of the legal rules and principles relating to the principle of freedom of expression and the law on obscenity.
2	6 - 10	<ul style="list-style-type: none"> Satisfactory knowledge and understanding of the legal rules and principles relating to the principle of freedom of expression and the law on obscenity.
1	1 - 5	<ul style="list-style-type: none"> Basic knowledge and understanding of the legal rules and principles relating to the principle of freedom of expression and the law on obscenity.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression and the law on obscenity. • Excellent evaluation of the restrictions to freedom of expression under the law on obscenity, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	<ul style="list-style-type: none"> • Very good analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression and the law on obscenity. • Very good evaluation of the restrictions to freedom of expression under the law on obscenity, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression and the law on obscenity. • Good evaluation of the restrictions to freedom of expression under the law on obscenity, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression and the law on obscenity. • Satisfactory evaluation of the restrictions to freedom of expression under the law on obscenity, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression and the law on obscenity. • Basic evaluation of the restrictions to freedom of expression under the law on obscenity. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

Section B

3. Analyse and evaluate whether the remedies available for a breach of contract provide adequate satisfaction for consumers. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to remedies available for a breach of contract. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the granting of common law and equitable remedies. Candidates are expected to consider and debate the full range of issues and arguments surrounding remedies, including an analysis and evaluation of the availability of common law and equitable remedies. In order to reach a judgment about these issues, candidates will offer a debate and come to a substantiated judgment regarding whether the remedies available provide adequate protection for consumers.

The response might consider issues such as:

- Common Law remedies: available as of right if a contract has been breached
Damages: an award of money that aims to compensate the wronged party for the financial losses they have suffered as a result of the breach. General rule is that innocent parties are entitled to such damages as will put them in the position they would have been in if the contract had been performed. Damages can be pecuniary or non-pecuniary
Analysis and evaluation of damages may consider the limitations on awards of damages such as causation, remoteness of damage – *Hadley v Baxendale*, mitigation of loss by the claimant – *Pilkington v Wood*
- Equitable remedies: these are not available as of right, they are provided at the discretion of the court, taking into account the behaviour of the both parties and the satisfaction of equitable maxims
Specific Performance: this is ordered where damages are inadequate and is available for contracts concerning unique items or interests in land. Specific Performance forces the parties to conduct the contract as agreed and can be seen in cases such as *Beswick v Beswick*
Injunction: this forces the defendant to not do a particular thing. Injunctions can be mandatory, prohibitory or interlocutory
- Remedies agreed at formation:
Liquidated Damages: a contract will specify the amount of damages to be paid in the event of a breach - *Dunlop Pneumatic Tyres Co v New Garage and Motor Co*
Penalty Clauses: If the pre-agreed sum is not a genuine estimate of the loss suffered, then this is a penalty clause and the amount of damages will be determined by the ordinary rules of contract law
- Other evaluation and analysis points that may be considered and discussed are the statutory time limits put on claims, the different time limits for equitable claims, the fact that financial loss is very much protected but little consideration is given to other issues such as mental distress, anxiety and the inconvenience of a breach of contract. Other factors that may be considered are the time and effort involved in litigation, including cost factors of bringing the matter to court

- There are also concerns about defendants profiting from their own breach – *Aggravated, Exemplary and Restitutionary Damages*, No 247 (1997) Law Commission
- Even though satisfactory remedies may be available, consumers may be unable to take advantage of them due to the limitations on legal aid for civil cases. In addition, the recent reforms to 'no win no fee' cases might reduce the amount of damages received. The availability of remedies does not mean consumers will receive adequate satisfaction.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to breach of contract and the protection afforded to consumers.
3	11 - 15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to breach of contract and the protection afforded to consumers.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to breach of contract and the protection afforded to consumers.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to breach of contract and the protection afforded to consumers.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25-30	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to common law and equitable remedies and the adequacy of protection afforded to consumers. • Excellent evaluation of the law relating to damages, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19-24	<ul style="list-style-type: none"> • Very good analysis of legal rules, principles, concepts and issues relevant to common law and equitable remedies and the adequacy of protection afforded to consumers. • Very good evaluation of the law relating to damages, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13-18	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to common law and equitable remedies and the adequacy of protection afforded to consumers. • Good evaluation of the law relating to damages, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7-12	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to common law and equitable remedies and the adequacy of protection afforded to consumers. • Satisfactory evaluation of the law relating to damages, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1-6	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to common law and equitable remedies and the adequacy of protection afforded to consumers. • Basic evaluation of the law relating to damages. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted

4. Analyse and evaluate the extent to which the Misrepresentation Act 1967 protects buyers against negligent statements made by sellers. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to misrepresentation. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the extent to which the Misrepresentation Act 1967 protects buyers against negligent statements made by sellers, including analysis and evaluation of relevant supporting case law. In order to reach a judgment about this issue, candidates will offer a debate and come to a substantiated judgment regarding the extent of the protection offered.

The response might consider issues such as:

- Requirements of a misrepresentation: a statement of material fact, made by one party to a contract to the other party, during the negotiations leading up to the formation of the contract, which induced the other party to enter the contract, but which was not intended to be a binding obligation, and which was untrue or falsely or incorrectly stated
- Types of misrepresentation: fraudulent misrepresentation – *Derry v Peek*, negligence misrepresentation – *Hedley Byrne v Heller & Partners*, innocent misrepresentation
- Classification of misrepresentation not so relevant since 1967 Act – previously only fraudulent misrepresentation could be awarded damages, otherwise innocent misrepresentation could be awarded rescission. Since 1967 Act, negligent misrepresentation is actionable with damages
- Common law rule: *Hedley Byrne & Co Ltd v Heller & Partners Ltd* – requirement for a “special relationship”, where the person making the misrepresentation owed a duty of care to the other party
- Misrepresentation Act 1967 s. 2(11) – no need to prove fraud or the existence of a “special relationship”
- Requirements under 1967 Act: defendant must show he had a reasonable belief in the truth of the statement; claimant has a choice to sue under the 1967 Act or under the Hedley Byrne principle, no need to prove special relationship
- Other remedies: rescission, damages
- Areas for reform: The Law Commission (2011), *Consumer redress for misleading and aggressive practices*. Suggestion made that statute should be passed which imposes liability on traders where the overall presentation of a product or service would be likely to mislead the average consumer

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of legal rules and principles relating to misrepresentation.
3	11 - 15	<ul style="list-style-type: none"> • Good knowledge and understanding of legal rules and principles relating to misrepresentation.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of legal rules and principles relating to misrepresentation.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of legal rules and principles relating to misrepresentation.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to misrepresentation. • Excellent evaluation of the extent to which the Misinterpretation Act 1967 protects buyers, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	<ul style="list-style-type: none"> • Very good analysis of legal rules, principles, concepts and issues relevant to misrepresentation. • Very good evaluation of the extent to which the Misinterpretation Act 1967 protects buyers, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to misrepresentation. • Good evaluation of the extent to which the Misinterpretation Act 1967 protects buyers, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to misrepresentation. • Satisfactory evaluation of the extent to which the Misinterpretation Act 1967 protects buyers, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to misrepresentation. • Basic evaluation of the extent to which the Misinterpretation Act 1967 protects buyers • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

Section C

5. Analyse and evaluate the extent to which the law accepts duress as a defence to a criminal charge. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the law of duress. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the defence of duress. Candidates are expected to consider and debate the full range of issues and arguments surrounding the defence of duress, including an analysis and evaluation of the two types of duress, duress by threats and duress of circumstances and the circumstances when the defence is not accepted as a defence to a criminal charge. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding the extent to which the defence of duress is accepted as a defence to a criminal charge.

The response might consider issues such as:

- Two types of duress: duress by threats and duress of circumstances.
- Duress by threats: where a person is forced to commit a crime by threats of death or serious injury to oneself or someone for whom one reasonably feels oneself to be responsible: Hasan, Shayler, Valderrama-Vega
- Extent of defence: does not apply to murder: Howe; or attempted murder: Gotts
- Nature of threat: must be of death or serious injury; in Quayle and others, A-G's Ref No.2 of 2004) the Court of Appeal held that a threat to cause severe pain not associated with serious injury would not suffice; in Singh the Court of Appeal held that a threat to expose immorality would not suffice; since 1746 in McGrowther it has been taken as axiomatic that a threat to harm property does not suffice (so not your dog, or the Mona Lisa)
- The threatened harm must be (or be believed to be) imminent: Hudson and Taylor, Hasan – in Hasan, the House of Lords disapproved Hudson and Taylor as too favourable to defendant: the harm must be immediate or almost immediate with no possibility of evasive action The two-part test: created in Graham but restricted in Hasan – a subjective element and an objective element
- Subjective element: was defendant forced to act as he did because he believed that death or injury would follow either to him or someone for whom he reasonably felt himself to be responsible? In Hasan, the House of Lords reiterated that the belief must be not merely genuine but also reasonable
- Objective element: would a sober person of reasonable firmness, sharing the defendant's characteristics, have acted in the circumstances in the way that the defendant did?
- Characteristics: Bowen – age, sex, pregnancy, serious physical disability, recognised mental illness or psychiatric condition

- Defence not available to defendant if, as a result of his voluntary association with others involved in criminal activity, he foresaw or ought reasonably to have foreseen the risk of being subjected to compulsion by threats of violence – Hasan. Also Cole – the Court of Appeal said that the defence only applies where the duressor has demanded the very offence the defendant commits – a general demand for money would not suffice
- Duress of circumstances: essentially the same two part test applies where defendant claims he was forced by circumstances to commit an offence
- Cases: Willer, Conway, Martin

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none"> • Excellent, detailed knowledge and understanding of the legal rules and principles relating to the law of duress.
3	11 - 15	<ul style="list-style-type: none"> • Good knowledge and understanding of the legal rules and principles relating to the law of duress.
2	6 - 10	<ul style="list-style-type: none"> • Satisfactory knowledge and understanding of the legal rules and principles relating to the law of duress.
1	1 - 5	<ul style="list-style-type: none"> • Basic knowledge and understanding of the legal rules and principles relating to the law of duress.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the law of duress. • Excellent evaluation of the extent to which the law accepts duress as a defence to a criminal charge, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	<ul style="list-style-type: none"> • Very good analysis of legal rules, principles, concepts and issues relevant to the law of duress. • Very good evaluation of the extent to which the law accepts duress as a defence to a criminal charge, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the law of duress. • Good evaluation of the extent to which the law accepts duress as a defence to a criminal charge, including a reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to the law of duress. • Satisfactory evaluation of the extent to which the law accepts duress as a defence to a criminal charge, including a reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the law of duress. • Basic evaluation of the extent to which the law accepts duress as a defence to a criminal charge. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

6. Analyse and evaluate the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability. [50]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to strict liability. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the decision whether an offence is one of strict liability, including an analysis and evaluation of relevant supporting case law. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding whether there is clear criteria used by the courts in deciding whether an offence should be one of strict liability.

The response might consider issues such as:

- Nature of strict liability; distinction between strict and absolute liability, e.g. possible support may come from *Larsonneur*, *Winzar*
- General presumption that mens rea is required; e.g. possible support may come from *Sweet v Parsley*; *Gammon Ltd v A-G for Hong Kong*
- The principles set out by Lord Scarman in *Gammon* as to when the presumption of mens rea can be displaced
- Is the offence truly criminal or merely regulatory in character? E.g. possible support may come from *Sweet v Parsley*
- Does the offence relate to an issue of social concern? E.g. possible support may come from *Gammon* itself, *Harrow London Borough Council v Shah*
- Did Parliament intend to create a strict liability offence by use of certain words in the statute, e.g. "cause" as in *Alphacell v Woodward*
- How serious is the penalty? The more serious the penalty, the less likely it is that Parliament intended the offence to be strict
- Illustration of the *Gammon* principles with examples of case law, e.g., *Callow v Tillstone*, *Sweet v Parsley*, *DPP v B (A minor)*, *Smedleys v Breed*, *LBC of Handsworth v Shah*, *Storkwain*, *Alphacell v Woodward*

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16 - 20	<ul style="list-style-type: none">• Excellent, detailed knowledge and understanding of the legal rules and principles relating to strict liability.
3	11 - 15	<ul style="list-style-type: none">• Good knowledge and understanding of the legal rules and principles relating to strict liability.
2	6 - 10	<ul style="list-style-type: none">• Satisfactory knowledge and understanding of the legal rules and principles relating to strict liability.
1	1 - 5	<ul style="list-style-type: none">• Basic knowledge and understanding of the legal rules and principles relating to strict liability.
	0	Response not creditworthy or not attempted

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	<ul style="list-style-type: none"> • Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to strict liability. • Excellent evaluation of the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	<ul style="list-style-type: none"> • Very good analysis of legal rules, principles, concepts and issues relevant to strict liability. • Very good evaluation of the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	<ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to strict liability. • Good evaluation of the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	<ul style="list-style-type: none"> • Satisfactory analysis of legal rules, principles, concepts and issues relevant to strict liability. • Satisfactory evaluation of the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to strict liability. • Basic evaluation of the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.