GCE AS MARKING SCHEME

SUMMER 2025

AS
LAW - COMPONENT 2
UNDERSTANDING SUBSTANTIVE LAW
B150U20-1

About this marking scheme

The purpose of this marking scheme is to provide teachers, learners, and other interested parties, with an understanding of the assessment criteria used to assess this specific assessment.

This marking scheme reflects the criteria by which this assessment was marked in a live series and was finalised following detailed discussion at an examiners' conference. A team of qualified examiners were trained specifically in the application of this marking scheme. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners. It may not be possible, or appropriate, to capture every variation that a candidate may present in their responses within this marking scheme. However, during the training conference, examiners were guided in using their professional judgement to credit alternative valid responses as instructed by the document, and through reviewing exemplar responses.

Without the benefit of participation in the examiners' conference, teachers, learners and other users, may have different views on certain matters of detail or interpretation. Therefore, it is strongly recommended that this marking scheme is used alongside other guidance, such as published exemplar materials or Guidance for Teaching. This marking scheme is final and will not be changed, unless in the event that a clear error is identified, as it reflects the criteria used to assess candidate responses during the live series.

EDUQAS GCE AS LAW

COMPONENT 2: UNDERSTANDING SUBSTANTIVE LAW

SUMMER 2025 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 2

All the questions in this component assess assessment objectives AO1, AO2 and AO3. AO1 focuses on the ability to demonstrate knowledge and understanding of legal rules and principles. AO2 focuses on the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology, and AO3 focuses on the ability to analyse and evaluate legal rules, principles and concepts.

The structure of the mark scheme

The mark scheme for 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 mark 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: Private Law

Question 1: Law of Contract

(a) Explain what is meant by the doctrine of promissory estoppel. [6]

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 doctrine of promissory estoppel in contract law, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the essential elements of a contract. 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 the rules of consideration.

The response might consider the following issues:

- Equitable doctrine which emanated from Lord Denning's obiter dicta in *Central London Property Trust Ltd v High Trees House Ltd (1947)*.
- In certain circumstances, the doctrine prevents a party going back on a promise which is not supported by consideration.
- For the doctrine to apply, the following conditions must be met:
  - Must be a pre-existing contractual relationship between the parties which is clear and unambiguous
  - The promisee must have relied on the promise and acted to his/her detriment
  - Can only be used as a "shield and not a sword" – *Combe v Combe (1951)*
  - It must be unfair for the promisor to go back on his/her word – *D & C Builders v Rees (1966)*
  - The promise is normally time limited.

Assessment grid for Q1(a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English Legal System and legal rules and principles
3	5-6	• Excellent knowledge and understanding of the English Legal System and legal rules and principles relating to the law governing the doctrine of promissory estoppel in contract law. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English Legal System and legal rules and principles relating to the law governing the doctrine of promissory estoppel in contract law. • Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English Legal System and legal rules and principles relating to the law governing the doctrine of promissory estoppel in contract law. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

(b) Explain how a contract can be discharged. [6]

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 a contract can be discharged, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the concept. Candidates are required to focus on the specific nature of the question set and not simply give an answer on the general rules relating to a contract.

The response might consider the following issues:

- Discharge means bringing a contract to an end so that one or both parties are released from their obligations
- Discharge by **performance.** This is where all obligations under the contract have been met, and the obligations should match the requirements of the contract exactly. Cutter v Powell (1795) found that, if a contract requires entire performance and a party fails to perform the contract in its entirety, they are entitled to nothing from the other party under the contract. This rule can be limited in the following ways: Substantial performance, Severable contracts, Acceptance of part performance, Prevention of performance.
- Discharge can be performed by **agreement.** There are two types of discharge by agreement:
    - bilateral discharge where it is assumed that both parties are to gain a fresh but different benefit from a new agreement.
    - unilateral discharge where the benefit is only be gained by one party who is trying to convince the other party to let them off their obligations under the original agreement.
- Discharge can be performed by **breach**. A party may fail to perform an obligation, perform an obligation defectively or indicates in advance that he/she will not be performing the agreed obligation under the contract. There are two types of discharge by breach:
    - Actual breach – where a party to a contract fails totally to perform his/her obligations under the contract. *Abromova v Oxford Institute of Legal Practice (2011).*
    - Anticipatory breach – where a party indicates in advance that he/she will not be performing their obligations under the original contract. *White & Carter Ltd v McGregor (1962).*

Assessment grid for Q1(b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English Legal System and legal rules and principles
3	**5-6**	• Excellent knowledge and understanding of the English Legal System and legal rules and principles relating to the law governing discharge in contract law. • Response is clear, detailed and fully developed.
2	**3-4**	• Good knowledge and understanding of the English Legal System and legal rules and principles relating to the law governing discharge in contract law. • Response is generally clear, detailed and developed.
1	**1-2**	• Basic knowledge and understanding of the English Legal System and legal rules and principles relating to the law governing discharge in contract law. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

(c) Evaluate the differences between an offer and an invitation to treat. [9]

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 order to achieve the highest marks, candidates must use legal rules, principles and concepts in order to evaluate the distinction between an offer and an invitation to treat. Evaluation supported by relevant legal citation is required to formulate a legal argument and to achieve the highest marks.

The following issues might be considered:

- Invitation to treat is a preliminary stage where one party invites the other to make an offer or to start negotiations. It indicates a willingness to deal but not an intention to be legally bound. An invitation to treat does not constitute an offer; an offer is capable of being accepted and leading to a valid contract.
- Confusion can arise when what would appear, in the everyday sense of the word, to be an offer is held by the law to be only an invitation to treat.
- Advertisements for bilateral contracts – advertisements of specified goods at a certain price - are usually regarded as invitations to treat on the grounds that they may lead to further bargaining – e.g. lots at an auction *(British Car Auctions v Wright (1972)* or a request for tenders *(Harvela Investments v Royal Trust of Canada (1986)*. Practical approach as potential buyers might want to negotiate the price or, as stocks might run out, it would be unreasonable to expect advertisers to sell to everybody who applied - see bramblefinches (protected species) in *Partridge v Crittenden (1968)* or circulation of price list by wine merchants in *Grainger & Sons v Gough (1896)*. Price-marked goods on display on the shelves or in the windows of shops are generally regarded as invitations to treat, rather than offers to sell goods at that price - *Fisher v Bell (1960)*, Goods on supermarket shelf are invitation to treat, offer is only made when customer offers to buy them at the cash desk and the shopkeeper may accept or reject that offer – *Pharmaceutical Society of GB v Boots Cash Chemists Ltd (1953)*.
- Practical consequences to this principle. A business will not lose out financially if an employee has marked the price up incorrectly and the business cannot be made to sell the last product of the kind displayed in the window.
- Contradictions - business may be committing an offence under the *Trade Descriptions Act 1968* and this approach does not encourage businesses to ensure that staff are properly trained.
- Advertisements for unilateral contract – *Carlill v Carbolic Smoke Ball Co (1893)* or those offering rewards for the return of lost property. Usually treated as offers as there is no need for further negotiations between the parties and the advertiser intends to be bound by it. A distinction is generally made between advertisements for a unilateral contract, and those for a bilateral contract.

Assessment grid for Q1(c)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	8-9	• Excellent analysis of legal rules, principles and concepts relevant to the distinction between invitations to treat and offers in contract law. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the distinction between invitations to treat and offers in contract law, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	6-7	• Good analysis of legal rules, principles and concepts relevant to the distinction between invitations to treat and offers in contract law. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the distinction between invitations to treat and offers in contract law, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	3-5	• Adequate analysis of legal rules, principles and concepts relevant to the distinction between invitations to treat and offers in contract law. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the distinction between invitations to treat and offers in contract law, including reference to a valid judgement. • Adequate citation of supporting case law and legal authorities.
1	1-2	• Basic analysis of legal rules, principles and concepts relevant to the distinction between invitations to treat and offers in contract law. Analysis includes minimal detail. • Basic evaluation of the distinction between invitations to treat and offers in contract law. • Basic citation of supporting case law and legal authorities.
	0	Response not credit worthy or not attempted.

Read the scenario below and answer part (d)

John and Sunita's daughter, Rhia, married her partner, Steven, on August 14th, 2024. The reception was held in her parent's large garden where they erected a marquee. The garden was generally well kept other than for the pond area. At the beginning of January 2024, John agreed with A Pond for Yew, a local landscaping company, that they would redo the pond so that it would look good for the wedding. He stressed the importance of getting the work completed by the beginning of July 2024 at the latest and agreed to pay £3,000 on that basis. As he had not heard from the company, John contacted them at the end of March. They told John that, if the work was to be done on time, he would need to pay an additional £850 to cover extra staffing as the company was going through a difficult time. John was not happy but felt as though he had no choice but to agree if the work was to be completed on time. The work was completed at the beginning of August 2024 and the firm is now chasing John for their additional money.

(d) Advise John as to whether he has to pay the extra £850 to the company. [9]

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 John candidates are expected to apply the full range of legal rules and principles relating to consideration. In this case candidates will need to apply the law on consideration and use relevant case law in relation to the given scenario in order to present a legal argument and to gain the highest marks.

The response might consider issues such as:

- Consideration is concerned with the bargain of the contract. A contract is based on an exchange of promises. Each party to a contract must be both a promisor and a promisee. They must each receive a benefit, and each suffer a detriment. This benefit or detriment is referred to as consideration.
- Rules of consideration: the consideration must not be past; the consideration must be sufficient but need not be adequate; the consideration must move from the promise; an existing public duty will not amount to valid consideration; an existing contractual duty will not amount to valid consideration; part payment of a debt is not valid consideration for a promise to forego the balance.
- Consideration must have some value. John would have to pay the £850 if following the case of *Williams v Roffey Bros (1990)*. John had agreed to pay the extra amount of £850 in order to prevent the inconvenience of hiring another firm to do the work instead, or to prevent his daughter's wedding celebrations being adversely affected. Therefore, he would be obliged to pay the amount agreed.
- However, the company is not doing anything more than what they initially contracted to do. Therefore, arguably there is no consideration on their part which would go against the rule of consideration that both parties should benefit. This would also go against the requirement that consideration must have some value. There is also the fact that the courts have not followed *Williams v Roffey* in later cases as shown in *Re Selectmove (1995)*. This shows how the decision in John's case is unlikely to follow the approach taken in *Williams v Roffey*.

On the basis that the company did not go beyond their existing duty, John might also consider the case of *Stilk v Myrick (1809)*, where the fact that the crew members didn't go beyond their existing duty meant they did not provide consideration and were doing what they were contractually obliged to do and could not receive the money. If this decision is followed John would not have to pay the £850.

Assessment grid for Q1(d)

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	**8-9**	• Excellent application of legal rules and principles to John's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to consideration. • The legal argument is detailed, fully developed and persuasive.
3	**6-7**	• Good application of legal rules and principles to John's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to consideration. • The legal argument is generally detailed, developed and persuasive.
2	**3-5**	• Adequate application of legal rules and principles to John's situation. • Adequate presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to consideration. • The legal argument includes some detail which is developed in places.
1	**1-2**	• Basic application of legal rules and principles to John's situation. • Basic presentation of a legal argument using minimal legal terminology relating to consideration. • The legal argument includes minimal detail.
	0	Response not credit worthy or not attempted.

Question 2: Law of Tort

(a) **Explain the "reasonable man" test in relation to a breach of a duty of care under the law of tort.** **[6]**

Indicative Content:

NOTE: *the content is not prescriptive, and candidates are not expected to mention all the material noted 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 reasonable person test in relation to breach in the law of tort, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the principles of the test. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set.

The response might consider issues such as:

- In deciding whether a defendant has breached his duty of care, the standard of care expected of him is that of a reasonable man, an objective test – *Blyth v Birmingham Waterworks (1865).*
- The reasonable man test may be variable and may depend on the circumstances of the particular defendant or the situation.
- A learner driver is expected to meet the same standard as a qualified, competent driver – *Nettleship v Weston (1971*). An amateur footballer is not expected to meet the standard of a footballer in the first division – *Condon v Basi (1985)*. A child will not be judged as an adult but by the standard of a reasonable child of the same age – *Mullins v Richards (1998)*.
- If the defendant is a professional, he will be held to the standard of a reasonable person within that profession – *Wilsher v Essex (1988)*; *Bolam v Friern Hospital (1957); Montgomery v Lanarkshire Health Board (2015)*.

Assessment grid for Q2(a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English Legal System and legal rules and principles
3	5-6	• Excellent knowledge and understanding of the English Legal System and legal rules and principles relating to the reasonable person test in the law of tort. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English Legal System and legal rules and principles relating to the reasonable person test in the law of tort. • Response is generally clear, detailed and fully developed.
1	1-2	• Basic knowledge and understanding of the English Legal System and legal rules and principles relating to the reasonable person test in the law of tort. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

(b) Explain the different kinds of damages available under the law of tort. [6]

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 what is meant by damages, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the remedy of damages.

The response might consider issues such as:

- The basis of damages – a claimant who has suffered a wrong arising from a tort is entitled to damages for any losses incurred but the claimant is expected to take reasonable steps to mitigate that loss – The Barracuda.
- Special damages – can be calculated at the time of the trial and relate to expenses incurred before trial. Examples.
- General damages – cannot be calculated before trial so they are calculated by the court following Judicial Guidelines. Examples.
- Nominal damages – awarded in torts which are actionable per se where there has been little, or no harm caused, and the court wishes to award only a small amount.
- Contemptuous damages – awarded when the level of damage is low, and the court does not think that legal action should have been taken. Consequently, damages can be as low as one penny.
- Aggravated damages – an additional sum of money is awarded because the initial harm was made worse by an aggravating factor. Mostly awarded in defamation and trespass to the person cases.
- Exemplary damage, sometimes called punitive damages. Their purpose, as stated in *Rookes v Barnard (1964)* is to "punish and deter" the defendant for committing the tort and are only awarded in limited circumstances.

Assessment grid for Q2(b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English Legal System and legal rules and principles
3	5-6	• Excellent knowledge and understanding of the English Legal System and legal rules and principles relating to the award of damages in the law of tort. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English Legal System and legal rules and principles relating to the award of damages in the law of tort. • Response is generally clear, detailed and fully developed.
1	1-2	• Basic knowledge and understanding of the English Legal System and legal rules and principles relating to the award of damages in the law of tort. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

(c) Evaluate the protection afforded to trespassers by the Occupiers' Liability Act 1984. [9]

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 order to achieve the highest marks, candidates must demonstrate their ability to draw together details of the protection afforded to trespassers under the 1984 Act. For example, the earlier position at common law and relevant case law can be used to effectively evaluate the position.

In order to achieve the higher marks, candidates will need to demonstrate a degree of evaluation of the topic.

The response might consider issues such as:

- Historically, the common law was very harsh towards trespassers, even children – the only duty of care was not to wilfully inflict harm on a child – *Addie v Dumbreck (1929)*. In 1972 in *BRB v Herrington*, the HL used the Practice Statement 1966 to overrule Addie and introduced a "duty of common humanity" which was owed to all, including trespassers. This case led to the OLA 1984.
- The OLA 1984 goes further than the 1957 Act. It imposes a duty on occupiers in relation to persons 'other than his visitors' (S.1(1)(a) OLA 1984). This includes trespassers and those who exceed their permission once on the property. Protection is even afforded to those breaking into the premises with criminal intent see *Revill v Newberry [1996*) – may at first appear somewhat harsh to impose a duty on occupiers for those who have come on to their land uninvited and without permission. Lord Hoffman in *Tomlinson v Congleton BC (2003)* clarified the distinction between the two Acts – in relation to OLA 1957 "one starts from the assumption that there is a duty, whereas in the case of a trespasser (OLA 1984) one starts from the assumption that there is none".
- "Occupier'" is given the same meaning as under the 1957 Act (S1(2) OLA 1984) – *Wheat v Lacon (1966)*.
- Since the OLA 1984 applies to trespassers, a lower level of protection is offered. Death and personal injury are the only protected forms of damage and occupiers have no duty in relation to the property of trespassers. (S1(8) OLA 1984).
- Also, the duty only arises when certain risk factors are present – all three conditions under S1(3) must be satisfied to impose a duty of care on the occupier towards trespassers.
- Standard of care expected - S1(4) the duty is to take such care as is reasonable in all the circumstances to see that trespassers are not injured on the premises by the danger concerned – objective test - what would a reasonable occupier have done?
- The duty may be discharged by giving a warning or discouraging others from taking the risk S1(5) Occupiers Liability Act 1984 **–** *Tomlinson v Congleton Borough Council (2003)*. There is no obligation in relation to the warning to enable the visitor to be reasonably safe - contrast with OLA 1957.

Assessment grid for Q2(c)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	8-9	• Excellent analysis of legal rules, principles and concepts relevant to the Occupiers Liability Act 1984. • Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the Occupiers Liability Act 1984, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	6-7	• Good analysis of legal rules, principles and concepts relevant to the Occupiers Liability Act 1984. • Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the Occupiers Liability Act 1984, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	3-5	• Adequate analysis of legal rules, principles and concepts relevant to the Occupiers Liability Act 1984. • Analysis includes some detail with some supporting evidence. • Adequate evaluation of the Occupiers Liability Act 1984, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-2	• Basic analysis of legal rules, principles and concepts relevant to the Occupiers Liability Act 1984. • Analysis includes minimal detail. • Basic evaluation of the Occupiers Liability Act 1984. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

Read the scenario below and answer part (d)

Tom is a roofer and following a period of bad weather he was very busy. In order to save time, he loaded far too many roof tiles onto the back of his pickup truck and did not secure them properly. He braked hard going over a speed bump and heard a loud crash. Some of the tiles had fallen off the back of the truck and had hit the car following behind. The front of the car was seriously damaged and Suki, the driver, has since suffered from anxiety and been unable to work. Ash, her passenger, suffered whiplash and continues to experience severe pain in his neck.

(d) Advise Suki and Ash as to whether they can claim in negligence against Tom. [9]

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 Suki and Ash, candidates are expected to apply the full range of legal rules and principles relating to their situation. In this case, candidates will need to consider the requirements of duty of care in negligence and apply them to the accident.

The response might consider issues such as:

- Duty of care needs to be established – see *Caparo (1990)* test, as modified by *Robinson (2018).*
-
- Likely to be able to show that Tom owes a duty of care to Suki and Ash as other road users.
- Need to establish breach of duty. A breach of duty occurs when conduct falls below that of a reasonable person. Issues to consider include whether Tom's conduct falls below that of a reasonable lorry *driver (Nettleship v Weston 1971)*; the probability of harm *(Bolton v Stone 1951)*; the magnitude of likely harm *(Paris v Stepney Borough Council 1951)* and the cost and practicality of preventing the risk *(Latimer v AEC Ltd 1953)*.
- By overloading his lorry and failing to secure his load properly Tom's conduct falls below that of a reasonable lorry driver.
- Tom's negligence must be a factual cause of the claimant's loss (*Barnett v Chelsea & Kensington Hospital Management Committee 1968).* Suki and Ash's injuries would not have occurred but for Tom's failure to secure the load properly.
- The claimants' loss must be a reasonably foreseeable consequence *(Wagon Mound No 1 1961)* of the breach. Suki and Ash's injuries are a reasonably foreseeable consequence of Tom's negligence in loading his lorry and failing to properly secure the roof tiles.
- Credit any other relevant citation

Assessment grid for Q2(d)

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	**8-9**	• Excellent application of legal rules and principles to Suki and Ash's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding whether they will be able to succeed in a negligence claim against Tom. • The legal argument is detailed, fully developed and persuasive.
3	**6-7**	• Good application of legal rules and principles to Suki and Ash's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding whether they will be able to succeed in a negligence claim against Tom. • The legal argument is generally detailed, developed and persuasive.
2	**3-5**	• Adequate application of legal rules and principles to Suki and Ash's situation. • Adequate presentation of a legal argument using some appropriate legal terminology regarding whether they will be able to succeed in a negligence claim against Tom. • The legal argument includes some detail which is developed in places.
1	**1-2**	• Basic application of legal rules and principles to Suki and Ash's situation. • Basic presentation of a legal argument using minimal legal terminology regarding whether they will be able to succeed in a negligence claim against Tom. • The legal argument includes minimal detail.
	0	Response not creditworthy nor attempted.

Question 3: Criminal Law

(a) **Explain how the chain of causation in criminal law might be broken. [6]**

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 an intervening act, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the concept. 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 causation.

The response might consider issues such as:

- In order to establish criminal liability, the law requires there to have been no *novus actus interveniens* (new intervening act) between the D's actions and the victim's injury as such an act would break the chain of causation and absolve the defendant at that point.
- An intervening act will, however, only break the chain of causation if it is unforeseeable and random, sometimes likened to an "act of God".
- The chain of causation can be broken by the actions of a third party, the actions of the victim or Acts of nature
- Third party actions. The court will consider whether, despite the actions of a third party, the original injury inflicted by the defendant is still the "operating and substantial" cause of death; if this is still so, then the chain will not be broken, and the defendant remains fully liable. Frequently, medical treatment, which follows from the D's actions, is called into question but only very rarely will the chain be broken – see *Smith (1959); Cheshire (1991)*. In *Jordan (1956)*, the court held that negligent medical treatment could only break the chain of causation where it is "palpably wrong" and so independent of the original act as to make it only part of the history.
- Actions of the victim. For a victim to break the chain of causation, they must do something "patently daft", as in *Williams and Davis (1992*). In *Roberts (1991*), the court held that the chain would only be broken if the victim did something so "daft …. or unexpected that no reasonable man could be expected to foresee it". A similar view was also taken in *Marjoram (1999*). Neither would self-neglect or failure to seek medical treatment break the chain – *Holland (1841); Dear 1996*.
- Thin skull rule – defendants must take their victims as they find them, whatever their attributes*. Blaue (1975)* confirms that this does not simply include physical attributes but extends to the "whole man" and is wide enough to include special characteristics of the victim, such as religious beliefs which prohibit blood transfusions.

Assessment grid for Q3(a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English Legal System and legal rules and principles
3	5-6	• Excellent knowledge and understanding of the English Legal System and legal rules and principles relating to the issue of *novus actus interveniens* in criminal law. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English Legal System and legal rules and principles relating to the issue of novus actus interveniens in criminal law. • Response is generally clear, detailed and fully developed.
1	1-2	• Basic knowledge and understanding of the English Legal System and legal rules and principles relating to the issue of novus actus interveniens in criminal law. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

(b) Explain what is meant by intention in criminal law. [6]

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 intention in criminal law, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the offence. Candidates will be expected to explain intention and to include supporting citation.

The response might consider such issues as:

- Mens rea in criminal law involves the defendant's state of mind and, unless the offence is one of strict liability, the prosecution must establish a culpable mens rea on the part of the defendant.
- There are different kinds of mens rea such as intention, recklessness and negligence.
- Intention encompasses the highest degree of fault of all the levels of mens rea and is required for the most serious offences such as S18 Offences Against the Person Act 1861 in the current specification. A defendant who intends to commit a crime is generally considered to be more culpable than one who acts recklessly.
- S8 Criminal Justice Act 1967 confirms that intention is to be viewed subjectively.
- There are two types of intention: direct intent and oblique intent.
- Direct intent is where the defendant has a clear foresight of the consequences of his/her actions and specifically requires that consequence. The defendant's conduct can therefore be said to have achieved the required result.
- Oblique intent is not so straightforward. Here, the defendant might not intend to kill but if he/she realises that death will happen as a virtual certainty of his/her actions, oblique intent will be satisfied.
- This area of law has evolved through case law. The degree of probability required to establish oblique intention was a problem which concerned the courts for many years, for example in *Moloney (1985)* and *Hancock and Shankland (1985)*. The current direction for oblique intention comes from *Nedrick (1986)*, as confirmed by *Woollin (1998)* where the judge held that a jury is not entitled to find the intention for murder unless they feel sure that death or serious injury was a virtual certainty of the defendant's actions and that the defendant appreciated that this was the case.

Assessment grid for Q3(b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English Legal System and legal rules and principles
3	5-6	• Excellent knowledge and understanding of the English Legal System and legal rules and principles relating to intention in criminal law. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English Legal System and legal rules and principles relating to intention in criminal law.. • Response is generally clear, detailed and fully developed.
1	1-2	• Basic knowledge and understanding of the English Legal System and legal rules and principles relating to intention in criminal law. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

(c) Evaluate the differences between S47 and S20 Offences against the Person Act 1861. [9]

Indicative Content

NOTE: *The content is not prescriptive, and candidates are not expected to mention all the material noted 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 assessment of the legal rules, principles and concepts in order to evaluate the law relating to the differences between s 47 and s 20 of the Offences Against the Person Act 1861. In order to achieve the highest marks, some AO3 skills are vital to accessing the higher-level marks.

The response might consider issues such as:

<u>Section 47:</u>

- Actus Reus:
- an assault or battery occasioning actual bodily harm
- actual bodily harm is any hurt or injury calculated to interfere with the health or comfort of the victim (*Miller 1954*). The offence encompasses a wide range of injuries, both physical and psychological. *Chan Fook (1994)* makes it clear that medical evidence would be required to support psychiatric injury and *Smith (2006)* demonstrates the extent of injuries (cutting of hair) that can be covered under S47.
- The Crown Prosecution Services Charging Standards confirm that s.47 includes temporary loss of consciousness, minor cuts and grazes and scalds, broken bone without complications
- Mens rea:
- Intention to commit assault/battery or recklessness; foresight of the degree of harm is not necessary *(Savage 1992*). As long as the defendant has the mens rea for assault or battery, then the mens rea of ABH is satisfied.
- Triable either way offence, maximum sentence 5 years.

<u>Section 20:</u>

- Actus Reus:
- Can be committed in one of two ways: maliciously wound or inflict GBH on the victim.
- A wound must break the inner and outer skin- *Moriarty & Brooks (1834)* and confirmed in *Eisenhower (1984).* Even a broken bone does not constitute a wound unless it penetrates through the skin (*Wood 1830*).
- GBH = means "really serious harm" (*Smith 1961*) but it does not have to be life threatening (*Saunders 1985*). The severity of the injuries will be assessed according to the victim's age and health *(Bollom 2003*). Can include psychiatric injury such as severe depression (*Burstow 1997*) and can be based on infecting another with HIV (*Dica 2004*).
- Mens rea:
- The mens rea of GBH is defined by the word "maliciously". *Mowatt (1967)* and *DPP v A (2000)* both confirm that it is sufficient to show that the defendant intended or foresaw that "some" harm might occur and that it was not necessary to show that he/she intended or foresaw "serious" harm.
- Triable either way offence, maximum sentence 5 years.

- The degree of injury which the offences encompass is significantly different. ABH can be “any hurt or injury which interferes with the health or comfort of the victim” whereas with GBH, we are looking at “really serious harm”.
- The sentences are, however, identical – 5 years for both offences – despite the obvious difference in the degree of harm caused. Unbalanced approach.
- Additional stigma attached to S20 offence, less so for S47, but again the same maximum sentence

Assessment grid for Q3(c)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	**8-9**	• Excellent analysis of legal rules, principles and concepts of criminal law relevant to the differences between S47 and S20 OAPA 1861. • Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of key differences between S47 and S20 OAPA 1861, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**6-7**	• Good analysis of legal rules, principles and concepts of criminal law relevant to the differences between S47 and S20 OAPA 1861. • Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of criminal law relevant to the differences between S47 and S20 OAPA 1861, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**3-5**	• Adequate analysis of legal rules, principles and concepts of criminal law relevant to the differences between S47 and S20 OAPA 1861. • Analysis includes some detail with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Adequate evaluation of criminal law relevant to the differences between S47 and S20 OAPA 1861, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**1-2**	• Basic analysis of legal rules, principles and concepts of criminal law relevant to the differences between S47 and S20 OAPA 1861. • Analysis includes minimal detail. • Basic evaluation of criminal law relevant to the differences between S47 and S20 OAPA 1861. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

Read the scenario below and answer part (d)

Sam and Ollie decided to go out for Halloween. They dressed up as scary clowns, complete with wigs, and started off by visiting houses on their local estate. All was going well until they knocked on a door which was opened by a frail old lady, Martha. She looked horrified and screamed "help, they are going to kill me". Her son, Jamal, raced to see what was going on. He was very angry and concerned about his mother (Martha) who was suffering from a serious mental illness. He shouted loudly and pushed both boys down the garden path on to the road; Sam was left with a small bruise on his shoulder.

(d) Advise Sam, Ollie and Jamal as to whether they could face any charges for non-fatal offences. [9]

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 Sam, Ollie and Jamal, candidates are expected to apply the full range of legal rules and principles relating to their situation. In this case candidates may apply the definition of the actus reus and mens rea of relevant offences, using supporting citation in order to present a legal argument.

The response might consider issues such as:

Sam and Ollie:

Both could be charged with assault against Martha. Assault is a common law offence charged under *S39 CJA 1988;* it has a maximum sentence of 6 months' imprisonment or a fine.

Actus Reus:

- An act or words, written (*Constanza 1997*) or spoken (*Ireland 1997*).
- Which cause the victim to apprehend the infliction of immediate unlawful force – *Logdon v DPP (1976*). Conversely, pointing an unloaded gun at someone who knows it to be unloaded is not an assault (***Lamb***).
- Immediate means "imminent" in the sense that the V is afraid because she does not know what the D is going to do next (***Smith***).
- Sam and Ollie's appearance at Martha's door could be the act which causes her to fear immediate unlawful force.

Mens Rea:

- Intention or subjective (***Cunningham***) recklessness as to causing another to fear immediate unlawful force.
- Sam and Ollie would not have had intended to assault Martha but were arguably reckless as to whether they did so and therefore have the mens rea for the offence as well as the actus reus.

<u>Jamal:</u>
Jamal could be charged with battery against Sam and Ollie. Battery is a summary criminal offence under s.39 of the Criminal Justice Act 1988. Punishment is a fine and/or a prison sentence of up to 6 months.

Actus Reus:
- The application of unlawful physical force by one person on another. The slightest touch will be sufficient, and it includes any unlawful physical contact, proof of pain or harm does not have to be shown. It can even include touching clothes (*Thomas 1985*). The main thing is that the force has to be unlawful.
- The force can be direct or indirect as in *Haystead v Chief Constable of Derbyshire [2000]* and the victim does not have to be aware that they are about to be struck.
- When Jamal pushed the two boys down the garden path, this could lead to a charge of battery.

Mens rea:
- intention or subjective recklessness as to the application of unlawful force on another, as confirmed in *Venna (1976).*
- It appears that Jamal intended to apply unlawful force to the two boys, completing the offence of battery.

It is not considered that a small bruise would be serious enough to warrant a S47 charge.

Assessment grid for Q3(d)

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	8-9	• Excellent application of legal rules and principles to Sam, Ollie and Jamal's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding whether Sam, Ollie and Jamal could be charged with a non-fatal offence against the person. • The legal argument is detailed, fully developed and persuasive.
3	6-7	• Good application of legal rules and principles to Sam, Ollie and Jamal's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding whether Sam, Ollie and Jamal could be charged with a non-fatal offence against the person. • The legal argument is generally detailed, developed and persuasive.
2	3-5	• Adequate application of legal rules and principles to Sam, Ollie and Jamal's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities regarding whether Sam, Ollie and Jamal could be charged with a non-fatal offence against the person. • The legal argument includes some detail which is developed in places.
1	1-2	• Basic application of legal rules and principles to Sam, Ollie and Jamal's situation. • Basic presentation of a legal argument using minimal legal terminology, case law and other legal authorities regarding whether Sam, Ollie and Jamal could be charged with a non-fatal offence against the person. • The legal argument includes minimal detail.
	0	Response not creditworthy nor attempted.

Question 4: Human Rights Law

(a) Explain the key elements of Article 11 European Convention on Human Rights. **[6]**

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 key elements of Art 11 ECHR, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying this right. 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.

- Art 11 is a qualified right only and comprises two elements: the right to freedom of assembly and the right to freedom of association.
- The right to freedom of assembly protects the individual's rights of peaceful protest (*Steel and others v UK 1998*), to take part in demonstrations and attendance at both public and private meetings.
- It links in with issues of public order and freedom of expression (Art 10).
- The right to freedom of association permits individuals to join with others to promote a particular objective, e.g. join a trade union *(GCHQ case 1984*) or political party. It also provides for a negative right for individuals who may not be compelled to join a particular association.
- As the right is qualified, it can be excluded by government and their administrators, such as police and armed forces, in a wide range of circumstances including in the interests of national security or public safety, prevention of disorder or crime, protection of health or morals.

Band	Marks	AO1: Demonstrate knowledge and understanding of the English Legal System and legal rules and principles
3	5-6	• Excellent knowledge and understanding of the English Legal System and legal rules and principles relating to the rights protected under Art 11 ECHR. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English Legal System and legal rules and principles relating to the rights protected under Art 11 ECHR. • Response is generally clear, detailed and fully developed.
1	1-2	• Basic knowledge and understanding of the English Legal System and legal rules and principles relating to the rights protected under Art 11 ECHR. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

(b) Explain the obligations which the Public Order Act 1986 imposes on the organiser of a march [6]

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 obligations of an organiser of a march under the Public Order Act 1986, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying this obligation. 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.

The response might consider issues such as:

- S.11 Public Order Act 1986 imposes an obligation of the organiser of a march to give the police 6 clear days' written notice of a march which is intended to show support for, or opposition to, the views or actions of a person or group, to publicise a cause of campaign, or to mark or commemorate an event.
- Details to be provided: date, time and proposed route and the name of the organiser.
- Notice requirement is not necessary if it is "not practical" to give such notice – e.g. where a march breaks out spontaneously, but no specific examples are provided in the Act.
- S11(7), S11(8) and S11(9) state that, otherwise, it is an offence to fail to give notice or to deviate from the details provided in the notice.
- The organiser has a defence if it can be shown that the march deviated and he/she either did not suspect it had occurred or it was beyond his/her control.
- Failure to provide the relevant notice does not make the demonstration unlawful per se.

Assessment grid for Q4(b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English Legal System and legal rules and principles
3	5-6	• Excellent knowledge and understanding of the English Legal System and legal rules and principles relating to obligations of the organiser of a march under S11 Public Order Act 1986. • Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English Legal System and legal rules and principles relating to obligations of the organiser of a march under S11 Public Order Act 1986. • Response is generally clear, detailed and fully developed.
1	1-2	• Basic knowledge and understanding of the English Legal System and legal rules and principles relating to obligations of the organiser of a march under S11 Public Order Act 1986. • Response includes minimal detail.
	0	Response not credit worthy or not attempted.

(c) Evaluate the protection given by the Human Rights Act 1998. [9]

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 assessment of the legal rules, principles and concepts in order to evaluate the protection afforded by the Human Rights Act 1998. In order to achieve the highest marks, it is vital that students demonstrate some AO3 skills.

The response might consider issues such as:

- The Human Rights Act 1998 incorporates the rights afforded by the ECHR into UK law, with a few exceptions. It therefore provides positive rights rather than simply residual rights.
- These rights are directly enforceable in UK courts without having to apply to the ECtHR in Strasbourg.
- S6 imposes an obligation upon our courts to take account of decisions made by the Strasbourg court.
- S3 requires our courts to interpret all UK legislation in a way which is compatible with Convention rights, in so far as it is possible to do so.
- Where this is not possible, S4 allows the higher courts to make a declaration of incompatibility. See *Bellinger v Bellinger (2003)*, *Anderson (2003*). This is, however, considered to be a “tool of last resort” (*R v A 2001*). A DI will refer the matter back to Parliament for consideration. The procedure allows judges to at least flag up an issue which they consider to be incompatible with the HRA.
- In some circumstances it could be considered to be a political or moral disincentive for government to legislate incompatibly but it is not unlawful for Parliament to refuse to change primary legislation even if it violates human rights. Therefore, the protection afforded by the HRA is weak.
- Where a DI is made, S10 provides a fast-track procedure whereby legislation which is not compatible can be amended.
- Examples where DIs have led to positive changes - *A v SoS Home Department (2004*), *R (on application of H) v Mental Health Review Tribunal*).
- S19 confirms that government must include a statement that all proposed legislation is compatible with Convention rights or state that it is not compatible but that, notwithstanding, government wants to proceed with the Bill.
- However, the HRA does not have the status of a Bill of Rights. It is an Act like any other and can be removed at the whim of government at any time.
- Courts still cannot strike down an Act which they consider is incompatible with Convention rights (cf position in States where courts can declare primary legislation to be unconstitutional and void).
- HRA only really protects civil and political rights, does not provide the kinds of rights people need such as right to housing, income etc.
- HRA only protects people from actions of state and public authorities whereas frequently there is need for protection against powerful, private institutions like the banks. The term “public authorities” may also be interpreted narrowly, limiting the protection.
- The power afforded to courts under S3 might be considered to give them too much scope to interfere with the will of Parliament.
- Consider the Bill of Rights argument.

Assessment grid for Q4(c)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	**8-9**	• Excellent analysis of legal rules, principles and concepts relevant to the protection given by the HRA 1998. • Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the protection given by the HRA 1998, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**6-7**	• Good analysis of legal rules, principles and concepts relevant to the protection given by the HRA 1998 • Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the protection given by the HRA 1998, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**3-5**	• Adequate analysis of legal rules, principles and concepts relevant to the protection given by the HRA 1998.. • Analysis includes some detail with some supporting evidence. • Adequate evaluation of the protection given by the HRA 1998, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**1-2**	• Basic analysis of legal rules, principles and concepts relevant to the protection given by the HRA 1998. • Analysis includes minimal detail. • Basic evaluation of the protection given by the HRA 1998. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

Read the scenario below and answer part (d).

The local Dog Rescue Kennel currently rents two fields from the council and uses them to exercise their dogs. Their work is very important as they take in many homeless, hungry, stray dogs who are no longer wanted by their owners. To the anger of the local community, the council has recently told them that they will no longer be able to use the fields as they are selling the land for residential development. On Saturday morning, the residents, led by Ali, are marching through the main street to the town hall, in opposition to the council's plans, to hand in a petition signed by approximately 750 people. Many demonstrators are carrying placards, some with horrific images of seriously ill-treated dogs. As it is getting near to Christmas, the area is very busy with both cars and pedestrians. To keep disturbance to a minimum, Sergeant Sefton has told them to go down a different route via the recreation ground to avoid problems. Ali tells them to ignore his orders.

(d) Advise Ali and the demonstrators of the powers of the police in respect of this demonstration. [9]

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 Ali and the demonstrators, candidates are expected to apply the relevant range of legal rules and principles that affect public order offences. In this case candidates may apply the relevant sections of the Public Order Act 1986 to determine the powers of the police over the demonstration.

The response might consider issues such as:

- The police have power under s.12 of the POA 1986 to impose conditions on processions: these may be imposed in advance by the Chief Constable in writing (s.12(3)), or by the senior police officer present at the scene (s.12(2)(a)).
- The grounds for imposing conditions (s.12(1)) are that the senior officer reasonably believes that the procession may result in serious public disorder, or serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is to intimidate others into doing something which they have a right not to do, or refraining from doing something which they have a right to do. These grounds are commonly called the "four triggers".
- The Police Crime, Sentencing & Courts Acts 2022 has amended the POA 1986 by adding another trigger in relation to noisy protests.
- Conditions which may be imposed:
- s.12(1) states that the officer may impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation. S.12(1) specifies that these may include conditions as to the route to be followed and that the procession is not to enter some particular public place but presumably extends beyond these.
- Since the HRA 1998, conditions imposed must be "proportionate" in order not to breach Art.11 of the ECHR.
- Refusal to comply with a condition is an offence (s.12(4) for organisers, s.12(5) for participants).
- Sergeant Sefton, as a senior officer present at the scene, has grounds to impose

conditions as it is reasonable to assume that, in view of the volume of shoppers and heavy traffic, the demonstration could lead to serious disruption to the life of the community.

- When he tells the demonstrators to go down a different route, he is imposing a condition which he is lawfully entitled to do. It is likely to be considered proportionate *(Kent v Metropolitan Commissioner 1981)* as the demonstrators will still end up at the town hall, albeit via a different route.
- If Ali and the demonstrators do not comply with Sergeant Sefton's orders, they will be committing an offence under S 12(5).
- The placards*:* s.5 POA 1986 creates the offence of causing harassment, alarm or distress. This may be committed in two ways: by using threatening, abusive or insulting words or behaviour, or by engaging in disorderly behaviour. The behaviour must take place within the sight of hearing of a person likely to be caused harassment, alarm or distress thereby (s.5(1))- *DPP v Clarke 1992, DPP v Fiddler (1992*). This can include a police officer - *DPP -v- Orum (1988*). The offence might therefore be relevant here in respect of the placards.
- The mens rea of the offence is likely to be satisfied here as there is at the very least an awareness on the part of the demonstrators that they are being threatening or abusive by using the placards. The arrest power under s.5 required the officer first to give a warning, and only arrest if this was ignored, but this has been superseded by the amended s.24 of PACE 1984 which gives the police an immediate power of arrest.
- S4A POA 1986 may also be relevant if it can be shown that the placards were intended to cause harassment, alarm or distress and actually do so. This offence carries higher penalties than a S5 offence.

Assessment grid for Q4(d)

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	8-9	• Excellent application of legal rules and principles to the demonstration. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding Sergeant Sefton's powers over the demonstration. • The legal argument is detailed, fully developed and persuasive.
3	6-7	• Good application of legal rules and principles to the demonstration. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding Sergeant Sefton's powers over the demonstration. • The legal argument is generally detailed, developed and persuasive.
2	3-5	• Adequate application of legal rules and principles to the demonstration. • Adequate presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding Sergeant Sefton's powers over the demonstration. • The legal argument includes some detail which is developed in places.
1	1-2	• Basic application of legal rules and principles to the demonstration. • Basic presentation of a legal argument using minimal legal terminology regarding Sergeant Sefton's powers over the demonstration. • The legal argument includes minimal detail.
	0	Response not creditworthy nor attempted.