



GCE A LEVEL MARKING SCHEME

SUMMER 2025

**A LEVEL
LAW - COMPONENT 2
SUBSTANTIVE LAW IN PRACTICE
A150U20-1**

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 A LEVEL LAW
COMPONENT 2: SUBSTANTIVE LAW IN PRACTICE
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 and AO2. AO1 focuses on the ability to demonstrate knowledge and understanding of the English legal system and 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 legal 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 material referred to. Examiners should seek to credit any further relevant evidence offered by the candidates.
- An assessment grid showing 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

Law of Contract

1. Emma is a vintage car enthusiast and has been searching for several months for a 1965 Ford Mustang. One day, she comes across an advertisement online posted by Jack, a vintage car dealer, offering a 1965 Ford Mustang in excellent condition for sale at £30,000. Excited about the opportunity, Emma contacts Jack to express her interest in purchasing the car. During their conversation, Jack tells Emma that the car has only had one previous owner, a collector who meticulously maintained it, and that it has never been involved in any accidents or undergone major repairs. He also assures Emma that the car's mileage is genuine and accurately reflects its usage over the years. Relying on Jack's representations, Emma agrees to purchase the car and signs a contract with Jack for the sale of the 1965 Ford Mustang. After taking possession of the car and driving it for a few weeks, Emma starts to notice several issues with the vehicle. She discovers that the car's mileage has been tampered with, and upon further inspection by a certified mechanic, she learns that the car has undergone significant repairs in the past, including engine replacement and frame restoration. Additionally, she finds evidence that the car had been involved in a serious accident prior to her purchase.

Advise Emma as to whether there was a misrepresentation, applying your knowledge and understanding of legal rules and principles. [25]

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.

This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Emma, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of misrepresentation

The response might consider issues such as:

- Nature of misrepresentation and differentiating between the different types of misrepresentation.
- Statutory misrepresentation under the Misrepresentation Act 1967
- Fraudulent misrepresentation and remedies available
- Innocent misrepresentation and remedies available
- Negligent misrepresentation and remedies available
- The distinction between fact and opinion.
- Relevant citation, for example, *Doyle v Olby*; *Royscot Trust v Rogerson*

AO2

Candidates are expected to apply the full range of legal rules and principles to Emma's situation. The response might consider issues such as:

- Discussion and application to Emma's situation of statutory misrepresentation under the Misrepresentation Act 1967
- Was there fraudulent misrepresentation here? If so, the remedies available
- Was Jack's statement an innocent misrepresentation? If so, the remedies available
- Whether there was negligent misrepresentation by Jack and the remedies available
- Candidates should refer to section 2(1) of the Misrepresentation Act 1967 in respect of the issue of damages
- Jack, as a professional vintage car dealer, had a duty to exercise reasonable care and diligence in verifying the accuracy of the information he provided to potential buyers
- Application of the distinction here between fact and opinion.
- Credit relevant citation

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation • Response is clear, detailed and fully developed	[12-15 marks] • Excellent application of legal rules and principles to Emma's situation • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to misrepresentation • The legal argument is detailed, fully developed and persuasive
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation • Response is generally clear, detailed and developed	[8-11 marks] • Good application of legal rules and principles to Emma's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to misrepresentation • The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation • Response includes some detail which is developed in places	[4-7 marks] • Adequate application of legal rules and principles to Emma's situation • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to misrepresentation • The legal argument includes some detail which is developed in places
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation • Response includes minimal detail	[1-3 marks] • Basic application of legal rules and principles to Emma's situation • Basic presentation of a legal argument using minimal legal terminology relating to misrepresentation • The legal argument includes minimal detail
0	Response not creditworthy or not attempted.	

2. Rahima enters into a contract to renovate her kitchen with Builder's Choice Ltd. The contract stipulates that the work will commence on January 1st and be completed within two months. Rahima pays a deposit of £2000 as per the agreement. However, Builder's Choice Ltd fails to start work on the agreed-upon date. Rahima contacts them several times, but they keep delaying the start date without providing a valid reason. By mid-February, Builder's Choice Ltd still hasn't commenced any work, and Rahima is becoming increasingly frustrated and worried about the delay. Meanwhile, Rahima's friend offers to renovate her kitchen at a similar price and guarantees completion within one month. Fed up with Builder's Choice Ltd's constant delays and breach of contract, Rahima decides to terminate the agreement with them and hires her friend instead to carry out the renovation work.

Advise Rahima on whether a discharge of contract has occurred with Builder's Choice Ltd, applying your knowledge and understanding of legal rules and principles. [25]

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.

This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Rahima candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to discharge of contract

The response might consider issues such as:

- Different ways of discharging a contract
- Discharge by agreement: parties agree to terminate a contract
- Bilateral discharge: Parties get a different benefit from a new agreement
- Unilateral discharge: Benefit is only to be gained by one party
- Discharge by breach: A party fails to perform an obligation or does it defectively
- Actual breach: A party does not perform their obligations at all: Platform Funding Ltd v Bank of Scotland plc (2008), Pilbrow v Pearlless de Rougemont & Company (1999), Modahl v British Athletic Federation Ltd (1999), Abramova v Oxford Institute of Legal Practice (2011)
- Anticipatory breach: A party indicates in advance that they will not be performing their obligations: Frost v Knight (1872), Avery v Bowden (1855), Fercometal Sarl v Mediterranean Shipping Company (1989), White and Carter Ltd v McGregor (1962)
- Discharge by performance: All obligations under the contract have been met Cutter v Powell (1795)
- Substantial performance: If a party has done substantially what was required under the contract: Dakin & Company v Lee (1916), Hoeing v Isaacs (1952), Bolton v Mahadeva (1972)

- Severable contracts: Payment due at various stages of performance
- Acceptance of part performance: One of the parties has performed the contract but not completely but other party will accept this: *Sumpter v Hedges* (1898)
- Prevention of performance: One party prevents the other from carrying out their obligations: *Planche v Colburn* (1831), *Startup v Macdonald* (1843)
- Discharge by frustration: Performance of the contract becomes impossible: *Taylor v Caldwell* (1863)
- Three reasons for frustration:
 - Impossibility
 - Illegality
 - Commercial sterility
- Law Reform (Frustrated Contracts) Act 1943 outlines the legal consequences when a contract has been frustrated

AO2

In advising Rahima candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to discharge of contract. Candidates are expected to apply the full range of legal rules and principles to Rahima's situation in order to present a legal argument.

The response might consider issues such as:

- Application - Builder's Choice Ltd has breached the contract by failing to commence work on the agreed-upon date. This constitutes a breach of contract. A breach occurs when a party fails to perform its obligations under the contract. In this case, Builder's Choice Ltd.'s failure to start work on time violates the terms of the contract.
- Remedies for Breach: Rahima has several options for remedies due to the breach by Builder's Choice Ltd:
- Damages: Rahima may claim damages from Builder's Choice Ltd for any losses she incurs as a result of their breach. This could include any additional costs she has to pay her friend for the renovation work.
- Termination: Rahima has the right to terminate the contract due to Builder's Choice Ltd.'s breach. Termination discharges both parties from their obligations under the contract.
- Specific Performance: Rahima could seek an order from the court requiring Builder's Choice Ltd to perform their obligations under the contract. However, given the delays and lack of performance thus far, this may not be a practical remedy in this scenario.
- Discharge by Frustration: Alternatively, Rahima may argue that the contract has been discharged by frustration. Frustration occurs when an unforeseen event occurs, making it impossible to fulfill the contract or fundamentally changing the obligations under the contract. In this case, the constant delays and failure to commence work by Builder's Choice Ltd could be considered frustrating events. Additionally, Rahima's decision to hire her friend due to Builder's Choice Ltd.'s inability to start work may also constitute frustration of the contract.
- Rahima is entitled to terminate the contract with Builder's Choice Ltd due to their breach of contract. She may also seek damages for any losses she incurs as a result of their breach. Alternatively, Rahima may argue that the contract has been discharged by frustration due to the unforeseen events and hire her friend to complete the renovation work

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to discharge of contract • Response is clear, detailed and fully developed	[12-15 marks] • Excellent application of legal rules and principles to Rahima's situation • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to discharge of contract. • The legal argument is detailed, fully developed and persuasive
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to discharge of contract • Response is generally clear, detailed and developed	[8-11 marks] • Good application of legal rules and principles to Rahima's situation • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to discharge of contract • The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to discharge of contract • Response includes some detail which is developed in places	[4-7 marks] • Adequate application of legal rules and principles to Rahima's situation • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to discharge of contract • The legal argument includes some detail which is developed in places
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to discharge of contract • Response includes minimal detail	[1-3 marks] • Basic application of legal rules and principles to Rahima's situation. • Basic presentation of a legal argument using minimal legal terminology relating to discharge of contract • The legal argument includes minimal detail
0	Response not creditworthy or not attempted.	

Section B

Law of Tort

3. Molly is the owner of a small boutique clothing store in a busy shopping centre. She employs two sales assistants, Penny and Kim, to help run the store. Molly has entrusted both Penny and Kim with the responsibility of assisting customers, handling cash transactions, and ensuring the store remains clean and organised. One busy Saturday afternoon, Penny accidentally spills a bottle of oil-based perfume on the floor while rearranging a display. She fails to clean up the spill immediately, assuming it will evaporate on its own. A few minutes later, a customer, Eileen, enters the store and slips on the oily patch, falling and breaking her arm. As a result of the incident, Eileen has to pay medical expenses and is unable to work for several weeks, causing her to suffer financial losses. She decides to take legal action against Molly's boutique, claiming compensation for her injuries and losses.

Advise Molly as to whether she is vicariously liable for the consequences of Penny's potential negligence in injuring Eileen, applying your knowledge and understanding of legal rules and principles. [25]

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.

This is an extended response question. To achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Molly candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to vicarious liability.

The response might consider issues such as:

- Vicarious liability is where one person is held liable for the torts of another, even though that person did not commit the act itself. It is therefore a form of strict liability.
- The most common form of vicarious liability is when employers are held liable for the torts of their employees that are committed during the course of employment.
- In order to establish liability on the part of the employer, several requirements must be satisfied. Firstly, the wrongdoer must be an employee (as opposed to an independent contractor), the employee must have committed a tort, and the tort must have been committed in the course of employment

AO2

Candidates are expected to apply the full range of legal rules and principles to Molly's situation, in order to present a legal argument.

The response might consider issues such as:

- Various tests have developed over the years to try to establish whether a person is an employee or an independent contractor.
- There are 3 main tests:
- Control Test (*Yewens v Noakes* (1880); *Walker v Crystal Palace FC* (1909))
- Integrated Test (*Cox v MOJ* (2016))
- Multiple/Economic Reality Test (*Ready Mixed Concrete v Minister of Pensions* (1968).)
- Course of Employment-Negligent act - If the employee does a job badly, the employer can be liable for his actions which cause injury to another
- Molly is vicariously liable for the torts of her employees committed in the course of their employment. Where the wrongful conduct could fairly and properly be regarded as done while acting in the course of the employment, it would ordinarily be fair and just to hold the employer liable.
- An employer will only be liable for the torts of their employees if they are committed during employment rather than, as the courts put it, 'on a frolic of his own' (*Storey v Ashton*). The traditional test for determining this is the Salmond test which states that a tort will be committed in the course of employment if it is either (a) wrongful act authorised by the master, or (b) a wrongful and unauthorised mode of doing some act authorised by the master.
- Course of employment - authorised duties; *Century Insurance v Northern Ireland Road Transport*
- ***Barclays Bank v Various Claimants [2020]* and the parallel case of *WM Morrison Supermarkets plc v Various Claimants [2020]***
Historically to be vicariously liable for the torts committed by another:
The relationship between the two parties must be such that it is proper for the law to make one pay for the fault of the other - initially limited to the relationship between employer and employee.
The connection between that relationship and the tortfeasor's wrongdoing must be sufficiently close – that the tort was committed in the course or within the scope of the tortfeasor's employment.
Recent case law has broadened the circumstances in which vicarious liability applies,
The Supreme Court has clarified the law on vicarious liability
The Barclays decision focuses on the first issue: whether the nature of the relationship between the parties is sufficiently close for it to be proper to impose vicarious liability.
The Supreme Court held that Barclays Bank was not vicariously liable for sexual assaults allegedly committed by a self-employed medical practitioner who conducted medical assessments and examinations of prospective Barclays employees, as the medical practitioner was operating his own business.
The Morrisons decision involves acts taking place in an employment relationship but focuses on the second issue, namely whether the acts were committed in the course of employment. The Supreme Court found that Morrisons was not vicariously liable for its employee's breach of statutory duty under the Data Protection Act 1998 (the DPA), misuse of private information and breach of confidence

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent application of legal rules and principles to Molly's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to vicarious liability. • The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. • Response is generally clear, detailed and developed.	[8-11 marks] • Good application of legal rules and principles to Molly's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to vicarious liability. • The legal argument is generally detailed, developed and persuasive.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate application of legal rules and principles to Molly's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to vicarious liability. • The legal argument includes some detail which is developed in places.
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. • Response includes minimal detail.	[1-3 marks] • Basic application of legal rules and principles to Molly's situation. • Basic presentation of a legal argument using minimal legal terminology relating to vicarious liability. • The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

4. Amy is a keen gardener and decided to hire a professional landscaping company, GreenThumb Landscapes Ltd, to redesign her back garden. During the initial consultation, Amy expressed her desire to have a fishpond installed in her garden. GreenThumb assured Amy that they would handle the project with utmost care and expertise. After agreeing on the design, GreenThumb began excavating the area for the pond. However, during the excavation process, the workers accidentally damaged a water pipe running beneath Amy's property. As a result, Amy's garden and the basement of her house were flooded, causing significant damage to her property and belongings. Amy incurred substantial financial losses in repairing the damages caused by the flooding.

Advise Amy of any legal action she may be able to take under the tort of negligence, applying your knowledge and understanding of legal rules and principles. [25]

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.

This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Amy candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the tort 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 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
- Robinson (2018) *Caparo* tests will now only be used to establish duty of care if the present case is a new (novel) situation
- Definition of causation –. Both factual and legal causation must be proved: Factual causation: 'But for' test – *Barnett v Chelsea and Kensington Hospital Management Committee*.
- Legal causation: Operating and substantial cause; Remoteness of damage; Take your victim as you find them; Cases such as *Wagon Mound*

AO2

Candidates are expected to apply the full range of legal rules and principles to Amy's situation, including duty of care, breach of duty and causation.

The response might consider issues such as:

- For Amy to succeed in an action in negligence, it must first be established that GreenThumb Landscapes Ltd owed Amy a duty of care. The basis of whether a duty of care is owed is determined by asking firstly if there is an already established duty of care between contractors and customers - Robinson (2018), which there is.
- If unsure as to whether there is already an established duty of care or there is not one by analogy, the three-part test as laid out in Caparo Industries PLC v Dickman is used, GreenThumb Landscapes Ltd 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 GreenThumb Landscapes Ltd actions 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 based on the relationship of the parties involved. The courts will also consider if it is reasonable to impose a duty of care on GreenThumb Landscapes Ltd based on fairness or policy.
- Breach of Duty Judged by the objective standard – a 'reasonable person' not the particular defendant. The general question is 'what would a reasonable person have foreseen in this particular situation?' rather than 'what did this particular defendant foresee in this particular situation?' This objective standard can be adjusted to take account of professionals and other special characteristics as well as risk factors.
- Blythe v Birmingham Waterworks - 'the omission to do something which a reasonable man would do or doing something which a prudent and reasonable man would not do.'
- Professionals – are judged by the standard of the profession as a whole. E.g. doctors, electricians, etc. Bolam – Doctors judged by the standard of competent doctors as long as it is a course of action supported by a substantial body of opinion. Montgomery – departed from Bolam.
- Risk factors – raise or lower the standard expected of a reasonable person in that situation:
- Special characteristics – has the claimant any special characteristics which should be considered. Paris v Stepney – Also, professionals are required to adhere to the standards expected of that profession (e.g. doctor, electrician, etc).
- Size of the risk – Small risk = defendant doesn't have to take as great a precaution. Bigger risk = more precautions should be taken.
- Care must also be taken in respect of a risk where it is reasonably foreseeable that harm or injury may occur. Bolton v Stone; Hayley v LEB – Have all appropriate precautions been taken considering the cost and practicality of preventing the risk. If the cost of taking such precautions to eliminate the risk is completely disproportionate to the extent of the risk itself, then the defendant will not be held liable. Latimer v AEC.
- Were the risks known about at the time of the accident? If the risk of harm is not known, there can be no breach. Roe v Minister of Health – invisible cracks in anaesthetic tubes. Not known about so no breach.

- Is there a public benefit to taking the risk? Some risks have potential benefits – e.g. emergency services, trains driving at speed. *Watt v Hertfordshire CC* –
- Causation. There has to be some sort of damage (e.g. physical injury or damage to property) resulting from the defendant's negligence. Here Amy must be able to prove both that her damage was caused by the defendant's breach of duty and that the damage was not too remote – that it was reasonably foreseeable.
- There are two parts to damage: causation and remoteness of damage. Causation is the idea that the breach of duty has caused the injury or damage being claimed. Chain of causation connecting the negligent act and the corresponding result.
- Factual causation – starting point. 'But for' test = if it wasn't for ('but for') the defendant's act or omission the injury or damage would not have occurred. *Barnett v Chelsea and Kensington Hospital Management Committee*
- Legal causation decides if the injury or damage suffered was reasonably foreseeable.
- Intervening acts can break the chain of causation (*novus actus interveniens*).
- Remoteness of damage – the damage or loss must not be too remote from the defendant's negligence. The test is 'reasonably foreseeable', laid down in *Wagon Mound No1*
- Type of injury must be foreseeable – *Hughes v Lord Advocate*
- Egg-shell skull rule – 'take your victim as you find him'. If an injury is more serious because of a pre-existing condition or weakness of the claimant, then the defendant is liable for all the consequences / injuries. *Smith v Leech Brain*

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the elements of the tort of negligence. Response is clear, detailed and fully developed.	[12-15 marks] - Excellent application of legal rules and principles to Amy's situation. - 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. - The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] - Good knowledge and understanding of the English legal system and legal rules and principles relating to the elements of the tort of negligence. - Response is generally clear, detailed and developed.	[8-11 marks] - Good application of legal rules and principles to Amy's situation. - 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. - The legal argument is generally detailed, developed and persuasive.
2	[3-4 marks] - Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the elements of the tort of negligence. - Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Amy's situation. - Adequate 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. - The legal argument includes some detail which is developed in places.
1	[1-2 marks] - Basic knowledge and understanding of the English legal system and legal rules and principles relating to the elements of the tort of negligence. - Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Amy's situation. - Basic presentation of a legal argument using minimal legal terminology relating to the elements of the tort of negligence. - The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

Section C

Criminal Law

5. Alex and Mark have been supporting their local football team all day, and have now gone to the pub for a drink. Sam, a supporter of the other team, enters the pub and Alex and Mark start shouting at him, "Get out of our town". This soon escalates to them shouting insulting remarks. Finally, Sam says: "If you were not so drunk, I would hit you for saying those things". Alex responds: "I am not too drunk to sort you out", and grabs hold of Sam's shirt. Sam, who is shocked by Alex's actions, hits Alex in the face with his clenched fist. This causes Alex to stagger backwards and collide with Mark. Mark responds by punching Sam in the face. In the meantime, James, who is wearing the same football shirt as Sam, is terrified that he is going to get beaten up because Mark is now screaming, "You all need to watch out", whilst brandishing the end of a smashed bottle. Meanwhile, Sam, who is still angry with Alex, decides to continue the fight outside, where he kicks and punches Alex repeatedly, breaking three of Alex's ribs.

Advise Alex, Mark and Sam as to whether they have committed any non-fatal offences applying your knowledge and understanding of legal rules and principles.

[25]

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.

This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Alex, Mark and Sam candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of non-fatal offences against the person

The response might consider issues such as:

- assault and battery- s39 Criminal Justice Act 1988
- ABH S.47 OAPA 1861
- GBH S.20 OAPA 1861
- GBH S.18 OAPA161

AO2

Candidates are expected to apply the full range of legal rules and principles to Alex, Mark and Sam's situation, including the Offences Against the Person Act 1861 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Sam – His words essentially show that he is not a threat – *Tuberville v Savage* (1669). Students may consider self-defence in hitting Alex – Consider how Sam considered the situation to be and whether the use of force was reasonable in

those circumstances.

- Alex – assault (s39 Criminal Justice Act 1988) and battery (s39) re grabbing Sam's shirt – Battery is committed if D 'intentionally or recklessly inflicts unlawful force on another person' – Collins v Wilcock (1984) grabbing someone's clothes is battery and the threat 'I am not too drunk to sort you out' is the assault regardless of whether Sam was afraid or not – Apprehension of immediate, unlawful personal violence. Intention or recklessness will suffice – Fagan v Met Police Commissioner [1969]
- Mark – Battery for punching Sam in the face – could argue ABH s.47 OAPA 1861. Any injury that is more than 'transient and trifling' can be classified as ABH and therefore can be subject to more serious criminal charges (and penalties) however, the CPS Charging standards advise that battery will be the appropriate charge where either...No injury occurs or injuries which are not serious occur. In determining 'seriousness' we need to consider things like significant medical intervention and/or permanent effects of the injury. The mens rea for s47 is the intention or recklessness to commit an assault, meaning the intention or recklessness to cause the victim fear of unlawful force or applying unlawful force. Could argue - s20, mens rea is the intention or recklessness to cause some harm (some injury or ABH) but the actus reus or the outcome has to be a wound or serious injury/GBH. Do Sam's injuries constitute a wound or GBH?
- Consider Mark's impact on James – assault – brandishing a broken bottle and making verbal threats. An assault is when Mark puts James in fear of immediate unlawful force. This can be a thing said or done, signs or even silence. The mens rea for assault is intention or recklessness as to causing the victim to fear immediate unlawful force, while the actus reus can be as little as fear. Mark causes James to feel fear and so he is liable.
- S18 requires the intention to cause serious injury/GBH or to wound. The actus reus is a wound which breaks all layers of the skin or a serious injury. Sam kicks and punches Alex repeatedly which clearly shows he has the intention to cause serious injury. As Alex's ribs are broken this is enough for serious injury/GBH. Sam is liable.
- It is helpful to consider the actus reus before the mens rea and then reach a conclusion.
- Can gain full marks without the inclusion of intoxication.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the non-fatal offences against the person. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent application of legal rules and principles to Alex, Mark and Sam'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. • The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to non-fatal offences against the person. • Response is generally clear, detailed and developed.	[8-11 marks] • Good application of legal rules and principles to Alex, Mark and Sam's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person. • The legal argument is generally detailed, developed and persuasive.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to non-fatal offences against the person. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate application of legal rules and principles to Alex, Mark and Sam's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating non-fatal offences against the person. • The legal argument includes some detail which is developed in places.
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to non-fatal offences against the person. • Response includes minimal detail.	[1-3 marks] • Basic application of legal rules and principles to Alex, Mark and Sam's situation. • Basic presentation of a legal argument using minimal legal terminology relating to non-fatal offences against the person. • The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

6. Sarah has been suffering from depression since the birth of her daughter two years ago. In a bid to cheer herself up, she decides to host a party and invites lots of people, including her best friend, Lisa. As the night progresses, Lisa informs Sarah that she believes Sarah's husband, Tim is having an affair and is planning on leaving Sarah. Consumed by a mixture of anger, betrayal, and despair, Sarah confronts her husband Tim in the kitchen, and they have a heated argument during which Tim taunts Sarah, rubbing her emotions and dismissing her concerns. Unable to contain her rage any longer Sarah grabs a nearby frying pan and strikes Tim on the head, causing him to collapse to the ground. Sarah immediately calls the police and paramedics, but despite their efforts, Tim is pronounced dead at the scene. Sarah is subsequently arrested and charged with murder.

Advise Sarah as to whether she may have any defences to a charge of murder, applying your knowledge and understanding of legal rules and principles. [25]

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.

This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Sarah candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of homicide and defences

The response might consider issues such as:

- The elements of murder are:
- Actus reus – unlawful killing of a person in being under the King's peace (including factual and legal causation)
- Mens rea – intention to kill or cause GBH; direct, indirect intention
- Defences - to include:
- Partial defences- loss of control; diminished responsibility.
- Insanity
- Self defence
- Unlawful and dangerous act manslaughter

AO2

Candidates are expected to apply the full range of legal rules and principles to Sarah's situation, including murder, defences and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Actus reus – unlawful killing of a person in being under the King's peace (including factual and legal causation)
- Mens rea – intention to kill or cause GBH

- Unlawful: refers to the absence of a valid defence, so this can be deferred until after the offence elements are considered. It may be inferred from the scenario that Tim is a person (from the context and his actions) and it is under the King's peace (as there is no contrary indication).
- Killing: factual and legal causation – Tim is dead. But for Sarah hitting him on the head Tim would not have died. Factual causation is established. Sarah's actions are the sole cause of death, so her actions are operating and substantial, and more than minimal. White, Pagett, Kimsey, Smith
- Intention to kill or cause GBH: Sarah's actions are voluntary, but did she want Tim to die? Was she just protecting herself - Direct or indirect intent here?
- Oblique/indirect intent: May infer intent if Sarah's actions were virtually certain to cause death or serious injury to Tim, and Sarah foresaw this (Nedrick, Woollin). Students may answer this either way, but there is at least some doubt as to whether intent is established.
- Is there coincidence of actus reus and mens rea in Sarah's case (i.e. the application of the 'same transaction' principle)? Reference to Thabo Meli, Church, Le Brun
- Applying the actus reus of murder to Sarah'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 Sarah's case: the intention to kill or cause grievous bodily harm to Tim. Advice should include reference to both direct and oblique intention. Support may come from discussion of virtual certainty test: Woollin; Nedrick
- Is there coincidence of actus reus and mens rea in Sarah's case (i.e. the application of the 'same transaction' principle)? Reference to Thabo Meli, Church, Le Brun
- Partial defence of loss of control- s54 and s55 Coroners and Justice Act 2009. There must be a loss of control - s.54 does not have to be sudden. Although, the defence does not apply if it is an act of revenge. As seen in R v Hatter (2013), where the defendant had 'accidentally' stabbed his ex-girlfriend in the chest and wrist in the middle of the night. He was convicted of murder as there was no evidence that he had lost his control.
- Secondly, the loss of self-control had a qualifying trigger. Under s.55 the qualifying triggers could be a fear of serious violence from Tim to Sarah or things said and done, which are extremely grave in nature and Sarah has a justifiable sense of being wronged. As seen in R v Bowyer (2013), where the defendant went to the victim's house to burgle him but when the victim taunted him about his girlfriend being a prostitute, Bowyer lost his control and killed him. However, it was held that the defendant had no justifiable sense of being wronged thus, the defence was not available to him. The third element requires a reasonable person to have acted in the same way. S.54(i) gives the objective test to find whether a person of the defendant's sex and age, with an ordinary level of tolerance and self-restraint, and in similar circumstances, might have acted in a similar way to the defendant.
- Diminished responsibility: Coroners and Justice Act, 2009, s.52 – This must be proven by the defence that Sarah was suffering from diminished responsibility at the time of the offence on the balance of probabilities. There are three elements to diminished responsibility.
- The first element is whether Sarah is suffering from an abnormality of mental functioning which arose from a recognised medical condition. 'Abnormality' was defined in R v Byrne (1960) as "a state of mind so different from that of an ordinary person that the reasonable man would term it abnormal".

- The second element is whether the abnormality is caused by a recognised medical condition Sarah has depression, and this has been classed as a recognised medical condition as seen in the case of Seers.
- The third element is that Sarah's abnormality of mental functioning must have substantially impaired her ability to: understand the nature of her conduct; Or form a rational judgement; or exercise self-control. As seen in R v Golds (2014), where the defendant was convicted of murder as it could not be argued that there was substantial impairment to the defendant's ability to take responsibility. Effect of defence reduces murder to voluntary manslaughter.
- Candidates- may refer to insanity also, due to the depression- rules in M'Naghten (1843) The defence of insanity would require Sarah to prove that at the time of the offence she was labouring under such a defect of reason (R v Clarke) caused by a disease of the mind, that she did not know either the nature and quality of the act, or if she did not know it, that she did not know what she was doing was wrong. (R v Windle)
- Self-defence- R v Palmer (1971)- 2 questions- Did the D honestly believe that the use of force was necessary? (This is a subjective test).
- Did the D use a reasonable amount of force in the circumstances as he believed them to be? (An objective test with a subjective element, the jury will determine if the force is excessive).
- The test for reasonable force is also now found in S.76 of the Criminal Justice and Immigration Act 2008:
- Whether, on the facts as the D. believed them to be, a reasonable person would regard the force used as reasonable (i.e. proportionate) in self-defence?
- S.76 says: In deciding whether the force used is reasonable in the circumstances-That a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of necessary action; and
- That evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose. See cases of Read v Wastie Jury are not to use the 'jeweller's scales'; Palmer: "if there has been an attack so that the use of force to defend is necessary, it will be recognised that a person defending themselves cannot weight to a nicety the exact measure of his defensive action"
- S.76 allows for a person who is facing an attack, is under stress and cannot be expected to work out the exact amount of force needed in the circumstances. If there is evidence that the person 'honestly and instinctively' thought the level of force was reasonable to protect himself or another, or to prevent crime then this is strong evidence that the action taken was reasonable in the circumstances.
- Did Sarah use reasonable force? See Hussain and another (2010)
- However, if the force is used after all danger is over (e.g. out of revenge or retaliation) the defence is not available. If Sarah genuinely made a mistake as to the amount of force, then he is to be judged on the facts as SHE believed them to be, even if the mistake was unreasonable - Williams (Gladstone) case.
- What about a pre-emptive strike? Bird [1985] - Someone who fears an attack can (in certain circumstances) prepare to defend himself (even if those preparations involve breaches of the law) The main consideration is once again, honest belief. You must ask 'was the use of force necessary to ward off an attack'?
- If the answer is 'yes', then a pre-emptive attack does not preclude a D from relying on self-defence.
- Sarah believed that the use of force was necessary to ward off an attack from Tim. If Sarah is the aggressor, however, she will not be able to use the defence - R v Rashford (2005) and R v Keane [2010]. However, if the jury decides that excessive force has been used then Sarah cannot use self-defence as a defence.

R v Clegg (1995) and R v Martin (Anthony) (2002)

- Can D's characteristics be considered in deciding if she thought that she needed to defend herself? As seen in Martin (2002), his appeal was rejected by the Court of Appeal, they held that personality disorders could not be considered when considering the defence of self-defence. The decision in Martin was followed in Cairns (2005) where the court held that when deciding whether the defendant had used reasonable force in self-defence, it was not appropriate to consider whether the defendant was suffering from a psychiatric condition. The law in Martin and Cairns was upheld in Oye (2013)
- Is involuntary manslaughter applicable?
- The possible type of involuntary manslaughter which may be applicable here is unlawful act manslaughter
- Unlawful act manslaughter is when there has been an unlawful act, the act must be dangerous, and it must have caused the death. An unlawful act refers to a crime/criminal offence, there must be foresight of some harm to be dangerous - as seen in the case of JM and SM.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to homicide and defences. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent application of legal rules and principles to Sarah's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to homicide and defences. • The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to homicide and defences. • Response is generally clear, detailed and developed.	[8-11 marks] • Good application of legal rules and principles to Sarah's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to homicide and defences. • The legal argument is generally detailed, developed and persuasive.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to homicide and defences. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate application of legal rules and principles to Sarah's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to homicide and defences. • The legal argument includes some detail which is developed in places.
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to homicide and defences. • Response includes minimal detail.	[1-3 marks] • Basic application of legal rules and principles to Sarah's situation. • Basic presentation of a legal argument using minimal legal terminology relating to homicide and defences. • The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

Section D

Human Rights Law

7. Due to proposed changes to council policies regarding environmental regulations, Tesni, the leader of a group of environmental activists has organised a march to the council offices, to voice their concerns about the potential impact of the new policies on the environment. The march starts peacefully, with activists carrying placards, banners, and megaphones, passionately calling for immediate council intervention to combat the escalating climate crisis. Despite the peaceful nature of the demonstration, a counter-protest group forms nearby, made up of individuals who support the proposed policy changes. Some individuals from both sides become confrontational and begin to shout aggressive slogans at each other. Some of the protestors block traffic by sitting in the middle of the road and some chain themselves to lampposts. Concerned about public safety and the risk of the situation spiralling out of control, Inspector Jackson and his officers arrive on the scene to assess the situation and attempt to restore order. Inspector Jackson orders all the protestors to stop marching and to leave the area. Despite the police intervention the protestors continue to march. Fearing trouble, Inspector Jackson radios for reinforcements. Several police vans arrive filled with officers who impose a tight cordon around the marchers and keep them there for six hours.

Advise Tesni as to whether any public order offences have been committed in this situation, applying your knowledge and understanding of rules and principles. [25]

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.

This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Tesni candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to public order law.

The response might consider issues such as:

- Public Order Act 1986,
- Police, Crime Sentencing and Courts Act 2022
- Public Order Act 2023
- Provisions of Article 10, European Convention on Human Rights, right to freedom of expression, and Article 11 ECHR right to peaceful protest.

AO2

In advising Tesni candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of public order. Candidates are expected to apply the full range of legal rules and principles to Tesni's situation, including the Public Order Act 1986, the Police, Crime Sentencing and Courts Act 2022 and the Public Order Act 2023, and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Under S.11 of the POA 1986, Tesni, the organiser of a procession is required to give notice six clear days in advance stating the date of the procession, the start time, the proposed route and the name and address of at least one person organising it. The notice must be delivered by hand or by post to a police station in the area where the procession is to start. Failure to give notice is a summary offence punishable by a fine. It is not the case that organisers require permission from the police, nor do they have to wait for police permission before going ahead. Failure to give notice is an offence as above, but the procession is not illegal. Under S.13 the Chief Constable can apply to the district council to ban all processions of a particular type in the area for up to three months, subject to approval by the Home Secretary: organising or participating in a banned procession is a summary offence under S.13. Section 11 is one of the few sections of the POA 1986 which did not give the police a power to arrest, but since the SOCPA amendments to PACE 1984, S.24, the police have power to arrest for any offence.
- The police have power under S.12 of the POA 1986 to impose conditions on Tesni's 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".
- Section 12 has been amended by PCSC 2022 to add another trigger in the case of a "noisy protest"- noise generated having a significant impact by causing harassment, intimidation, alarm or distress to people in the area. the PCSC 2022 - examples of serious disruption include significant delay to the delivery of a time sensitive product; prolonged disruption of access to any essential goods or services. Has the march become 'noisy'?
- 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).
- Potential public order offences:
- Discussion of offences in sections 1 to 5 POA 1986
- The placards/ banners: s.5 of the 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 or hearing of a person

likely to be caused harassment, alarm or distress thereby (s.5(1)). This can include a police officer: DPP -v- Orum. Cases: DPP -v- Clarke; DPP -v- Fidler. 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.

- Section 1 and 2 POA 2023 - locking on and going equipped to lock on- chaining themselves to lampposts
- Section 6 POA 2023- obstructing major transport works - blocking traffic
- Once a procession comes to a standstill, it becomes an assembly, and the police may impose conditions under s.14. The triggers are identical to s.12 and the police can impose virtually any conditions they consider necessary. Candidates may speculate whether it has come to a standstill
- Discussion of breach of the peace; Austin -v- Metropolitan Police Commissioner (2007), the House of Lords held that the practice of confining demonstrators ("kettling") was lawful as an exercise of the power to impose conditions under s.14, even if the police did not have these in mind. There was no breach of Art.5: freedom of movement, where the confinement was only for the time necessary to prevent serious public disorder; if a cordon was maintained beyond this merely to punish the demonstrators, it would be a breach of Art.5; Laporte (2007).
Protestors held in Tesni's situation for 6 hours
- Obstruction of the highway- s.137 Highways Act 1980- blocking the road
- Obstruction of the police 0 Police Act 1996- refusing instructions from Inspector Jackson

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to public order law. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent application of legal rules and principles to Tesni's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to public order law. • The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to public order law. • Response is generally clear, detailed and developed.	[8-11 marks] • Good application of legal rules and principles to Tesni's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to public order law. • The legal argument is generally detailed, developed and persuasive.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to public order law. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate application of legal rules and principles to Tesni's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to public order law. • The legal argument includes some detail which is developed in places.
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to public order law. • Response includes minimal detail.	[1-3 marks] • Basic application of legal rules and principles to Tesni's situation. • Basic presentation of a legal argument using minimal legal terminology relating to public order law. • The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

8. A charity shop was having a 'buy one, get one free' sale. Ellie bought a jacket but could not find anything else in the shop which fitted her. The shop assistant pointed to a rack of clothes which was on display outside the shop and suggested that Ellie might like to take one of those. Ellie thanked her, and as she was leaving the shop she put a dress from the rack into her bag. This action was witnessed by the local police officer, PC Stone, who was appalled by what looked like a shameless theft from a charity shop. PC Stone ran after Ellie, grabbed her arm and snatched the bag, and marched Ellie to the nearby police station, where she was put straight into a cell. Eleven hours later Ellie was taken from the cell to have her fingerprints taken. Ellie took the opportunity to explain that the shop assistant had given her permission to take the dress, but the police said that she would have to remain in the cell until they could check her story. Ellie asked if she could phone her mother and speak to a solicitor but was told that she would have to wait until the police had completed their enquiries. After spending a total of 41 hours in police custody Ellie was told that the shop assistant had confirmed her story, and she was released without charge.

Advise Ellie as to the legality of the actions of the police, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Ellie candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to police powers.

The response might consider issues such as:

- Provisions of Article 5 & 6 European Convention on Human Rights, right to liberty and a fair trial the police powers to stop and search: reference may be made to ss 1-3 of the *Police and Criminal Evidence Act 1984* (PACE) and Code A of the Codes of Practice
- The police powers to arrest: section 24 of PACE as amended by section 110 of the Serious Organised Crime and Police Act 2005, section 28 of PACE and Code G of the Codes of Practice
- The rights of a suspect during detention: including sections 56, 57, 58 and 61 of PACE and Code C of the Codes of Practice
- The time limits and reviews of detention: sections 40-44 of PACE

AO2

Candidates are expected to apply the full range of legal rules and principles to Ellie, 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:

- In the case of the stop and search - reasonable suspicion to stop and search Ellie under Code A of the Codes of Practice should not be based on personal factors alone; requirements of a valid search: information given to Ellie under section 2 of PACE; the failure renders search invalid: Osman/ Bristol cases could be cited to support this requirement under section 3 of PACE to supply Ellie with a record of the stop and search
- In the case of the arrest Ellie should be advised that the police can arrest her; under s.24 of PACE as amended by section 110 of SOCPA 2005 provided that they reasonably suspect that an offence is about to be committed, is being committed, or has been committed. The power to arrest Ellie can only be exercised if the police have reasonable grounds to believe it is necessary under section 24(5) of PACE. Reasons include where the suspect's name cannot be readily ascertained or no satisfactory address has been given; where it is necessary to prevent the suspect causing injury to himself or another or suffering physical injury or causing loss or damage to property; to allow the prompt and effective investigation of the offence or the conduct of the suspect, or to prevent the investigation being hindered by his disappearance. At least the last two grounds would seem to apply in Ellie 's case. But query whether Ellie was validly arrested in view of the procedural requirement of S.28; DPP v Hawkins. and Code of Practices, Code G - the procedural requirements of a valid arrest including the fact Ellie is under arrest; also, the grounds for arrest (s.28) and that she should be cautioned
- In the case of the detention how Ellie should be treated in police custody: Code C. Her rights should be explained - Information to be given immediately by custody officer (s.36) (Code C para 3) – provision of written notice of right to have someone informed, right to legal advice and right to consult the Codes of Practice, and written notice of entitlement to visits, meals and conduct of interviews.
- the right to have someone informed of arrest: S.56 of PACE. and her right to legal advice: S.58 of PACE, and the circumstances when these rights can be withheld by the police and whether these apply to Ellie. Query whether Ellie would need an appropriate adult under S.57 PACE
- time limits: on detention: section 41 allows police to authorise detention up to 36 hours but further detention up to 96 hours requires authorisation by magistrates. Ellie 'detention should be reviewed after 6 hours and then every 9 hours thereafter by a review officer not involved in the case: section 40 of PACE. S.60-requirements for interview- did these take place?
- Potential remedies for Ellie – IOPC; sue for false imprisonment; trespass to the person; breaches of human rights, Arts 3, 5, 6

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] - Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. - Response is clear, detailed and fully developed.	[12-15 marks] - Excellent application of legal rules and principles to Ellie's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. - The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] - Good knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. - Response is generally clear, detailed and developed.	[8-11 marks] - Good application of legal rules and principles to Ellie's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. - The legal argument is generally detailed, developed and persuasive.
2	[3-4 marks] - Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. - Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Ellie's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. - The legal argument includes some detail which is developed in places.
1	[1-2 marks] - Basic knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. - Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Ellie's situation. - Basic presentation of a legal argument using minimal legal terminology relating to the legality of the actions of the police. - The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	