



GCE A LEVEL MARKING SCHEME

SUMMER 2025

**A LEVEL
LAW – COMPONENT 3
A150U30-1**

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.

GCE A LEVEL LAW
COMPONENT 3 – PERSPECTIVES OF SUBSTANTIVE LAW
SUMMER 2025 MARK SCHEME

Section A

Law of Contract

Either,

1	1
---	---

Analyse and evaluate the extent to which the rules on intention to create legal relations are in need of reform. [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 where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the essential requirements of a contract, focusing on the intention to create legal relations and whether this area of law is in need of reform. In order to reach a judgment about this issue, candidates will offer a debate and come to a substantiated judgment regarding the extent of the need for reform.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the law surrounding the intention to create legal relations and whether this should be reformed.

The response might consider issues such as:

- An explanation of the term intention to create legal relations, including its legal status.
- The need to shift out cases that are not appropriate for court action as there is no intention to be bound.
- The compromise established by the law concerning social and domestic arrangements and commercial and business contracts.
- The presumption that there is an intention to create legal relations in commercial and business contracts. *Edwards v Skyways (1964)*.
- Free gifts, by way of promoting a business, are likely to be binding *Esso Petroleum Ltd v Commissioners of Customs and Excise (1976)*.
- Similarly, a prize offered in a competition is also likely to be held as an intention to create legal relations as in the case of *McGowan v Radio Buxton (2001)*.

- This presumption in commercial and business contracts can be rebutted. For example, 'binding in honour only' clauses. *Rose v Frank Co v Crompton Bros* (1925).
- Also note the position of 'comfort letters' in *Kleinwort Benson v Malaysia Mining Corporation* (1989).
- The presumption that there is no intention to create legal relations in social and domestic contracts. *Balfour v Balfour* (1919).
- Such presumptions can be rebutted. For example, in social and domestic situations may result in a binding contract. *Errington v Errington Woods* (1952).
- The presumption can apply where parties have separated as in *Merritt v Merritt* (1970).
- Alternatively, the presumption may be rebutted where a third party is involved. *Simpkins v Pays* (1955).
- Friends agreeing to share winnings from gambling such as bingo and the lottery will depend upon the evidence that is available. See *Peck v Lateu* (1973) and *Wilson v Burnett* (2007)

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the need to reform the law on intention to create legal relations, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the essential requirements of a contract and whether the law on intention to create legal relations is in need of reform.

The response might consider issues such as:

- Does intention to create legal relations need to be a requirement of a valid contract? If a valid offer and acceptance has taken place - is this not sufficient for the formation of a contract?
- The rules try to provide certainty with the presumptions in both social and domestic and commercial and business contracts.
- The presumptions established in social and domestic and commercial and business contracts can be rebutted. This allows individual cases to be considered and prevents a too rigid approach.
- The determination to decide if the parties intended to create legal relations is an objective test. Thus, the courts are not concerned with the state of mind of the parties. Is this appropriate?
- However, there is not always a clear and obvious reason for rebuttals to take place. This has caused inconsistencies and confusion. Hence suggesting that reform is needed.
- Consider the two cases of *Hardwick v Johnson* (1978) and *Ellis v Chief Adjudication Officer* (1998). Here the social and domestic presumption was rebutted in the former case but not the latter, when the facts are very similar.
- Confusion can be seen in binding in honour only clauses and comfort letters. Neither have legal effect but what is the distinction between the two?
- The difference between social and domestic contracts and commercial and business contracts can be fine. Is there a 'halfway house' situation between domestic and commercial? See *Sadler v Reynolds* (2005).
- Consider the following cases *Coward v MIB* [1963] and *Albert v MIB* (1971).
- The above cases may suggest clearer rules are required by way of reform.

- A conclusion should make reference to the need, or a lack of need, to reform the rules on intention to create legal relations.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	8-10 marks • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to intention to create legal relations. • Response is clear, detailed and fully developed.	12-15 marks • Excellent analysis of legal rules, principles, concepts and issues relevant to intention to create legal relations. Analysis is detailed with an appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding intention to create legal relations, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	5-7 marks • Good knowledge and understanding of the English legal system and legal rules and principles relating to intention to create legal relations. • Response is generally clear, detailed and developed.	8-11 marks • Good analysis of legal rules, principles, concepts and issues relevant to intention to create legal relations. Analysis is generally detailed with an appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding intention to create legal relations. Including a valid judgement. • Good citation of supporting case law and legal authorities.

2	3-4 marks • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to intention to create legal relations. • Response includes some detail which is developed in places.	4-7 marks • Adequate analysis of legal rules, principles, concepts and issues relevant to intention to create legal relations. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding intention to create legal relations. Including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-2 marks • Basic knowledge and understanding of the English legal system and legal rules and principles relating to intention to create legal relations. • Response includes minimal detail.	1-3 marks • Basic analysis of legal rules, principles, concepts and issues relevant to intention to create legal relations. Analysis includes minimal detail. • Basic evaluation of the principles regarding intention to create legal relations. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Or,

1	2
---	---

‘The rules surrounding the communication of offer and acceptance are complex and uncertain’. Analyse and evaluate this statement.

[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 where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the regulation of the communication of offer and acceptance. Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the approach adopted by the common law, in clarifying the law on offer and acceptance. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the communication of offer and acceptance including relevant supporting case law. In order to reach a judgment about this issue, candidates will offer a debate and come to a substantiated judgment regarding the matter.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the communication of offer and acceptance.

The response might consider issues such as:

- Explain the difference between a bilateral offer and a unilateral offer **Carlill v Carbolic Smoke Ball Company**
- Explain the general rules for acceptance of a bilateral offer, that it must be unconditional and communicated, **Hyde v Wrench**
- Explain the postal rule of acceptance, acceptance being effective on posting, *Adams v Lindsell*.
- Explain the exceptions to the postal rule, offer made by instant means, mistake made in posting, postal rule excluded, **Holwell Securities v Hughes**
- Explain the rules of acceptance by instant means, that the acceptance takes effect on arrival subject to sound business practice.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the significance of offer and acceptance, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the law surrounding whether the law on the communication of offer and acceptance is complex and uncertain.

The response might consider issues such as:

- Analysis and evaluation of Issues concerning offer: well-established nature of the

- rules; established in response to specific cases; pragmatic in application; problems with distinction between offer, invitation to treat, statements of price; problems with adaptation to modern methods of communication.
- Issues concerning acceptance: strengths as above; problems with distinction between acceptance, requests for further information, counteroffer; problems with particular modes of acceptance – postal rule, and modern forms of electronic communication.
 - Suggestions for reform: proposals may concentrate on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications.
 - Relevant citation

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to whether the rules surrounding the communication of offer and acceptance are complex and uncertain. • Response is clear, detailed and fully developed	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to whether the rules surrounding the communication of offer and acceptance are complex and uncertain. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the significance of whether the rules surrounding the communication of offer and acceptance are complex and uncertain, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.

3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to whether the rules surrounding the communication of offer and acceptance are complex and uncertain. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to whether the rules surrounding the communication of offer and acceptance are complex and uncertain. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • • Good evaluation of the principles regarding whether the rules surrounding the communication of offer and acceptance are complex and uncertain, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to whether the rules surrounding the communication of offer and acceptance are complex and uncertain. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to whether the rules surrounding the communication of offer and acceptance are complex and uncertain. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding implied terms under the Consumer Rights Act 2015, including reference to a judgement. • Adequate citation of supporting case law and legal authorities
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to whether the rules surrounding the communication of offer and acceptance are complex and uncertain. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to whether the rules surrounding the communication of offer and acceptance are complex and uncertain. Analysis includes minimal detail. • Basic evaluation of the principles regarding whether the rules surrounding the communication of offer and acceptance are complex and uncertain. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Section B

Law of Tort

Either,

- | | |
|---|---|
| 1 | 3 |
|---|---|
- ‘The law of negligence has evolved through the Common Law and, as such, would benefit from reform and clarification.’ Analyse and evaluate this statement.** [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 where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the law of negligence, the English legal system and law of tort. For example, a response may include reference to duty of care, breach of the duty and foreseeable damage.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the law on negligence.

The response might consider issues such as:

- Definition of negligence – breach of a duty of care causing foreseeable loss or injury.
- The neighbour principle from *Donoghue v Stevenson* 1932. Lord Atkin’s speech about owing a duty of care to your neighbour.
- Development from *Caparo Industries Plc. v Dickman* 1990 into a 3-part test. (i) was the damage foreseeable – *Kent v Griffiths* 2000. (ii) was there a proximate relationship between claimant and defendant – *Bourhill v Young* 1943. (iii) is it fair, just and reasonable to impose a duty of care – *Mulcahy v Ministry of Defence* 1996.
- Consideration must be given to the cases of *Robinson v Chief Constable of West Yorkshire* (2018) and *Steel v NRAM* (2018) and the impact on a duty of care.
- Breach of a duty of care involves the standard expected of the reasonable man. *Blyth v Birmingham Waterworks* 1865.
- Tests to help establish if a breach has occurred (i) degree of probability that harm will be done – *Bolton v Stone* 1951. (ii) the magnitude of likely harm – *Paris v Stepney Borough Council* 1951. (iii) the cost and practicality of preventing the risk – *Latimer v ACE Ltd.* 1953.
- Potential benefits of the risk – *Daborn v Bath Tramways* 1946.
- Professional persons - the skill expected is that of a competent person in the profession concerned – *Bolam v Friern Hospital Management Committee* 1957.
- The third element of negligence is resulting foreseeable damage.
- Foreseeability ensures that the damage occurred as a result of the defendant’s breach.

- Causation – but for test. Barnett v Chelsea and Kensington Hospital management Committee 1968.
- Remoteness of damage – Wagon Mound No.1 1961.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the law of negligence including analysis and evaluation of relevant supporting case law. In order to reach a judgement about, candidates will offer a debate and come to a substantiated judgement regarding whether the law of negligence has developed into a set of consistent and fair rules for both claimants and defendants.

The response might consider issues such as:

- Although the case of Donoghue v Stevenson became the leading case on negligence for many years it had to be adapted to deal with life in a more modern age.
- For example, in Hedley Byrne & Co Ltd v Heller & Partners Ltd(1963) concerned a negligent statement rather than an act or omission. Therefore, the law needed further development to be fair to both claimant and defendant in these types of situations. This was achieved by the special relationship that had to be established between the parties.
- The rules had to be further developed by Caparo into a wider test based on foreseeability, proximity and considerations of fairness and justice.
- The third part of the Caparo tests is a policy test which tries to limit the extent of the tort of negligence. For example, in Mulcahy v Ministry of Defence the court would not impose a duty of care in a battlefield situation. The courts have been reluctant to impose a duty of care on public bodies. This is arguably fair on public body defendants otherwise they may be reluctant to carry out their duties for fear of being sued.
- Consider if the case of Robinson v Chief Constable of West Yorkshire (2018) has meant the Caparo tests are no longer needed.
- The objective test to establish if a duty has been breached is fair to a defendant as it involves an average standard, not a perfect one.
- The rule in Nettleship v Weston 1971 is fair on the claimant as the standard of care required is not the learner driver but a higher standard of a fully qualified and competent driver.
- There are a range of tests to help establish a breach of a duty of care. This guidance provides a set of fair rules to the claimant and defendant.
- The Bolam principle allows the average person carrying out the profession in question. This adaptation of the reasonable man can be seen to be fair to both parties. As for the claimants it allows an average standard only. However, it allows for the professional skill of the task concerned for the defendant.
- The same applies when children are involved. This is fair on the defendant as a different standard would be expected from an adult. Mullins v Richards 1998.
- The fact that the damage must be caused by the breach is fair to the defendant as it requires the damage to be caused through the defendant's breach.
- The remoteness test is fair to the defendant as they will only be responsible for foreseeable harm.
- Since Donoghue v Stevenson the law of negligence has required development to produce a set of rules that deal with modern day claims.
- The developments have tackled many of the problems that have arisen and have tried to develop a set of consistent and fair rules for both claimants and

- defendants.
- The impact of *Robinson v Chief Constable of West Yorkshire* (2018) and *Steel v NRAM* (2018) on the establishment of. The consequence on Caparo and new duty of situations. Caparo test doesn't have to be strictly applied in every case, instead the courts should apply existing statutes and precedents and identify duties through analogy.
 - Occupiers Liability Acts 1957 and 1984 have placed some of this law on a statutory footing.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles regarding the evolution of the law of negligence. • Response is clear, detailed and fully developed	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to the evolution of the law of negligence. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the evolution of the law of negligence, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles regarding the evolution of the law of negligence. • Response is generally clear, detailed and developed	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to regarding the evolution of the law of negligence. Analysis is generally detailed with an appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the evolution of the law of negligence, including a valid judgement. • Good citation of supporting case law and legal authorities.

2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles regarding the evolution of the law of negligence. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to the evolution of the law of negligence. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the evolution of the law of negligence, including reference to a judgement. • Adequate citation of supporting case law and legal authorities
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles regarding the evolution of the law of negligence. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to the evolution of the law of negligence. Analysis includes minimal detail. • Basic evaluation of the principles regarding a breach of a duty of care in negligence. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Or,

- | | |
|---|---|
| 1 | 4 |
|---|---|
- 'The defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants.' Analyse and evaluate this statement.** [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 where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including consent and contributory negligence, the English legal system and law of tort. For example, a response may include reference to the extent to which the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the defences of consent and contributory negligence

The response might consider issues such as:

- Define and explain defence of consent or *volenti non fit injuria*: Complete defence – although defendant been negligent and caused damage to claimant, claimant voluntarily exposed self to risk of harm ;claimant exercised free choice when accepting risk – *Smith v Baker*; Claimant understood exact nature of risk – *Shermer v Lawson*; Claimant voluntarily accepted risk – *ICI v Shatwell* ;Sporting context – injury to occur within rules of game – *Simms v Leigh RFC*; Medical context – patient to consent to all treatment and must be aware of risk in broad terms but emergency treatment may be exception *Re T*, *Chatterton v Gerson*, *Leigh v Gladstone*.
- Define and explain defence of contributory negligence: Partial defence under Law Reform (Contributory Negligence) Act 1945 reducing damages by extent to which claimant responsible for harm.
- When discussing contributory negligence by the claimant students should make the point that, unlike consent, this is a partial defence only, so that if any damages are awarded, they will be reduced by a proportionate amount to the finding of liability. Contributory negligence can be a failure to take care in addition to an overt act. It will attract a discount to damages where the extent of injury could have been less if reasonable care had been taken by the claimant. *Jones v Livox Quarries Ltd* [1952] 2 QB 608 would exemplify when the claimant did an act with inherent risk and the reduction in damages that resulted when injury occurred.
- *Froom v Butcher* [1975] 3 All ER 52 relating to not wearing a seat belt.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the defences of consent and contributory negligence are fair and effective, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law provides a fair and just outcome for both claimants and defendants.

The response might consider issues such as:

- Complete defence of consent can appear to favour defendant whereas contributory negligence encourages claimant to take personal responsibility
- Pre-1945 both defences were complete so contributory negligence had been unfair
- Strength of defences is aim of fairness
- Problem in that can lead to allegations of those causing harm avoiding obligations and so can be ineffective
- Potential confusion between defences which can make them ineffective
- Difficulty of succeeding under consent
- Perhaps apportionment policy as in contributory negligence fairer approach, however difficulties associated with apportioning blame led to questions whether contributory negligence does produce fairness and so is ineffective
- Evaluation surrounding the age of the claimant and what effect this will /will not have. E.g. Jackson v Murray [2015] UKSC 5 where a child was not careful in crossing the road, but the driver of the car that hit her was liable. Imprecise nature of judges apportioning damages
- Influence of policy
- Use of each defence
- Relevant citation.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.

3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants. Analysis includes minimal detail. • Basic evaluation of the principles regarding whether the defences of consent and contributory negligence provide a fair and just outcome for both claimants and defendants. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Section C

Criminal Law

Either,

- | | |
|---|---|
| 1 | 5 |
|---|---|
- 'The Crown Prosecution Service is not fit for purpose'. Analyse and evaluate this statement. [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 where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the history of the CPS, their role and the recent reforms.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the Crown Prosecution Service.

The response might consider issues such as:

- Background and reasons for the establishment of the CPS (e.g. Justice Report, Phillips Commission)
- Prosecution of Offences Act 1985.
- Role of the CPS within the criminal justice system:
 - Statutory Charging - Criminal Justice Act 2003.
- Taking the decision whether to prosecute; advising the police. Application of the Full Code Test – evidential test and public interest test. Relevant examples.
- Conducting prosecutions in the magistrates' courts and Crown Court.
 - Role of Crown Prosecutors and Crown Advocates.

AO3

Candidates will offer an analysis and evaluation of the relevant legal rules, principles, concepts and issues in order to discuss the extent to which the CPS is fit for purpose. In order to reach a judgement about these issues, candidates will offer a debate and come to a substantiated judgement regarding whether the CPS is fit for purpose with reference to issues such as their relationship with the police, the reforms and the role of the CPS Inspectorate.

The response might consider issues such as:

- Early problems and proposals for reform: Glidewell Report, Narey review.
- Major reforms: the Narey fast track system; establishment of Criminal Justice Units; closer collaboration with the police.
- Present structure of the CPS: 13 areas corresponding to police areas, each headed by a chief Crown Prosecutor.
- Roles of the Attorney
- General and Director of Public Prosecutions
- Recent reforms, e.g. full advocacy rights; CPS Direct; CPS has taken over charging in all but minor cases.
- Establishment of CPS Inspectorate.
- Evaluation: the importance of an independent prosecution service, whether the CPS has made the system fairer and more efficient.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to whether the CPS is fit for purpose. • Response is clear, detailed and fully developed	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to whether the CPS is fit for purpose. Analysis is detailed with an appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding whether the CPS is fit for purpose, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.

3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to whether the CPS is fit for purpose. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to whether the CPS is fit for purpose. Analysis is generally detailed with an appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding whether the CPS is fit for purpose, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to whether the CPS is fit for purpose. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to whether the CPS is fit for purpose. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding to whether the CPS is fit for purpose, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to whether the CPS is fit for purpose. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to whether the CPS is fit for purpose. Analysis includes minimal detail. • Basic evaluation of the principles regarding whether the CPS is fit for purpose. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Or,

- | | |
|---|---|
| 1 | 6 |
|---|---|
- 'The presumption of mens rea has been eroded by the application of the Gammon principles when it comes to offences of strict liability'. Analyse and evaluate this statement. [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 where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including elements of crime, the English legal system and criminal law, focusing on strict liability. For example, a response may include reference to the presumption of mens rea and the challenges for judges in determining if an offence is one of strict liability. A response may include references to the Gammon principles used by the courts in deciding whether Parliament intends an offence to be one of strict liability.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles used when deciding the law on strict liability.

The response might consider issues such as:

- Mens rea is usually required for criminal liability.
- The nature of strict liability.
- The distinction between strict and absolute liability.
- Support may come from *Larsonneur*, *Winzar*.
- How the courts determine whether an offence is intended by Parliament to be one of strict liability.
- the seriousness of the penalty – the more serious penalty, the less likely it is that Parliament intended the offence to be strict.
- The Gammon principles, with examples of case law such as *Callow v Tillstone*, *Sweet v Parsley*, *DPP v B (A minor)*, *Smedleys v Breed*, *LBC of Handsworth v Shah*, *Storkwain*, *Alphacell v Woodward*.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the rules used by the courts in deciding whether Parliament intends an offence to be one of strict liability. including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the rules used by the courts in deciding whether Parliament intends an offence to be one of strict liability.

The response might consider issues such as:

- Determining Parliament's intention – the subject matter of the statute; whether it relates to activities posing a risk of danger to the public, whether it places particular responsibilities on certain classes of person (*Cundy v Le Cocq*, *Pharmaceutical*)
- *Society of Great Britain v Storkwain*, *Harrow LBC v Shah*)
- Whether the offence relates to matters of general social concern e.g. the environment (*Alphacell v Woodward*). The seriousness of the offence; whether the offence carries a social stigma (*Sweet v Parsley*, *B v DPP*); whether the offence is "truly criminal" or merely regulatory.
- *Sweet v Parsley* represented a turning point in judicial attitudes in favour of the presumption of mens rea where an offence is "truly criminal" or carries a social stigma.
- The re-affirmation by the courts in recent years of the presumption that mens rea is required unless there is a necessary implication that Parliament intended the offence to be one of strict liability.
- Candidates are likely to evaluate the opinion given by Lord Scarman in *Gammon v A-G of Hong Kong*, setting out 5 principles: There is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence. The presumption is particularly strong where the offence is "truly criminal" in character.
- The presumption applies to statutory offences and can be displaced only if this is clearly or by necessary implication the effect of the statute.
- The only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern; public safety is such an issue. Even where a statute is concerned with such an issue, the presumption of mens rea stands, unless it can be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.
- *B v DPP*, where the requirement that the implication was necessary was reaffirmed by the House of Lords. Lord Nichols stated that "necessary" means "compellingly clear" *K* (2001), where Lord Steyn affirmed that it was not necessary for the wording to be ambiguous for the presumption to apply: the presumption supplements the text.
- The justifications for strict liability e.g., that it protects the public by imposing greater vigilance on those who undertake certain activities; that it assists and promotes the enforcement of the law. Countervailing arguments e.g., that it is futile and unjust.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the law on strict liability. • Response is clear, detailed and fully developed	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to the law on strict liability. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the law on strict liability, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to the law on strict liability. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to the law on strict liability. Analysis is generally detailed with an appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the law on strict liability, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the law on strict liability. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to the law on strict liability. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding to the law on strict liability, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to the law on strict liability. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to the law on strict liability. Analysis includes minimal detail. • Basic evaluation of the principles regarding the law on strict liability. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Section D

Human Rights Law Either,

- | | |
|---|---|
| 1 | 7 |
|---|---|
- Analyse and evaluate whether the law on breach of confidence adequately balances Articles 8 and 10 of the European Convention on Human Rights. [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 where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including defamation, the English legal system and human rights law. For example, a response may include reference to the qualified nature of articles 8 and 10, breach of confidence and the development of the law in this area.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the law on breach of confidence.

The response might consider issues such as:

- Summary of Articles 8 and 10 of the ECHR.
- Qualified nature of Article 8.
- Qualified nature of Article 10.
- No specific right to privacy in UK law: *Kaye v Robertson*.
- ECHR Art. 8 – right to private and family life.
- Elements of breach of confidence
- *Coco v Clarke*

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the law on breach of confidence, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the right to protection of private life against the right to freedom of expression in the context of breach of confidence.

The response might consider issues such as:

- analysis and evaluation of breach of confidence which has been developed
- breach of confidence, for example, Lord Woolf in *A v B and C*; Lord Goff in *A-G v Guardian Newspapers (No.2)*
- analysis and evaluation of the case of *Venables v News Group Newspaper*
- further examples of cases which illustrate the balance between the freedom of expression of the media and the individual's right to privacy e.g. *Prince Albert v Strange*; *Argyll v Argyll*; *Stephens v Avery*; *Douglas v Hello!* *Campbell v MGN* – Art 8 & Art 10 ECHR; *Venables and Thompson*
- Remedies: injunction.
- Development of “super injunctions” – cases such as *Ryan Giggs*. Analysis and evaluation of the recent use of “super injunctions” to protect the identity of the claimant.
- A reasoned judgment as to whether the law adequately balances articles 8 and 10.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to breach of confidence. • Response is clear, detailed and fully developed	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to breach of confidence. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding breach of confidence, Including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to breach of confidence. • Response is generally clear, detailed and developed	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to breach of confidence. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding breach of confidence, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to breach of confidence. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to breach of confidence. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding breach of confidence, including reference to a judgement. • Adequate citation of supporting case law and legal authorities
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to breach of confidence. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to breach of confidence. Analysis includes minimal detail. • Basic evaluation of the principles regarding defamation. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Or,

1	8
---	---

‘A British Bill of Rights is the only way to ensure the protection of human rights of people in the United Kingdom.’ Analyse and evaluate this statement.

[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 where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the public order law, the English legal system and human rights law. For example, a response may include reference to the history of the ECHR, impact of the HRA 1998 and current debates about its replacement with a British Bill of Rights.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the protection of human rights.

The response might consider issues such as:

- Scope of the **European Convention on Human Rights (ECHR)**. Residual rights - **Malone**
- **Human Rights Act 1998 (HRA)** incorporates the rights given in the **ECHR** into UK law, with a few exceptions
- The **HRA 1998** provides positive rights and not just residual liberties.
- Rights under the European Convention on Human Rights are directly enforceable in the UK without need to apply to the European Court of Human Rights in Strasbourg – **section 7**.
- **Section 6** imposes a duty on all public authorities, including the courts, to act in a way which is compatible with Convention rights.
- Section 2 imposes an obligation on the courts to account for Strasbourg jurisprudence.
- **Section 3** requires that all UK legislation must be interpreted in a way which is compatible with Convention rights so far as is possible to do so.
- The courts have no power to overrule or refuse to apply primary legislation if it proves impossible to interpret it in a way which is compatible with Convention rights.
- The higher courts have power to issue a declaration of incompatibility under **section 4**.
- **Section 10** provides a fast-track procedure whereby legislation which is not compatible can be amended.
- The government must include a statement that all proposed legislation is compatible
- with Convention rights, or state that it is not compatible but that the government intends to proceed with the Bill anyway – **section 19**.
- Credit for relevant citation for all above sections.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the impact of the Human Rights Act 1998 and whether this would be better protected by a British Bill of Rights. Candidates are expected to consider and debate the full range of issues and limits of the ECHR, including an analysis and evaluation of the impact of the Human Rights Act 1998 and the arguments for a British Bill of Rights. In order to reach a judgement about these issues, candidates will offer a debate and come to a substantiated judgement regarding the enduring appropriateness of the Human Rights Act 1998 and whether domestic human rights protection would be enhanced by the introduction of a Bill of Rights.

The response may include:

- Evaluation of each section of the HRA 1998 in terms of its impact, limitations and scope.
- Evaluation: **HRA 1998** reflects the limitations as the European Convention on Human Rights e.g., only really protects civil and political rights; doesn't provide the kinds of rights people need in today's society such as right to housing, income, etc.
- **Bill of Rights** – scope, formation, proposals.
- Evaluation: would it be better to have a **Bill of Rights**? Current debates.
- Only really protects people from actions of state and public authorities – the narrow scope of public authorities – today, the need for protection is often against powerful private institutions like the banks.
- The powers of the courts are circumscribed so that in the last analysis, the government is not constrained by the **HRA 1998**.
- Alternatively, the powers of the courts allow them too much scope to interfere with the will of democratically elected bodies.
- The **HRA 1998** cannot prevent any government from acting in violation of the rights it enshrines or even abolishing the **HRA 1998** itself.
- Reference to relevant legal authority/reports.
- A conclusion is expected, for instance, encouraging freedoms produces dangers of lawlessness, so controls are important. A healthy democracy needs to get the balance between the two correct. Public order legislation attempts to do this by preserving order but also support fundamental freedoms.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
4	[8-10 marks] • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the debate surrounding the British Bill of Rights. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to the debate surrounding the British Bill of Rights. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the debate surrounding the British Bill of Rights, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	[5-7 marks] • Good knowledge and understanding of the English legal system and legal rules and principles relating to the debate surrounding the British Bill of Rights. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to the debate surrounding the British Bill of Rights. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the debate surrounding the British Bill of Rights, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	[3-4 marks] • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the debate surrounding the British Bill of Rights. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to the debate surrounding the British Bill of Rights. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding to the debate surrounding the British Bill of Rights, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	[1-2 marks] • Basic knowledge and understanding of the English legal system and legal rules and principles relating to the debate surrounding the British Bill of Rights. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to the debate surrounding the British Bill of Rights. Analysis includes minimal detail. • Basic evaluation of the principles regarding the debate surrounding the British Bill of Rights. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	