



GCE A LEVEL MARKING SCHEME

SUMMER 2024

**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 2024 MARK SCHEME

Section A

Law of Contract

1	1
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Analyse and evaluate the fairness and consistency of the essential requirements of intention, consideration and privity of contract. [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 intention, consideration and privity in the law of contract and the English legal system. For example, a response may include reference to the rules, presumptions, cases and relevant legislation.

AO1

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 including relevant exceptions, the doctrine of promissory estoppels and the Contracts (Rights of Third Parties) Act 1999.

The response might consider issues such as:

- **Consideration:** This means that each party must give something in return for what is gained by the other party. It can be described in terms of benefit to the person making the promise and detriment to the person to whom the promise is being made.
- Consideration must be sufficient but not necessarily adequate *Thomas v Thomas* (1942).
- Rules of consideration, including past consideration is no consideration *Pinnel's case* (1602). The consideration must be given in return for the promise *Re McArdle* (1951).
- Performance of an existing contractual duty is not sufficient consideration, unless it goes beyond an existing duty or where there is an extra benefit *Williams v Roffey* (1991).
- Performance of a legal duty is not sufficient consideration *Glasbrook v Glamorgan CC* (1925).
- Part payment of a debt is not consideration *D v C Builders v Rees* (1965).
- Under the doctrine of promissory estoppel, a contract can be formed even where there is no consideration. A contracting party who promises not to enforce a contractual

right will not be able to enforce that right later if it is inequitable to do so *Central London Property Trust v High Trees House* (1947).

- **Intention to create legal relations.** In social and domestic arrangements generally, there is no intention to be legally bound *Balfour v Balfour* (1919). Contrast with the case of *Merritt v Merritt* (1970). However, in commercial and business agreements the general presumption is that there is intention to create legal relations *Esso Petroleum Co v Commissioners of Customs and Excise* (1976).
- Rebuttal of this presumption is possible *Errington v Errington Woods* [1952] or *Edwards v Skyways Ltd* (1969). Consideration of *Peck v Lateu* (1973) and *Wilson v Burnett* (2007).
- Intention can be negated by express wording, such as “subject to contract” *Confetti Records v Warner Music UK Ltd* (2003).
- **Privity of contract** has a basic rule that third parties cannot sue or be sued under a contract, even if they have an interest in its performance *Tweddle v Atkinson* (1861).
- There are common law exceptions to the general rule. Married Women’s Property Act 1882 allows the beneficiary to life insurance to enforce the terms even though they are not parties to the contract. Road Traffic Act 1988 requires all drivers to take-out third-party liability insurance. Restrictive covenants are clauses in land deeds between initial owners of property to not use the land in certain ways.
- Contracts (Rights of Third Parties) Act 1999 enables parties to enforce contractual terms even where they are not a party, provided (i) the contract expressly provides that they may do so; or (ii) the contract purports to confer a benefit upon them, unless the parties did not intend it to be enforceable *Nisshin Shipping v Cleaves* (2003).

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the essential requirements of a contract, 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 matters such as rules, exceptions and a lack of legal interference are fair and consistent.

The response might consider issues such as:

- **Consideration** - the fact that consideration must be sufficient but not adequate allows commercial arrangements to occur without legal interference *Thomas v Thomas* 1942. This case shows that the court supports the agreement made between the parties. This laissez faire approach helps provide certainty and consistency.
- It seems fair that an existing contractual duty does not constitute consideration *Williams v Roffey Bros* (1990).
- Fairness could be argued in the rule that past consideration is not consideration, and that the consideration must be given in return for the promise *Re McArdle* (1951). If allowing something that has already happened to be consideration, then it could open the floodgates of litigation.
- The doctrine of promissory estoppel stops someone going back on a promise that they made, even though that promise has been unsupported by consideration. Whether or not this is fair and consistent depends upon the interest of the different parties.
- **Intention** – This is assessed objectively as in how does it look to the reasonable outsider? This is a fair starting point. The presumptions in social/domestic and commercial situations provide fairness as they are certain and consistent. However, both situations can be rebutted by evidence. This allows for fairness in the flexibility where the terms of the arrangements suggest this should be the case. Alternatively, the possibility of rebuttal suggests that there are possible inconsistencies in similar situations. Rebuttals can also make an area more complex.
- Express wording, such as “subject to contract” allows negotiations in a commercial situation without the restrictions of legally binding the parties until they are ready. This

can be fair and allows business transactions to proceed. However, it can produce uncertainty and a party has to remember to use express terminology to secure their intention.

- **Privity of contract** means that only the parties to a contract should be able to sue or enforce their rights. Generally, this seems fair and provides consistency.
- There is some flexibility with common law exceptions, which have been established as the need has arisen. This again suggests the law can be fair. However, any flexibility could also produce inconsistency with changing the general rule. Exceptions can also make the area complex.
- Privity can also lead to unfair situations. Hence the changes introduced by the Contracts (Rights of Third Parties) Act 1999. It allows third parties to enforce the contract in certain circumstances. This allows fairness in appropriate situations.
- However, the Act is also open to criticism, as a contract can specifically exclude the application of the Act. In addition, the Act is unable to impose liabilities on a third party, from one viewpoint this seems fair because it is not right to impose a contractual obligation on a person who is not party to the contract and has not given consent. On the other hand, it can give that person a benefit of enforcing a contract to receive a benefit.
- Consideration of the 'holiday cases,' where fairness has arguably been provided for all members of a holiday party. This is because where loss of enjoyment, as a result of the holiday not meeting the specification, means that the holiday company can be liable for the loss incurred by all members of the holiday party *Jackson v Horizon Holidays* 1975.
- A conclusion is expected to comment on the fairness and consistency of intention, consideration and privity of contract.

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, consideration and privity of contract. - Response is clear, detailed and fully developed.	[12-15 marks] - Excellent analysis of legal rules, principles, concepts and issues relevant to intention, consideration and privity of contract. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. - Excellent evaluation of the principles regarding intention, consideration and privity of contract, 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, consideration and privity of contract. - Response is generally clear, detailed and developed.	[8-11 marks] - Good analysis of legal rules, principles, concepts and issues relevant to intention, consideration and privity of contract. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. - Good evaluation of the principles regarding intention, consideration and privity of contract 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, consideration and privity of contract. - Response includes some detail which is developed in places.	[4-7 marks] - Adequate analysis of legal rules, principles, concepts and issues relevant to intention, consideration and privity of contract. Analysis includes some detail with supporting evidence. - Adequate evaluation of the principles regarding intention, consideration and privity of contract, 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, consideration and privity of contract. - Response includes minimal detail.	[1-3 marks] - Basic analysis of legal rules, principles, concepts and issues relevant to intention, consideration and privity of contract. Analysis includes minimal detail. - Basic evaluation of the principles regarding intention, consideration and privity of contract. - Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Analyse and evaluate whether the implied terms under the Consumer Rights Act 2015, in a consumer contract for goods, have substantially improved the legal position of a consumer. [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 implied terms in a consumer contract for goods under the Consumer Rights Act 2015, the English legal system and law of contract. For example, a response may include reference to sections 9, 10 and 11 of the Consumer Rights Act 2015 and remedies for breach.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to implied terms of the Consumer Rights Act 2015.

The response might consider issues such as:

- Define consumer - an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.
- Define trader – a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another.
- Define an implied term - these are terms which the law says have to be included, irrespective of the wishes of the parties.
- The Consumer Rights Act 2015 contains implied terms with regard to contracts concerning the supply of goods including digital content.
- The following implied terms relate to contracts between a trader and a consumer for the supply of goods.
- **S.9** – of satisfactory quality, in other words not faulty or damaged. This is judged by what a reasonable person would consider satisfactory. This takes account of description, price and other relevant circumstances.
- **S.10** – fit for purpose, which means it should be fit for the purpose they are supplied for as well as any specific purpose made known to the trader *Baldry v Marshall* (1925).
- **S.11** – the goods must match the description, this means they must match any description, models or samples shown at the time of purchase. This includes the way the goods are packaged *Beale v Taylor* (1967).
- **S.20, S.23**: bringing a claim must be against the retailer, not the manufacturer.
- **S.20** – short term right to reject the goods. This gives the consumer a legal right to reject goods that are of unsatisfactory quality, unfit for purpose or not as described to get a full refund, but this is limited to within 30 days of purchase.
- **S.23** - provides one opportunity for the trader to repair or replace any goods if outside the 30 days.
- **S.24** - if the attempt to repair is unsuccessful, the consumer can then claim a refund or a price reduction.

- If a fault is discovered within six months of purchase, it is presumed to have been there since purchase, unless the retailer can prove otherwise.
- If the fault is discovered after six months, the burden is on the consumer to prove that the product was faulty at the time of delivery.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of implied terms under the Consumer Rights Act 2015, 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 contracts for goods and whether the Consumer Rights Act 2015 has substantially improved the legal position of a consumer.

The response might consider issues such as:

- The definition of consumer under the CRA is wider than previous definitions as it includes individuals who enter into a contract for a mixture of both private and business reasons. This could enable litigation under the consumer law where previously it would have been impossible. This is a substantial enhancement for a consumer.
- The definition of trader under the CRA sets out that traders remain liable when dealing through a third party. This is a substantial enhancement of a consumer's legal position as it allows litigation when otherwise it may not have been possible.
- The implied terms try to provide bargaining power to consumers against large powerful organisations.
- **S.9** concerns the standard that a reasonable person would consider, thus this objective test seems fair on both consumer and trader. It also seems appropriate that aspects such as description and price are considered. This is very similar to the law under the Sale of Goods Act 1979, so it can be said that the consumer's position is maintained rather than improved.
- **S.10** (fit for purpose) is also very similar to previous law. Whilst not enhancing the position of a consumer it does confirm the protection where a consumer is relying on the skill and judgement of the seller and has expressed a particular purpose for the goods.
- **S.11** is also similar to the previous position under the Sale of Goods Act 1979, so it again appears that the consumer's position is maintained.
- Rights and remedies available to a consumer appear to be improved under the CRA. **S.20** allows a reasonable period of 30 days for a consumer to reject the goods. This right empowers a consumer. It seems fair that a consumer must inform the trader if they are exercising this right and the consumer is not disadvantaged as a refund must be given without undue delay and within 14 days. Also, no fee can be deducted by the trader for making the refund. This favours the consumer.
- **S.23** provides for repair or an identical replacement for the consumer. The trader also bears any cost. However, if the cost is disproportionate to the trader, compared to an alternative remedy the consumer cannot compel the trader to repair or replace. Perhaps this is something placing fairness on a trader?
- **S.24** allows for a price reduction which provides a compromise for both trader and consumer. The trader only has one attempt to repair or replace, which protects the consumer against unnecessary time delay.
- The remedies under the CRA, for the consumer, are cumulative or sequential. This allows for a gradual enhancement of rights protecting the consumer's legal position.
- The CRA does not contain all the law in this area. For example, there is still the Consumer Protection Act 1987 in force in respect of dangerous goods.
- It could be argued that the CRA strengthens and aligns consumer remedies for substandard goods, thus enhancing their legal position.
- There is an argument that the remedies under the CRA are weaker than under previous legislation.

- The public are often unaware of their rights; those who are aware are unwilling or cannot finance the pursuing of them.
- A conclusion is expected to comment on whether or not the implied terms in the Consumer Rights Act 2015 have substantially improved the legal position of a consumer.

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 implied terms under the Consumer Rights Act 2015. - Response is clear, detailed and fully developed	[12-15 marks] - Excellent analysis of legal rules, principles, concepts and issues relevant to implied terms under the Consumer Rights Act 2015. 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 implied terms under the Consumer Rights Act 2015, 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 implied terms under the Consumer Rights Act 2015. - Response is generally clear, detailed and developed.	[8-11 marks] - Good analysis of legal rules, principles, concepts and issues relevant to implied terms under the Consumer Rights Act 2015. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. - Good evaluation of the principles regarding the significance of implied terms under the Consumer Rights Act 2015, 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 implied terms under the Consumer Rights Act 2015. - Response includes some detail which is developed in places.	[4-7 marks] - Adequate analysis of legal rules, principles, concepts and issues relevant to implied terms under the Consumer Rights Act 2015. 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 implied terms under the Consumer Rights Act 2015. - Response includes minimal detail.	[1-3 marks] - Basic analysis of legal rules, principles, concepts and issues relevant to the significance of implied terms under the Consumer Rights Act 2015. Analysis includes minimal detail. - Basic evaluation of the principles regarding implied terms under the Consumer Rights Act 2015. - Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

SECTION B

LAW OF TORT

1	3
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Analyse and evaluate the law surrounding breach of a duty of care in the tort of negligence. [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 breach of a duty of care, the English legal system and law of tort. For example, a response may include reference to the tests established to decide the existence of breach of a duty of care in the tort of negligence.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to a breach of a duty of care in the tort of negligence.

The response might consider issues such as:

- Define negligence – a breach of a duty of care that causes foreseeable loss or injury.
- After establishing a duty of care, owed by the defendant to the claimant, it must be proved, by the claimant, that the Defendant's breached this duty.
- Breach of a duty of care involves the standard expected from the reasonable man *Blyth v Birmingham Waterworks* (1865). In other words, 'Did the defendant fall below the standard of care expected of a reasonable man in the same circumstances.....' The reasonable man is expected to have ordinary levels of skill and knowledge.
- The characteristics of the defendant are not (usually) taken into account when deciding whether there has been a breach of duty. The Courts do not recognise any personal difficulties which might be encountered by the specific defendant *Nettleship v Weston* (1971).
- Where professional persons are involved, or a particular skill, then the skill expected is that of a competent person in the profession concerned *Bolam v Friern Hospital Management Committee* (1957).
- Where children are involved then the test is whether an ordinarily prudent and reasonable child of the same age as the defendant and in the defendant's, situation would have behaved the same way *Mullins v Richards* (1998).

- There are several tests to help establish if a breach has occurred (i) degree of probability that harm will be done. If there is a high risk of harm, then a reasonable man would be expected to take greater care *Bolton v Stone* (1951).
- (ii) The magnitude of likely harm. The court considers not only the risk of any harm but also the foreseeable level of seriousness of the injury. If the potential harm or injury is very serious, individuals and organisations must exercise considerable care to avoid liability for accidents *Paris v Stepney Borough Council* (1951).
- (iii) The cost and practicality of preventing the risk. The court will consider whether the defendant should have taken precautions against the risk. If the cost of taking precautions to eliminate the risk is completely disproportionate to the extent of the risk itself, the defendant will not be held liable *Latimer v AEC Ltd.* (1953).
- (iv) Finally, the potential benefits of the risk test. In some cases, the court has to weigh up whether there are some risks that have potential benefits for society *Daborn v Bath Tramways* (1946) or *Watt v Hertfordshire County Council* (1954).

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the development of a breach of a duty of care in the tort of negligence, 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 appropriateness of a claimant having to establish a breach of a duty of care in the tort of negligence.

The response might consider issues such as:

- The standard for proving breach of a duty of care is that of the reasonable man test. This provides an objective standard of the average person. Arguably this is a fair standard and one that the average person should be able to reach. However, it fails to consider subjective considerations relating to a defendant.
- The reasonable man test is not consistent as it is varied to a lower standard where children are involved. However, as it is of a reasonable child of the age of the defendant it could be fair on all parties.
- The Bolam principle allows for specialist knowledge in specific situations to be considered. This prevents defendants being expected to behave in a way they could never reach, where they do not have the specialist skills and expertise of a profession.
- There are tests to give guidance on how a reasonable person should behave and the level of care expected. This could produce consistency for all parties and provides guidance for the court.
- The requirement to prove a breach of a duty of care ensures negligence is a fault-based tort. Someone must be at fault in order to claim compensation. If no fault is established, no matter what the injury, no damages can be awarded. Is this fault element always appropriate?
- Proving fault to the standard required incurs costs. Medical evidence and/or expert evidence may need to be produced. This can cause issues if evidence is not available or if the costs preclude a claimant from bringing a claim.
- Proving fault can also cause potential delay in the settlement of a claim or decision from a court. Sometimes there are multiple parties involved and/or insurance companies all in dispute.
- Sometimes to help prove the case, lawyers are needed. This can increase costs and delay. No win no fee arrangements mean that the lawyer will have to be prepared to represent the claimant and that the chance of success is at a high level. If proving fault is not considered sufficiently likely there may be an issue finding a lawyer prepared to represent the parties.

- The adversarial system and proving fault could mean a stressful court case and confrontations between the parties.
- Establishing a breach of a duty of care is based on case law. This can be positive as there are precedents to provide guidance on the rules likely to be applied and therefore chances of success. However, sometimes unelected judges avoid precedents, and this can cause inconsistencies.
- Possible reform to the tort, and necessity to prove fault, could include compulsory insurance which pays out if an insured is injured. This occurs in America.
- Alternatively, a state-run system such as that in Canada's accidents at work scheme, which prevents the need to prove fault. This produces extra cost to an employer and could mean people are less safety conscience.
- New Zealand's no-fault system covers a wide range of injuries but has similar disadvantages to those in Canada.
- A final alternative could be an increased use of out of court settlements is possible which helps avoid costs and delays.
- Amateurs - Wells v Cooper. An amateur undertaking a task will be compared to a reasonably competent amateur, not a professional employed in the field of the task being completed.
- A conclusion is expected to summarise the law concerning breach of a duty of care in negligence.

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 a breach of a duty of care in negligence. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to a breach of a duty of care in negligence. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding a breach of a duty of care in 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 relating to a breach of a duty of care in negligence. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to a breach of a duty of care in negligence. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding a breach of a duty of care in 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 relating to a breach of a duty of care in negligence. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to a breach of a duty of care in negligence. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding a breach of a duty of care in 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 relating to a breach of a duty of care in negligence. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to a breach of a duty of care in 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.	

Analyse and evaluate whether the tort of Rylands v Fletcher is a no-fault tort and therefore easy to prove. [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 rule in Rylands v Fletcher, the English legal system and law of tort. For example, a response may include reference to the development of the tort in Rylands v Fletcher and to the common law.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the **tort of** Rylands v Fletcher.

The response might consider issues such as:

- This tort is where property is destroyed or damaged by something escaping from a neighbour's property.
- There may be comments from the case of Rylands v Fletcher 1868, about damage caused by escaping cattle, flooded mines or damage caused by escaping fumes and poisonous vapours.
- It is considered a no-fault tort and 4 elements must be established, namely (i) something must have been collected and kept on the land (ii) the use of the land must be non-natural (iii) the thing brought onto the land must be likely to do mischief if it escaped and (iv) the thing brought onto the land must have escaped and caused damage.
- Initially a claim could only be brought by the owner of the land or someone with a property interest in it.
- There has been development and consideration of the various aspects of the tort over the years.
- Non-natural use of the land - this has been developed by Rickards v Lothian 1913 and Transco PLC v Stockport Metropolitan Borough Council 2004.
- The following were held to be a natural use - a fire in a grate which spread to the claimant's premises, defective electrical wiring which caused a fire which spread to the claimant's premises and a domestic water supply.
- There must be an escape of something which causes harm as shown in Read v K Lyons and Co. 1947.

- More modern case law includes *LMS International Ltd. v Styrene Packaging and Insulation Ltd.* 2005 where storage of flammable items led to a recognisable risk.
- *Stannard (t/a Wyvern Tyres) v Gore* 2012, where storage of tyres did not present an exceptionally high risk of danger and tyre fitting was a natural use of the premises in an industrial estate.
- Defences are available, namely *volenti non fit injuria* or consent, act of a stranger - *Perry v Kendrick's Transport Ltd.* 1956.
- Other defences include an Act of God *Nichols v Marsland* 1876, statutory authority and contributory negligence where the claimant is partly responsible.
- As regards a remedy the claimant has to prove damage and the amount will be limited to the cost of repair or replacement.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues concerning the tort of *Rylands v Fletcher*, 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 nature of the tort's no-fault liability and if this makes it easier to prove.

The response might consider issues such as:

- This is a no-fault tort and so liability is strict. There is no necessity to prove fault by the defendant, who may be liable even if they had taken care to avoid the escape. This should mean that the tort is easier to prove.
- Whilst this is a no-fault tort, there are still the 4 elements that are required to be proved by the claimant. These are very specific and there have been numerous cases over the years that have developed and extended these requirements.
- Evolution of law and rules from 1868 may be entirely appropriate and allow for application of the law to a more modern age.
- Initially, unlike nuisance, there was no need for the harm to be foreseeable. However, *Cambridge Water Co. v Eastern Counties Leather PLC* (1994) directed that, like nuisance, the damage did have to be foreseeable. This requirement admits to the claimant's obligations in a case and could mean liability is difficult to prove.
- Liability under *Rylands v Fletcher* is now regarded as a nuisance. It is a form of strict liability in that defendant may be liable in the absence of any negligent conduct on their part. Hence it should be easier to prove, than a claim in the tort of negligence.
- The thing must be brought onto the land. If it is naturally present, there will be no liability. This would prevent liability being established as in the case of *Giles v Walker* (1890).
- Claims for personal injury cannot be proved using this tort. Negligence would be a possible tort, where fault must be proved.
- Also, non-natural use of the land must be shown, which again adds to the claimant's obligations, potentially making the tort difficult to prove.
- In addition, arguably what was a non-natural use of land 100 years ago may not be the same today. This could add to the claimant's difficulties. It can be difficult to prove a non-natural use of the land.
- There must be an escape from one property to an adjoining property, otherwise even if damage occurs no liability can be established *Read v Lyons and Co. Ltd.* (1947). A further requirement.

- The tort is described as strict liability, but many defences are available. They may mean the tort is difficult to prove.
- The Pearson Committee Report 1978 called for the rule in *Rylands v Fletcher* to be replaced with a statutory scheme for injuries suffered in hazardous activities and require those who engage in them to pay compensation on a strict liability basis. This could mean liability is easier to establish.
- It may be that the restrictions applied to the rule in *Rylands v Fletcher* will see the area of law being used less and less and alternative claims under the torts of nuisance and negligence being used instead.
- A conclusion is expected; perhaps along the lines of, despite being a tort of strict liability, other requirements can mean liability is not easy to prove a claim under *Rylands v Fletcher*.

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 tort of Rylands v Fletcher. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to the tort of Rylands v Fletcher. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the tort of Rylands v Fletcher, 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 tort of Rylands v Fletcher. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to the tort of Rylands v Fletcher. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the tort of Rylands v Fletcher, 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 tort of Rylands v Fletcher. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to the tort of Rylands v Fletcher. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the tort of Rylands v Fletcher, 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 the tort of Rylands v Fletcher. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to the tort of Rylands v Fletcher. Analysis includes minimal detail. • Basic evaluation of the principles regarding the tort of Rylands v Fletcher. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

SECTION C

CRIMINAL LAW

1	5
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Analyse and evaluate whether the law surrounding non-fatal offences against the person is a confused mixture of offences. [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 Offences Against the Person Act 1861, the English legal system and criminal law. For example, a response may include reference to the offences of assault, battery, ABH, GBH and S.18, and suggestions for reform from the Law Commission.

A01

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to non-fatal offences against the person.

The response might consider issues such as:

- There are several non-fatal offences against the person, namely assault, battery, S.47 ABH, S.20 GBH, S.18 GBH with intent.
- They are on a sliding scale of injury and punishment as the severity of the injury increases, so too does the seriousness of the offence and the punishment.
- Although there are two common law offences against the person, assault and battery, the main offences of ABH, GBH and GBH with intent, are contained in the Offences Against the Person Act 1861.
- Assault - Common law summary offence, charged under S.39 Criminal Justice Act 1988 and carries 6 months' imprisonment or fine.
- The actus reus involves an act which causes the victim to apprehend the infliction of immediate and unlawful force being used against them. It only needs to have caused apprehension; no force need actually be applied.
- Whilst the force needs to be immediate, this has been interpreted as imminent – *Smith v Chief Superintendent of Woking Police Station* (1983).
- The mens rea of assault is intention to cause someone to fear the immediate infliction of unlawful force or recklessness as to whether that fear is caused.

- Battery – is a common law summary offence charged under S.39 Criminal Justice Act 1988.
- The actus reus is application of unlawful force against the victim. The force can be just a touch *Collins v Wilcock* (1984).
- The mens rea of battery is an intention to apply unlawful physical force to someone or recklessness as to whether that force was applied.
- Assault occasioning actual bodily harm - S 47 Offences Against the Person Act 1861. An either way offence which carries 5 years in prison.
- The actus reus is an assault or battery which causes actual bodily harm. Actual bodily harm is any harm or injury that interferes with the health or comfort of the victim *R v Miller* (1954).
- The mens rea of battery is the same as for assault or battery.
- S.20 Offences Against the Person Act 1861 is an either way offence which has a sentence of 5 years in prison.
- The actus reus is a direct or indirect act or omission which causes wounding or the infliction or grievous bodily harm. Wounding is a cut or break in the whole skin *JCC v Eisenhower* (1983). Grievous bodily harm is serious harm *Saunders* (1985).
- The mens rea of S.20 is intention or subjective recklessness as to some harm which must be done maliciously.
- S.18 Offences Against the Person Act 1861 - is indictable only and carries a life sentence.
- *The actus reus* is wounding or causing grievous bodily harm. Definitions of these are same as for S.20.
- The mens rea of S.18 is intent to do some grievous bodily harm or resist or prevent the lawful apprehension or detention of any person (if any injury is caused whilst resisting arrest then can just prove recklessness in relation to this injury) *Morrison* (1989).

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 law on non-fatal offences needs to be reformed. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding whether non-fatal offences are a confused mixture of offences with reference to issues such as out of date law, inconsistent language, inconsistent punishment and issues over mens rea.

The response might consider issues such as

- The OAPA, represents a confused mixture of offences brought together from a wide variety of sources with no attempt, as the draftsman frankly acknowledged, to introduce consistency as to substance or as to form” (Prof JC Smith, 1991).
- Discussion of the OAPA 1861 as a consolidating statute, in need of modernisation.
- It is Victorian legislation from a very different age. Parliament has yet to update the law.
- One main area of concern is the antiquated language of the legislation. It is not in keeping with modern language use.
- Many of the words used to define non-fatal offences have been criticised as out-of-date and ambiguous. For example, assault is commonly understood to involve some kind of physical attack, whereas it is technically defined as causing a victim to apprehend

some form of attack. There are also problems with the use of the word 'maliciously' under S.18 and S.20.

- The offence of battery is also misleading, insofar as there is no need for there to be any injury. For a S.47 offence, it is known as an assault occasioning actual bodily harm, but in the vast majority of cases, the assault is actually battery.
- There are inconsistencies in the use of language with 'inflict' in S.20 and 'occasion' in S.47.
- The word 'wounding' is not set out in the Act and case law has provided that it means breaking both layers of the skin. This means that a person, in theory, can be charged under S.20 or S.18 for wounding by merely pricking their victim's finger with a pin.
- Sentencing anomalies is a further issue with this area of law. The maximum sentence for assault or battery is 6 months' imprisonment. An ABH offence under S.47 receives a custodial sentence of up to 5 years. The only real difference between the offences is the ABH caused. According to case law, this can mean as little as causing discomfort to the victim (Miller).
- Grievous bodily harm under S.20 is a much more serious offence than actual bodily harm, yet the maximum sentence for each offence is 5 years.
- The only significant difference between S.20 and S.18 is arguably a slightly more serious mens rea under S.18, yet the maximum sentence leaps from 5 years for S.20 to life for S.18. This can perhaps be justified by the fact that a defendant who intends to cause GBH within S.18 has the mens rea for murder (Vickers), and it is merely chance that dictates whether the victim survives or dies.
- Discussion of the difficulties with the mens rea element – intention or recklessness for all offences apart from S.18. A person is liable under S.47 where there is only intention or recklessness as to an assault or battery (Roberts, Savage). Similarly for S.20 a defendant is liable where there is only intention or recklessness as to some harm, (Mowatt). This has been criticised as failing to match the punishment to the ability of the defendant and is therefore unjust. Criminal liability should depend on, and indeed reflect, the amount of fault, i.e., mens rea, possessed by the defendant.
- With plea bargaining, it is quite common for a person to be charged with a lesser offence than the one that they have committed. The prosecution may also charge the defendant with a lesser offence if they will agree to a guilty plea.
- The arrest element of S.18 is a confusing concept, which allows a defendant to be charged with GBH when they have caused GBH whilst intentionally resisting arrest.
- The 'breaking of the skin' element of S.20 is arguably a lesser degree of harm than a 'serious' ABH.
- Definitions of the offences are a confusing mixture of common law and statute, surely it is appropriate for definitions to be codified in an Act of Parliament?
- The Law Commission produced 'Offences Against the Person and General Principles' in 1993. This report re-drafted the non-fatal offences and criticised the current offences. Their three main criticisms of the current law being (i) complicated, obscure and old-fashioned language (ii) complicated and technical structure and (iii) complete unintelligibility to the layman.
- The draft Criminal Law Bill 1998 was based upon the Law Commission Report of 1993. It has yet to be enacted and the courts are still relying upon the OAPA 1861.
- The following proposals were made:
- statutory definitions are provided for assault and battery.

- S.47 is replaced by the offence of intentionally or recklessly causing injury to another person with a maximum sentence of 5 years. There is no requirement to prove an assault or battery. Injury includes physical and mental injury.
- S.20 and 18 are replaced by separate offences – recklessly causing serious harm to another (max 7 years) and intentionally causing serious harm to another (max life). There is no longer a reference to wounding. The troublesome word 'inflict' is removed along with 'caused.'
- The issue of constructive intent is therefore removed. Accordingly, a defendant will only be convicted under the new S.47 if they had intention or recklessness as to injury, as opposed to assault or battery as it currently stands. Intention and recklessness are also defined in the draft Bill.
- A conclusion is required, perhaps along the lines of non-fatal offences are indeed a confused mixture of offences and this is recognised by the courts and reform bodies. However, it is up to Parliament to amend the law and they have not felt it appropriate to do so.

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 non-fatal offences against the person. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to the law on non-fatal offences against the person. 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 non-fatal offences against the person, 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 non-fatal offences against the person. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to the law on non-fatal offences against the person. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the law on non-fatal offences against the person, 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 non-fatal offences against the person. • 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 non-fatal offences against the person. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the law on non-fatal offences against the person, 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 non-fatal offences against the person. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to the law on non-fatal offences against the person. Analysis includes minimal detail. • Basic evaluation of the principles regarding the law on non-fatal offences against the person. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Analyse and evaluate whether the law on bail strikes a balance between the liberty of a suspect and the safety of society. [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 bail, the English legal system and criminal law. For example, a response may include reference to the law on both police and court bail, S.4 Bail Act 1976 presumption and subsequent bail provisions.

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 bail.

The response might consider issues such as:

- Bail means a release from custody pending the next stage of the case. Both the police and the courts can grant bail. When granting bail (with or without conditions) the police can decide to grant a person one of the following:
 - bail under section 30A of PACE to attend a police station (street bail).
 - pre-charge bail under section 37 of PACE for a charging decision to be made.
 - bail under section 34(5) of PACE for further investigation.
 - bail post-charge under section 38(1) of PACE.
- Prior to charge under the Policing and Crime Act 2017, bail was restricted to 28 days maximum. This time restriction resulted in many suspects being released without any form of bail or monitoring and became known as RUI or released under investigation.
- This was amended by the Police, Crime, Sentencing and Courts Act 2022 which encourages the police to use pre-charge bail in every case where it is necessary and proportionate by removing the perceived presumption against pre-charge bail.
- There are circumstances in which police bail may be refused: They include where the custody officer has reasonable grounds to believe that the name or address given by the suspect may not be genuine, where the custody officer has reasonable grounds to believe that the suspect will commit further offences, interfere with witnesses or the administration of justice, where detention is necessary for the suspect's own protection or for the protection of others. Also, where the charge is murder Coroners and Justice Act 2009.
- Court bail is governed by the Bail Act 1976, and S.4 which contains a presumption of entitlement to bail. There are factors under Schedule 1(9) that a court must take into account when considering bail. These are (i) the nature and seriousness of the offence

- (ii) the character, past record, associations and community ties of the defendant (iii) the defendant's past record of surrendering to bail and (iv) the strength of the evidence against them.
- Bail may not be granted if there are substantial grounds to believe that the defendant would (i) commit further offences while on bail, (ii) fail to surrender to bail, (iii) interfere with witnesses or otherwise obstruct the course of justice, or (iv) the suspect needs to be kept in custody for their own protection.
- Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 bail may also be refused if there are substantial grounds to believe that the defendant would, if released, commit an offence against an 'associated person' in a domestic violence case.
- Under the Bail Act 1976 and the Criminal Justice and Public Order Act 1984 conditions can be placed on both police and court bail. Examples include curfew, electronic tagging, surrendering of passport, residing at a bail hostel and reporting to a police station at regular intervals.
- Examples of cases involving conditioning bail include Dave Lee Travis with a residence condition and Ryan Cleary whose conditions included a curfew, electronic tag and only leaving his home when accompanied by his parents.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the law on bail places the correct emphasis on the presumption of innocent until proven guilty and the need to protect society from dangerous individuals, 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 on bail strikes a balance between the suspect person and the safety of society.

The response might consider issues such as:

- Bail is in line with Article 5 ECHR the right to liberty and security.
- Police bail prior to charge was restricted to 28 days (Policing and Crime Act 2017) and this seems to prioritise the suspect person's freedom. The police response to this limited period was to release the suspect under investigation (RUI) so there was no time limit on their investigations. However, this meant there were no restrictions on a suspect such as bail conditions. Such people could be suspected of serious offences such as GBH, aggravated burglary, sex crimes and domestic abuse. This does not protect society. Examples of cases such as Kay Richardson, who was killed in 2018 by her husband who was released under investigation.
- The Police, Crime, Sentencing and Courts Act 2022, has arguably changed the law to protect society. The Act introduces new pre-charge bail time periods for suspects, which are more balanced and proportionate. Victims will be better protected through a new requirement to seek the views of victims on pre-charge bail conditions relating to their safeguarding. Such changes focus on safeguarding society.
- The Act establishes a neutral position within the legislation, by removing the presumption against pre-charge bail. This is designed to encourage its use when necessary and proportionate to do so, based on each case's individual circumstances and the list of risk factors now set out in legislation. Custody officers, who are independent of investigations, will be able to authorise the first period of pre-charge bail to a period of three months in standard police cases.
- Street bail considers the suspect person as they are not deprived of their liberty by the necessity of attending a police station to then be granted bail. It also frees up a police officer to enable them to continue protecting society.

- The presumption of bail under S.4 Bail Act 1976 favours the liberty of the suspect person.
- The factors that must be considered by a court under Schedule 1(9) can be said to strike a balance between the liberty of the suspect person and protection of society.
- The fact that conditions can be added to both police and court bail is an example of this area of law trying to strike a balance and allow a person their liberty whilst safeguarding against interfering with an investigation or harming the public.
- Modification of the general presumption in favour of bail, e.g. bail can only be granted in exceptional circumstances where the defendant is charged with murder, manslaughter or rape, or where previously charged with a specified serious offence or where the offence was committed while already on bail (Criminal Justice and Public Order Act 1994 S.25 as amended by Crime and Disorder Act 1998). Such restrictions can be said to protect society.
- The right of the prosecution to appeal against grant of bail, Bail Amendment Act 1993 favours the protection and safety of society.
- To ensure the protection and safety of society the law allows for the power to arrest for breach of bail conditions.
- S.90 LASPO Act 2012 introduced the 'no real prospect test' where the power of the court to refuse bail is restricted if it appears that there is no real prospect that the defendant would receive a custodial sentence. This appears to uphold the suspect person's liberty.
- Bail bandit cases of such as Hogans and Weddell may be considered to help with evaluation.
- A conclusion is expected with a final comment on the set question.

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 bail. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to the law on bail. 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 bail, 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 bail. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to the law on bail. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding to the law on bail, 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 bail. • 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 bail. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding to the law on bail, 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 bail. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to the law on bail. Analysis includes minimal detail. • Basic evaluation of the principles regarding the law on bail. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

SECTION D

HUMAN RIGHTS LAW

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Analyse and evaluate whether the law on defamation adequately protects freedom of expression under article 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 slander, libel, Article 10 ECHR and the Defamation Act 2013.

AO1

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

The response might consider issues such as:

- Defamation involves a claimant attempting to protect their reputation against the right of a defendant to have freedom of expression.
- Article 10 ECHR is the right to freedom of expression. It is a qualified right which means it can be interfered with in certain conditions such as the rights of others or for reasons of national security.
- There are two parts to defamation, slander where it is a non-permanent form and libel, the permanent form.
- Under S.11 Defamation Act 2013 cases are tried without a jury unless a court orders otherwise. A judge will therefore decide the outcome and remedy, which is usually damages but can also be an injunction.
- To establish defamation the following must be proved, a statement must (i) be defamatory, (ii) refer to the claimant or be taken to refer to them, (iii) have been published and (iv) publication of the statement must cause or be likely to cause serious harm to the claimant.
- A defamatory statement would tend to lower the claimant in the estimation of right-thinking members of society *Sim v Stretch* (1936). Or has the claimant's statement so adversely affected the defendant's reputation or put it at risk.
- This will include asking if an ordinary reasonable person avoid the claimant or think that they lack the ability to do their job properly or treat them as a figure of fun.

- Examples include a suggestion that someone famous was deceiving the public and was therefore a liar and being hypercritical – *Jason Donovan v The Face* (1998) and calling an actor hideous-looking and comparing them to Frankenstein’s monster, hence making them an object of ridicule - *Berkoff v Burchell* (1996).
- No loss or damage needs to be proved.
- Implied criticism, or an innuendo, can be defamatory *Tolley v JS Fry and Sons Ltd* (1931).
- S.1(1) Defamation Act 2013 introduced a requirement that the defamatory statement must have caused, or be likely to cause, serious damage to the claimant’s reputation.
- The statement must refer to the claimant or by taken to refer to them.
- A defamatory statement may be made about a group of people *Riches v News Group* (1986), but not about an overly large group.
- The statement must have been published which means passed from the defendant to another person other than the claimant or the defendant’s spouse. Typically, this involves newspapers, magazines and television.
- There are several defences that can be used in a defamation action. These include the truth, honest opinion, responsible publication on a matter of public importance and absolute and qualified privilege.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the law on defamation, 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 reputation against the right to freedom of expression.

The response might consider issues such as:

- Proving something is a defamatory statement involves the view of right-thinking members of society. This is a fair and objective test. It excludes the claimant’s friends and family so provides an independent element.
- Defamation is not about how it makes a person feel but the impression it gives to an ordinary reasonable person about the claimant. This could seem unfair to the claimant.
- No loss or damage actually needs to be proved, which could seem unfair on a defendant.
- Right-thinking members of society would also be law abiding. *Byrne v Deane* (1937). To hold otherwise would be contrary to the law.
- S.1(1) Defamation Act 2013 and the requirement that the defamatory statement must have caused, or be likely to cause, serious damage to the claimant’s reputation ensures that claims are not trivial and helps to protect freedom of expression.
- Liability can often be avoided by the publication of a swift apology *Cooke and Another v MGN Ltd* (2014). However, the damage may have already been done.
- A defamatory statement may be made about a group of people but not about an overly large group. There is no indication about a specific number of people which would result in an unsuccessful claim. This makes the law uncertain.
- The law on defamation could seem contrary to Article 10 ECHR, which provides that everyone has a right to freedom of expression. This includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities.
- Article 10(2) contains the restriction on this freedom and includes, inter alia, for the protection of the reputation or rights of others. This could coincide with aim and focus of defamation. However, it can be thought to be a restriction on the freedom of the press, something crucial in a democracy.

- Restrictions must also be prescribed by law, be for the protection of a legitimate interest, be necessary in a democratic society and proportionate to the aim pursued.
- The defences for defamation seem to accord with Article 10. They seem to balance the freedom of expression against the protection of reputation.
- Absolute privilege provides an absolute defence in circumstances where freedom of expression is of the essence, for example in cases of Members of Parliament.
- Some form of conclusion is expected, for example, both areas try to work in harmony providing respect for a person's reputation whilst trying to maintain appropriate freedom of expression.

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 defamation. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to defamation. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding defamation, 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 defamation. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to defamation. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding defamation, 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 defamation. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to defamation. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding defamation, 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 defamation. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to defamation. 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.	

Analyse and evaluate whether the law on public order upholds freedom of assembly and association. [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 various sections in the Public Order Act 1986, as amended and Article 11 ECHR.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to public order law and the right to freedom of assembly and association.

The response might consider issues such as:

- Article 11 ECHR provides for freedom of assembly and association. However, this is subject to restrictions provided by law which are in the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals or for the protection of rights and freedoms of others.
- Article 11 places both negative and positive obligations on the police. The police must not prevent or restrict peaceful protest except to the extent allowed by Art 11 ECHR.
- *Beattie v Gilbanks* (1882) is an early indication that the courts are willing to uphold the right to protest, when it confirmed that marchers acting peacefully and lawfully should not be prevented.
- The Public Order Act 1986 (POA) established new offences, namely riot (S.1), violent disorder (S.2), affray (S.3), threatening behaviour (S.4), fear or provocation of violence (S.4), intentional harassment, alarm or distress (S.4A), harassment, alarm or distress or disorderly behaviour (S.5).
- The POA does not enact any positive rights to demonstrate but has various measures to maintain control of order. S.11 places various duties on the organiser of a march. This includes 6 days notice of a procession to support/oppose the views of a person/group, to publicise a cause/campaign or to mark an event. The notice must contain certain information relating to time, date and route. It is an offence not to give this notice or to deviate from it.
- S.12 POA gives the police power to impose conditions on marches/processions regarding time and place if they think it may result in one of the following triggers (i) serious public disorder (ii) serious damage to property (iii) serious disruption to the life of a community (iv) a belief in the presence of intimidation or coercion. It would be an offence to break a condition. The police can also invoke conditions, as they see fit, to deal with a situation.
- S.13 allows an application by the police, for the local authority, with the consent of the Home Secretary, to impose a blanket ban on marches. This can apply if it is thought

that serious public disorder would result. The ban can be very wide and cover all marches within the time period and area stated even peaceful marches and can last for up to 3 months. It is an offence to organise a march knowing of a ban.

- S.16 defines an assembly as 2 or more persons in a public place which is wholly or partly in the open air.
- S.14 gives police power to impose conditions on static assemblies/meetings held wholly or partly in the open air, where 2 or more people are present. The same S.12 triggers apply. The conditions can be in advance or at the time of the assembly. Conditions may relate to place, duration and maximum number of people. Those who fail to comply with the conditions can be arrested.
- The Police, Crime, Sentencing and Courts Act 2022 strengthens the police's power to tackle disruptive protests and protect the public by increasing the range of conditions police can impose on public assemblies, increasing the sentences for obstructing a highway and introducing new conditions police can set based on the noise generated by protests.
- The 2022 Act widens the range of conditions that the police can impose on public assemblies to match powers to impose conditions on public processions.

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the arguments surrounding the right to freedom of assembly and the restrictions placed upon it, 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 whether the law on public order upholds the freedom of assembly and association or restrictions it.

The response may include:

- Article 11 ECHR is a qualified right, and it provides for certain restrictions to be placed on freedom of assembly and association, this is necessary in a democratic society. Should the POA be criticised for doing something that the article itself permits? Or are the restrictions too much of an infringement?
- Does the POA unnecessary, provide too much power to the police and limit freedoms?
- The POA tries to produce exemptions, where appropriate, to ease the controls. A S.11 notice is not required where it is 'not practical' to give such notice. In addition, there is a defence for an organiser if they (a) did not suspect a deviation had occurred or (b) if it was beyond their control. This demonstrates an appreciation that the legislative control cannot always be adhered to. However, this aspect of 'not practical' to give notice can also cause uncertainty and confusion.
- The courts have interpreted the S.12 triggers strictly, confirming their words should not be diluted, Reed (1987), Where shouting, raised arms and waving of fingers was not intimidation.
- A S.13 blanket ban on marches is very far reaching and can cover all marches within the time period and area stated even peaceful marches and can last for up to 3 months.
- No notice is required for a S.14 meeting/assembly, allowing for greater flexibility for those organising a meeting as opposed to a march.
- The courts are not always willing to support the police in imposing conditions as seen in R v Baillie (1995), where the police did not know sufficient information about a meeting to justify imposing conditions.
- Are the provisions of the POA too restrictive? Consider duration and extent of conditions.
- Does the right to impose conditions at the time of a march or meeting allow for public safety to be maintained or provide a further opportunity for restricting freedoms?
- The police have a positive duty to take all steps necessary to protect the public and prevent a breach of the peace Michael v Chief Constable of South Wales Police [2015].

- The police are therefore compelled to exercise their powers in a balanced and proportionate way.
- The courts are the forum for dispute as to whether the powers used are proportionate and have shown they do not always support the police in imposing controls.
- The Police, Crime, Sentencing and Courts Act 2022 has strengthened police powers which could be seen as weakening the right to freedom of assembly and association. For instance, it broadens the range of circumstances in which police may impose conditions on protests, including a single person protest, to include where noise may cause a significant impact on those in the vicinity or serious disruption to the running of an organisation.
- 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 Public Order Act 1986. • Response is clear, detailed and fully developed.	[12-15 marks] • Excellent analysis of legal rules, principles, concepts and issues relevant to the Public Order Act 1986. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the Public Order Act 1986, 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 Public Order Act 1986. • Response is generally clear, detailed and developed.	[8-11 marks] • Good analysis of legal rules, principles, concepts and issues relevant to the Public Order Act 1986. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the Public Order Act 1986, 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 Public Order Act 1986. • Response includes some detail which is developed in places.	[4-7 marks] • Adequate analysis of legal rules, principles, concepts and issues relevant to the Public Order Act 1986. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding to the Public Order Act 1986, 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 Public Order Act 1986. • Response includes minimal detail.	[1-3 marks] • Basic analysis of legal rules, principles, concepts and issues relevant to the Public Order Act 1986. Analysis includes minimal detail. • Basic evaluation of the principles regarding the Public Order Act 1986. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	