



GCE A LEVEL MARKING SCHEME

SUMMER 2023

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

INTRODUCTION

This marking scheme was used by WJEC for the 2023 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

It is hoped that this information will be of assistance to centres but it is recognised at the same time that, without the benefit of participation in the examiners' conference, teachers may have different views on certain matters of detail or interpretation.

WJEC regrets that it cannot enter into any discussion or correspondence about this marking scheme.

EDUQAS GCE A LEVEL LAW
COMPONENT 2: SUBSTANTIVE LAW IN PRACTICE
SUMMER 2023 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 2

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

The structure of the mark scheme

The mark scheme for each question has two parts:

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

Stage 1 - Deciding on the band

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

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

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

Stage 2 - Deciding on the mark

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

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

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

SECTION A

Law of Contract

Either,

0 1 Ashee entered into a contract with Better Boilers Limited for them to install a new boiler in his home. Ashee had used the same company 10 years ago when he first moved into his house. Better Boilers Limited installed the boiler and on the way out of Ashee's house handed him some paperwork saying, 'This is the official stuff for you to read'. Unknown to Ashee the paperwork contained the following clause, "All faults from the installation must be reported within 24 hours after which time liability for any breach of contract is limited to £60." Ashee did not read the paperwork, nor check the boiler because he left his home straight away to go away for the weekend. Upon his return, two days later, Ashee saw that the boiler was leaking water and a warning light was flashing. The leak had ruined the flooring causing £500 worth of damage. Ashee realised that the boiler was faulty. He contacted Better Boilers Limited who are trying to rely on the clause limiting their liability.

Advise Ashee whether Better Boiler Limited can rely on the clause, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Ashee, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of exclusion and limitation clauses.

The response might consider issues such as:

- The terms of a contract set out the obligations on the parties under the agreement. An explanation of different terms in a contract including terms and representations with cases in support.
- Explanation of express terms and their legal impact. Those which are laid down by the parties themselves.
- Explanation of implied terms and their legal impact. Those which are assumed by the courts or by statute.
- In order to be a term of the contract, the statement must be incorporated. This is usually straightforward where a contract is in writing as the terms are the ones that are written in the document.

- Implied terms in contracts for goods under the Consumer Rights Act 2015. Section 9 – of satisfactory quality – not faulty or damaged – this is judged by what a reasonable person would consider satisfactory.
- Also s10 – fit for purpose – goods should be fit for the purpose they are supplied for as well as any specific purpose made known to the retailer.
- Similar implied terms for services under the Consumer Rights Act 2015. S.49 – the trader must perform the service with reasonable care and skill.
- Bringing a claim and remedies under the Consumer Rights Act 2015.
- The law on exclusion clauses and reference to the Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contracts Regulations 1999.
- Key terms of a contract may be assessed for fairness, unless they are prominent and transparent.
- Common law controls and consideration of the exemption clause being **incorporated** into the contract:
 - Unfair Contract Terms Act 1977 - imposes limitations on exemption clauses and controls the use of clauses excluding or limiting liability for breach of a contract, where one of the parties is a consumer.
 - S.11 provides restrictions where a contract tries to exclude or restrict liability for breach of contract. Test of reasonableness and schedule 2 factors may be considered - *George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd (1983)*.
 - S.6 – Exclusion of liability in contracts for the sale of goods – clauses that are implied by statute such as those in the Consumer Rights Act 2015 cannot be excluded.

AO2

Candidates are expected to apply the full range of legal rules and principles to Ashee's situation, including the Unfair Contract Terms Act 1977 and relevant case law, in order to present a legal argument

The response might consider issues such as:

- The clause restricting liability is likely to be an express term of the contract as it is laid down in the contract.
- Possible implied term about the quality of the boiler. It appears to be faulty and therefore in breach of s.9 Consumer Rights Act 2015.
- Also s.10 appears to be breached as the boiler is not fit for purpose.
- Is there a problem with the service from Better Boilers Ltd? Has the installation been performed with reasonable care and skill?
- Under s62 Consumer Rights Act 2015 if Ashee thinks a term is unfair, he should complain to the trader. An unfair contract term can include something that tries to limit the consumer's legal rights.
- The issue of notice that common law may be relevant, especially in respect of the exemption clause. Is there a previous course of dealings? Unlikely as last transaction was 10 years ago.
- Application of the Unfair Contract Terms Act 1977 would suggest the exemption clause would not be upheld.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	<p style="text-align: center;">8-10 marks</p> <ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system and legal rules and principles relating to exclusion clauses. Response is clear, detailed and fully developed 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> Excellent application of legal rules and principles to Ashee's situation. Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to exclusion clauses. The legal argument is detailed, fully developed and persuasive.
3	<p style="text-align: center;">5-7 marks</p> <ul style="list-style-type: none"> Good knowledge and understanding of the English legal system and legal rules and principles relating to exclusion clauses. Response is generally clear, detailed and developed 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> Good application of legal rules and principles to Ashee's situation. Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to exclusion clauses. The legal argument is generally detailed, developed and persuasive
2	<p style="text-align: center;">3-4 marks</p> <ul style="list-style-type: none"> Adequate knowledge and understanding of the English legal system and legal rules and principles relating to exclusion clauses. Response includes some detail which is developed in places. 	<p style="text-align: center;">4-7 marks</p> <ul style="list-style-type: none"> Adequate application of legal rules and principles to Ashee's situation. Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to exclusion clauses. The legal argument includes some detail which is developed in places
1	<p style="text-align: center;">1-2 marks</p> <ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system and legal rules and principles relating to exclusion clauses. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> Basic application of legal rules and principles to Ashee's situation. Basic presentation of a legal argument using minimal legal terminology relating to exclusion clauses. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted	

Or,

0 2

Patrick wanted to purchase the latest model of mobile telephone and so decided to sell his current phone to help raise funds. He put a notice on the wall of the student union building advertising it for sale for the sum of £400. David saw the notice and sent Patrick a text offering £350 for the phone. Patrick thought that amount was a bit of an insult and replied saying he would take £390. Before he received a response from David, Patrick received a message from Mary saying 'I will pay £400 if it is a nice colour'. Patrick knew Mary did not like him and ignored the message. David decided he really wanted the mobile phone and prepared a message saying he would pay the £390. However, the text would not send as he had no credit left on his phone. David has now learnt that Patrick has sold the mobile phone to one of his lecturers for £400. David is very annoyed and feels Patrick should be forced to sell the mobile phone to him.

Advise Patrick as to whether he has a contract with David or Mary for the sale of the mobile phone and possible remedies that could be ordered by a court, applying your knowledge of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Patrick, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of essential elements of a contract.

The response may include:

- A contract requires an offer and acceptance to be valid.
- An offer is a statement containing the essential terms expressed in reasonably certain terms. Discussion of the differences between an offer and an invitation to treat - *Pharmaceutical Society of GB v Boots Cash Chemists (1953)*.
- The concept of offer must be communicated - *Taylor v Laird (1856)*
- A counter offer must also be communicated – serving as a rejection of original offer - *Hyde v Wrench*
- All terms must be certain - *Guthing v Lynn (1831)*
- Acceptance takes place when there is an unconditional assent to all terms of the offer.
- Acceptance must be communicated to the offeror; silence cannot amount to acceptance – *Felthouse v Bindley (1863)*.
- Where there are ongoing negotiations of a contract, any new condition, alteration or qualification is regarded as a counter offer – *Butler Machine Tool Ltd v Ex-cell-O Corp (1979)*.
- Remedies may be considered – including suitability of damages, specific performance and rescission.

AO2

Candidates are expected to apply the full range of legal rules and principles to Patrick's situation, including concepts such as offer, counter offer, acceptance and remedies for breach of contract.

The response may include issues such as:

- A consideration of the legal status of the advertisement - is it an offer or an invitation to treat? The legal significance of the difference between the two should be considered - *Partridge v Crittenden*.
- What is David's first communication? A counter offer? And does Patrick then make a further offer?
- Discussion of offer/acceptance/counter offer by use of a text message and mobile phone. Such communication is capable of being used to form a valid contract.
- Is Mary's offer to pay the full price sufficiently certain due to the 'if it is a nice colour request'? If so can Patrick just ignore her request?
- The issue of David's failure to send the acceptance text as silence cannot amount to acceptance – *Felthouse v Bindley (1863)*
- If there is a breach of contract the remedies available should be considered, such as damages, specific performance and injunctions.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	8-10 marks <ul style="list-style-type: none">• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the essential elements of a contract. Response is clear, detailed and fully developed.	12-15 marks <ul style="list-style-type: none">• Excellent application of legal rules and principles to Patrick's situation.• Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the essential elements of a contract.• The legal argument is detailed, fully developed and persuasive.
3	5-7 marks <ul style="list-style-type: none">• Good knowledge and understanding of the English legal system and legal rules and principles relating to the essential elements of a contract. Response is generally clear, detailed and developed.	8-11 marks <ul style="list-style-type: none">• Good application of legal rules and principles to Patrick's situation.• Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the essential elements of a contract.• The legal argument is generally detailed, developed and persuasive.

2	<p style="text-align: center;">3-4 marks</p> <ul style="list-style-type: none"> Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the essential elements of a contract. Response includes some detail which is developed in places. 	<p style="text-align: center;">4-7 marks</p> <ul style="list-style-type: none"> Adequate application of legal rules and principles to Patrick's situation. Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the essential elements of a contract. The legal argument includes some detail which is developed in places.
1	<p style="text-align: center;">1-2 marks</p> <ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system and legal rules and principles relating to the essential elements of a contract. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> Basic application of legal rules and principles to Patrick's situation. Basic presentation of a legal argument using minimal legal terminology relating to the essential elements of a contract. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted	

SECTION B

Law of Tort

Either,

0 3 Margot, a professional ballet dancer, has been involved in a road traffic incident with Simon. The incident occurred whilst Margot was crossing the road as a pedestrian. She was on a bend, which obstructed her vision of oncoming vehicles. Simon, who was driving his car, failed to see Margot because he was looking at his mobile phone and was driving slightly above the speed limit. He was unable to stop in time to prevent the collision. Margot has suffered a broken leg, loss of earnings over the past 10 months and is unable to resume her work as a ballet dancer. She also has travel expenses after visiting the hospital for physiotherapy every week.

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

Indicative content

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

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

AO1

In advising Margot candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the tort of negligence. The response might consider issues such as:

- Definition of negligence - a breach of a duty to take care which causes foreseeable loss or injury.
- History of test for duty of care – Donoghue v Stevenson; A person must take reasonable care to avoid acts or omissions which could be reasonably foreseen to likely injure a neighbour.
- Test redefined in Caparo v Dickman. Three elements must be proved: (i) reasonable foreseeability that a person in the claimant's position would be injured – Langley v Dray, (ii) there was sufficient proximity between the parties - Bourhill v Young and (iii) it is fair, just and reasonable to impose liability on the defendant – Hill v Chief Constable South Yorkshire.
- In 2018, under Robinson v Chief Constable of West Yorkshire and Steel v NRAM where a case falls within an established category of a duty of care then such principles are applied. If no previous category of a duty of care exists then use of an existing category should be used to argue that a duty is owed.

- Consideration of a breach of a duty of care. Use of the objective reasonable man test – *Nettleship v Weston*. Tests used to help determine breach (i) degree of risk that harm would be done - *Bolton v Stone*, (ii) the magnitude of risk - *Paris v Stepney Borough Council*, (iii) cost and practicality of avoiding the risk – *Latimer v AEC Ltd* and (iv) potential benefits of the risk to society – *Bath v Daborn Tramways*.
- Definition of causation – Both factual and legal causation must be proved: Factual causation: ‘But for’ test – *Barnett v Chelsea and Kensington Hospital Management Committee*. Legal causation: Operating and substantial cause - *Bonnington Castings Ltd v Wardlaw*.
- Remoteness of damage - It must be established that the damage was not too remote. This used to be any type of damage under the *Re Polemis* test but now the specific kind of damage suffered by the claimant must be reasonably foreseeable at the time of the breach of duty – In the case of the *Wagon Mound No 1*, the fire damage to Sydney harbour was not a foreseeable type of damage from an oil spill out at sea. If the damage or loss is too remote, then the defendant is not liable.
- Explanation and impact of contributory negligence. Law Reform (Contributory Negligence) Act 1945 s1(1) where damages recoverable can be reduced if a claimant is partly responsible for their injuries.
- Remedies available for a claimant. Types of damages, especially general and special damages.

AO2

Candidates are expected to apply the full range of legal rules and principles to Margot’s situation, including negligence and contributory negligence, in order to present a legal argument. The response might consider issues such as:

- For Margot to succeed in an action in negligence against Simon, it must first be established that Simon owed Margot a duty of care. As they are both road users they are likely to be neighbours as they closely and directly affect each other by their acts or omissions.
- Consideration of the application of *Robinson v Chief Constable of West Yorkshire*.
- Consideration of *Caparo*, the 3-part test must be established. (i) It is reasonably foreseeable that failing to watch the road whilst driving would cause some injury to a pedestrian. In addition (ii) proximity is made out as both Margot and Simon are using the same piece of road at the same time. Finally, (iii) there is no public policy to apply that suggests it is anything other than fair and reasonable for a duty to be imposed in this situation. Also road users owing each other a duty of care is an established category of duty.
- Whether or not Simon has breached his duty of care can be answered by asking what the reasonable man would have done in the same situation. Apply the tests for breach. The risk of harm is high when a driver is using his mobile phone especially if there is a bend in the road impacting on visibility. Also the magnitude of the harm is potentially very serious when a car is travelling at speed. It is very practical to ignore a mobile phone and keep within the speed limit whilst driving. It also costs nothing. Finally as there is no benefit to society by driving as Simon drove, it would suggest that he breached his duty of care.
- Margot has suffered damage as a result of Simon’s breach of his duty of care. ‘But for’ Simon’s breach she would not have suffered the injuries and his actions are an operating and substantial cause of the accident. Simon’s acts or omissions must have caused the loss complained of.

- Apply remoteness to Margot's injuries. A broken leg is a foreseeable type of injury that could occur in a road traffic accident.
- Discussion of Margot's potential contributory negligence in crossing the road on the bend, rather than waiting until she had good visibility. If she is partly responsible, then her damages could be reduced to reflect this.
- Margot is likely to seek compensation. General damages to reflect her injuries, especially her broken leg, pain and suffering and future loss of earnings. Special damages would include her loss of earnings from the date of the accident up to the date of the trial and her travel expenses.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	<p style="text-align: center;">[8-10 marks]</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to negligence. Response is clear, detailed and fully developed. 	<p style="text-align: center;">[12-15 marks]</p> <ul style="list-style-type: none"> • Excellent application of legal rules and principles to Margot's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to negligence. The legal argument is detailed, fully developed and persuasive.
3	<p style="text-align: center;">[5-7 marks]</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system and legal rules and principles relating to negligence. Response is generally clear, detailed and developed. 	<p style="text-align: center;">[8-11 marks]</p> <ul style="list-style-type: none"> • Good application of legal rules and principles to Margot's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to negligence. The legal argument is generally detailed, developed and persuasive.
2	<p style="text-align: center;">[3-4 marks]</p> <ul style="list-style-type: none"> • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to negligence. Response includes some detail which is developed in places. 	<p style="text-align: center;">[4-7 marks]</p> <ul style="list-style-type: none"> • Adequate application of legal rules and principles to Margot's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to negligence. The legal argument includes some detail which is developed in places
1	<p style="text-align: center;">[1-2 marks]</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles relating to negligence. Response includes minimal detail. 	<p style="text-align: center;">[1-3 marks]</p> <ul style="list-style-type: none"> • Basic application of legal rules and principles to Margot's situation. • Basic presentation of a legal argument using minimal legal terminology relating to negligence. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

Or,

0 4

Amanda and her 10-year-old child, Joel, visit a Christmas market at a local country house. Amanda wanted to go and listen to the carol singers on the third floor of the house, but Joel wanted to play in the grounds. Amanda tells Joel that he can play outside for 30 minutes and then he must return to the main house. Amanda starts to walk up the stairs to the third floor and in her eagerness to get there she fails to see a box of Christmas decorations left on the stairs by a member of staff. Amanda trips over the box and falls down a short flight of stairs breaking her ankle. Whilst Joel is outside he comes across a café and decides to go in to buy some sweets. There is a sign warning visitors that the café is closed for repairs and visitors should not be in the area. Joel is not very good at reading and does not realise the café is closed. As he walks up to the door a slate is dropped by a roofer from the top of a ladder and it falls on Joel's head causing cuts and bruises.

Advise Amanda and Joel if they have a claim in the tort of Occupiers' Liability for their injuries, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Amanda and Joel candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of occupiers' liability.

- Consideration of the Occupiers' Liability Act 1957 including duty and the nature of the duty.
- The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which they are invited or permitted by the occupier to be there.
- Reference to a breach of the duty by the occupier and the care expected to be exercised by a visitor.
- Consideration of the Occupiers Liability Act 1984 and the duty owed to unlawful visitors or trespassers.
- The pre-requisites of the occupier (i) being aware of the danger or have reasonable grounds to believe that it exists; and (ii) know or have reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger; and (iii) the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection.
- The statutory duty of care is to take care as is reasonable in all the circumstances of the case to see that they are not injured on the premises by the danger concerned. Tomlinson.
- An occupier must be prepared for children to be less careful than adults. *Railways Board v Herrington* [1972]
- Remedies available under the Act

AO2

Candidates are expected to apply the full range of legal rules and principles to Amanda and Joel's situation, including the Occupiers' Liability Act 1957 and 1984 and the possible remedies available to them, in order to present a legal argument. The response might consider issues such as:

- As regards Amanda she appears to be a lawful visitor with express permission to be on the premises - application of the 1957 Act
- Who may be the occupier or have occupational control. *Wheat v Lacon and Co.*
- Has there been a breach of the duty? Reference likely to be made to the box of decorations left on the stairs. Should Amanda be expected to exercise greater care?
- Whilst initially a lawful visitor, does Joel become a trespasser when he goes to the closed cafe?
- Do the pre-requisites apply to Joel's situation?
- Has the occupier fulfilled the statutory duty? Consideration of Joel being a child, the warning sign and delegation of the work to a roofer.
- Reference to damages- Credit a consideration of the different categories of damages e.g. loss of future earnings, pain and suffering etc.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	8-10 marks <ul style="list-style-type: none">• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to occupiers' liability. Response is clear, detailed and fully developed.	12-15 marks <ul style="list-style-type: none">• Excellent application of legal rules and principles to Amanda and Joel's situation.• Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to occupiers' liability. The legal argument is detailed, fully developed and persuasive.
3	5-7 marks <ul style="list-style-type: none">• Good knowledge and understanding of the English legal system and legal rules and principles relating to occupiers' liability. Response is generally clear, detailed and developed.	8-11 marks <ul style="list-style-type: none">• Good application of legal rules and principles to Amanda and Joel's situation.• Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to occupiers' liability. The legal argument is generally detailed, developed and persuasive.

2	<p style="text-align: center;">3-4 marks</p> <ul style="list-style-type: none"> • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to occupiers' liability. Response includes some detail which is developed in places. 	<p style="text-align: center;">4-7 marks</p> <ul style="list-style-type: none"> • Adequate application of legal rules and principles to Amanda and Joel's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to occupiers' liability. The legal argument includes some detail which is developed in places.
1	<p style="text-align: center;">1-2 marks</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles relating to occupiers' liability. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic application of legal rules and principles to Amanda and Joel's situation. • Basic presentation of a legal argument using minimal legal terminology relating to occupiers' liability. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

SECTION C

Criminal Law

Either,

0 5 Ella and Annika decided to go for a walk in the countryside. They came across Hillside Mansion, the home of the pop singer George Starr. They were both fans of the pop singer and so Ella suggested they sneak into the property to have a look round. They found a side entrance open and went into the grand dining room. Annika saw a gold disc of her favourite song and decided to take it to sell. As Annika pulled it off the wall Ella saw a picture of George Starr with his wife. In a jealous rage Ella threw the picture on the floor and the frame smashed. The noise was heard by George Starr who ran into the grand dining room, saw Ella and Annika and tried to block their way out of the room. In an attempt to get out as quickly as possible the girls ran past George and pushed him out of the way. George Starr fell to the floor in pain. Annika lost her grip on the gold disc in the struggle and it fell to the floor and smashed. Ella and Annika left the house empty-handed.

Advise Ella and Annika as to their potential liability under the Theft Act, 1968, applying your knowledge of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Ella and Annika candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to the Theft Act 1968.

The response might consider issues such as:

- Define and explain theft – section 1 Theft Act 1968.
- Explain the actus reus of theft – appropriation, property and belonging to another. Relevant case law should be included.
- Explain the mens rea of theft – dishonestly and intention to permanently deprive. Relevant case law should be included.
- Define and explain robbery under s.8 Theft Act 1968. Robbery is theft aggravated by the threat or use of force.
- Explain the actus reus of robbery – the actus reus of theft plus force or the threat of force. Discussion of the word force and relevant case law.
- Explain the mens rea of robbery – the mens rea of theft plus intention to use or threaten force in order to steal. Relevant case law to be included.
- Define and explain burglary under s.9(1)(a) and s.9(1)(b) Theft Act 1968/
- Explain the actus reus of burglary with relevant case law.
- Explain the mens rea of burglary with relevant case law.

AO2

Candidates are expected to apply the full range of legal rules and principles to Ella's and Annika's situation, including the Theft Act 1968 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Apply the actus reus and mens rea of theft.
- Apply s3 – appropriation – any interference with any of owner's rights with or without consent – McPherson, Lawrence, Morris, Gomez. Appropriation occurs when Annika takes the gold disc of the wall and Ella picks up and smashes the picture frame.
- Apply s4 – property – this must be tangible – Oxford v Moss. Both the gold disc and the picture frame are personal property.
- Apply s5 – belonging to another – ownership, possession or control – Turner. Ownership appears to lie with George Starr for both items. Or at least he has a proprietary interest in them.
- Apply s2 – dishonesty – no statutory definition but there are escape routes s2 (1) (a) – defendant not dishonest if honestly believe have legal right to property; s2 (1) (b) – defendant not dishonest if honestly believe owner would consent – Holden and s2 (1) (c) – defendant not dishonest if honestly believe owner cannot be found by taking reasonable steps. It is highly unlikely that any of these apply to Ella and Annika.
- If guidance is still needed the jury must decide if the defendant was dishonest by the standards of the reasonable man and, if so, the defendant knew they were dishonest by that standard – formerly from Ghosh, however now the law has been clarified in Ivey v Genting Casino [2017]. The fundamental principle of the test remains, to assess whether what the defendant was doing was dishonest by the standard of ordinary and honest people. What a defendant cannot fall back on now is whether he appreciated that what he was doing was dishonest to those ordinary and honest people. The difficulty as the court saw it was primarily based on a defendant's view of society. This is done by ascertaining Ella's and Annika's knowledge and belief to the facts and this belief must be reasonable and once their actual state of mind has been established, assess whether his conduct was honest or dishonest by the standards of ordinary decent people. Given the fact that they should not be in the house and Annika's intention to take the gold disc to sell and Ella's anger and deliberate smashing of the picture frame it would appear both girls are clearly dishonest.
- Apply s6 – intention to permanently deprive – intention to take forever or for period equivalent to outright taking, even if there is intention to return property – Lloyd, Warner. Annika wanted to sell the gold disc. The picture frame is smashed and has no virtue left in it.
- Apply the actus reus and mens rea of robbery – charged under section 8 Theft Act 1968.
- Apply the actus reus – theft accompanied by use or threat of force before or at time of stealing and in order to steal – Dawson and James, Hale, Lockley. Consider how Ella and Annika tried to force their way out of the house by pushing George Starr out of the way. Discussion of the timing of the force. Had theft been completed or was it still ongoing?
- Apply the mens rea – intention to steal. Was the use of force with the intention to steal or to escape?
- Apply the actus reus and mens rea of burglary.

- Explain s9 (1) (a) and the intention on entry. Potentially to look around the house and not to steal, commit GBH or cause unlawful damage.
- Explain s9 (1) (b) where, once inside a defendant must steal or inflict GBH or attempt to do either of these things. Reference may be made to the earlier decision on theft and the force used on George Starr.
- For both types of burglary a defendant must enter a building or part of a building as a trespasser. Both Ella and Annika clearly enter Hillside Mansion as per case law such as Collins, Brown and Ryan. The property qualifies as a building and neither of the girls had permission to be in the property and they were aware of this fact, thus were intentionally trespassing.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	<p style="text-align: center;">8-10 marks</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to theft, robbery and burglary. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent application of legal rules and principles to Ella and Annika's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to theft, robbery and burglary. The legal argument is detailed, fully developed and persuasive.
3	<p style="text-align: center;">5-7 marks</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system and legal rules and principles relating to theft, robbery and burglary. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good application of legal rules and principles to Ella and Annika's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to theft, robbery and burglary. The legal argument is generally detailed, developed and persuasive.
2	<p style="text-align: center;">3-4 marks</p> <ul style="list-style-type: none"> • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to theft, robbery and burglary. Response includes some detail which is developed in places. 	<p style="text-align: center;">4-7 marks</p> <ul style="list-style-type: none"> • Adequate application of legal rules and principles to Ella and Annika's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to theft, robbery and burglary. The legal argument includes some detail which is developed in places.

1	<p style="text-align: center;">1-2 marks</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles relating theft, robbery and burglary. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic application of legal rules and principles to Ella and Annika's situation. • Basic presentation of a legal argument using minimal legal terminology relating theft, robbery and burglary. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

Or,

0 6

Amir had been very depressed and so his best friend Hussain suggested they play ten-pin bowling to cheer him up. However, during the game they argued over who was the better bowler and Hussain insulted Amir. Enraged by this, Amir threw a heavy bowling ball at Hussain's head. Unknown to Amir, Hussain suffered from a thin skull and as a result he lost consciousness. An ambulance was called and Hussain was taken to hospital. At the hospital Hussain recovered consciousness and seemed to be making a good recovery. However, a junior doctor, Alma, failed to order a head scan and a slow bleed on the brain caused by the bowling ball proved fatal and Hussain died 10 hours after arriving at hospital.

Advise Amir as to whether he may be criminally liable for Hussain's death, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Amir candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to the subject of homicide. The response might consider issues such as:

- Explain and define the offence of murder.
- The actus reus of murder, that the defendant must cause the death of a human being.
- Causation, factual and legal- 'but for' test (White) and legal causation -operating and substantial cause (Kimsey). Intervening acts and what could break the chain of causation, cases such as Jordan, Smith and Cheshire.
- The mens rea of murder- the intention to kill or cause grievous bodily harm. Reference to both direct and oblique intention – discussion of virtual certainty test. Reference to case authority such as Woolin and Nedrick.
- The partial defences of diminished responsibility and loss of control both under the Coroner and Justice Act 2009. A successful defence will reduce a conviction to manslaughter with a discretionary and not mandatory life sentence.
- Define and explain involuntary manslaughter as in constructive or unlawful and dangerous act manslaughter.

AO2

Candidates are expected to apply the full range of legal rules and principles to Amir's situation, including concepts such as actus reus and mens rea of murder and manslaughter, causation and possible defences available to Amir, in order to present a legal argument.

The response might consider issues such as:

- Amir may be guilty of murder or manslaughter, depending on (a) his action being the cause of Hussain's death, and (b) his state of mind when he threw the bowling ball at Hussain.
- Causation – Amir throwing a bowling ball at Hussain's head is very likely to be the factual cause of Hussain's death, on the "but-for" test in *White*. Consideration of Amir's actions being a legal cause of Hussain's death with comments about Hussain regaining consciousness and appearing to be making a good recovery. Case authority such as *Kimsey*. Also the issue of whether Alma's conduct amounts to a novus actus interveniens and is sufficient to break the chain of causation. Hussain dies 10 hours after the incident and hasn't left hospital. The effects of being hit by the bowling ball may still be ongoing.
- Mens rea - for murder, malice aforethought - intention to kill or cause grievous bodily harm – *Moloney*. Knowledge that one's action is virtually certain to cause death or grievous body harm: *Woollin*. The bowling ball is heavy and it is thrown at the head.
- Defences – Amir may have the defence of loss of control as he is enraged by the name calling. He must kill as a result of loss of self-control; this loss of self-control must have been caused by a recognised "qualifying trigger" and a person with normal self-control might have reacted in a similar way in Amir's situation. Consider if Amir is acting out of revenge and if his anger would be sufficient for a qualifying trigger. It is unlikely that the name calling will amount to 'a thing or things done or said (or both) which (a) constituted circumstances of an extremely grave character, and (b) caused Amir to have a justifiable sense of being seriously wronged (anger trigger)' – *Dawes (2013)* and *Zebedee (2012)*. Amir's degree of tolerance and self-restraint -s54(1)(c) is that of a person of the same sex and age, with a normal degree of tolerance and self-restraint and in Amir's circumstances – *Mohammed (2005)*. His depression is unlikely to be taken into account as it would impact on his ability to keep his self control.
- Defences – Amir may have the defence of diminished responsibility due to his depression. Amir must be shown to be suffering from an abnormality of mental functioning which arose from a recognised medical condition, which substantially impaired his ability to (i) understand the nature of his conduct; or (ii) form a rational judgment; or (iii) exercise self-control. The abnormality must be so different from an ordinary person that the reasonable man would term it abnormal. It is abnormal to throw a bowling ball at someone's head – *Byrne 1960*. Depression has been recognised as a medical condition – *Seers 1985*. In addition, Amir would need to show a substantial impairment of being able to exercise his self-control. We are told he was enraged when he threw the ball.
- Involuntary manslaughter – unlawful act manslaughter - act must be unlawful and dangerous: *Franklin, Lamb, Church and Newbury*. Throwing the bowling ball is likely to be an offence under the *Offences against the Person Act 1861*. It is a positive act, rather than an omission and a sober and reasonable person would inevitably recognize it would subject Hussain to the risk of some harm. The mens rea of the dangerous act would need to be proved but it does appear Amir deliberately threw the ball with the intention to cause harm of some level.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	<p style="text-align: center;">8-10 marks</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to homicide. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent application of legal rules and principles to Amir’s situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to homicide. The legal argument is detailed, fully developed and persuasive.
3	<p style="text-align: center;">5-7 marks</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system and legal rules and principles relating to homicide. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good application of legal rules and principles to Amir’s situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to homicide. The legal argument is generally detailed, developed and persuasive.
2	<p style="text-align: center;">3-4 marks</p> <ul style="list-style-type: none"> • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to homicide. Response includes some detail which is developed in places. 	<p style="text-align: center;">4-7 marks</p> <ul style="list-style-type: none"> • Adequate application of legal rules and principles to Amir’s situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to homicide. The legal argument includes some detail which is developed in places.
1	<p style="text-align: center;">1-2 marks</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles relating to homicide. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic application of legal rules and principles to Amir’s situation. • Basic presentation of a legal argument using minimal legal terminology relating to homicide. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

SECTION D

Human Rights Law

Either,

0 7 Brothers Martin and Gary are amateur dramatic actors who are soon to appear in a murder mystery production at the local theatre. One day, as they were walking to the theatre, they decided to go over their lines by way of practice. Martin was acting out the lines from the murder scene and was shouting about plunging a dagger into Gary. Just at that moment, PC Dickinson walked by, thinking he was attacking Gary she pushed Martin into the back of a police car and took him to the police station. Martin tried to explain what was happening but PC Dickinson said she was tired of young people fighting in the streets and that he needed to learn how to behave in public. She said she would take his fingerprints and a DNA sample whether or not he consented. Martin asked if he could tell the theatre director about the incident so the show could continue without him. PC Dickinson refused his request and left him in the police cell for 18 hours before finally releasing him from police custody.

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

Indicative content

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

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

AO1

In advising Martin candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to police powers. The response might consider issues such as:

- Considerations of both Article 5 & 6 European Convention on Human Rights, right to liberty and a fair trial.
- The police powers to arrest: section 24 of PACE as amended by section 110 of the Serious Organised Crime and Police Act 2005, section 28 of PACE and Code G of the Codes of Practice.
- The rights of a suspect during detention: sections 56, 57, 58 and 61 of PACE and Code C of the Codes of Practice.
- The time limits and reviews of detention: sections 40-44 of PACE.

AO2

Candidates are expected to apply the full range of legal rules and principles to Martin's situation, including powers of the police to arrest and powers during detention, including a suspect's rights, in order to present a legal argument.

The response might consider issues such as:

- Martin should be advised that the police can arrest him; under s24 of PACE as amended by section 110 of SOCPA 2005 provided that they reasonably suspect that an offence is about to be committed, is being committed, or has been committed. Comments about a potential attack on Gary may be made.
- The power to arrest Martin can only be exercised if the police have reasonable grounds to believe it is necessary under section 24(5) of PACE. Reasons include: where the suspect's name cannot be readily ascertained or no satisfactory address has been given; where it is necessary to prevent the suspect causing injury to himself or another or suffering physical injury or causing loss or damage to property; to allow the prompt and effective investigation of the offence or the conduct of the suspect, or to prevent the investigation being hindered by his disappearance. Comments may be made about a potential attack on Gary.
- Was the procedure surrounding Martin's arrest valid? Martin does not seem to be told he is under arrest or a reason for it – s28; DPP v Hawkins. and Code of Practices, Code G. Nor does Martin seem to be cautioned.
- Martin's treatment during detention should be considered: This should include expectations on arrival at the police station. Code C. His rights should be explained - Information to be given immediately by custody officer (Code C para 3) – provision of written notice of right to have someone informed, right to legal advice and right to consult the Codes of Practice, and written notice of entitlement to visits, meals and conduct of interviews.
- The right to have someone informed of arrest: s56 of PACE and his right to legal advice: s58 of PACE, and the circumstances when these rights can be withheld by the police and whether these apply to Martin. Refusal does not appear to be in accordance with PACE.
- Police can take fingerprints and a DNA sample (e.g. from a mouth swab or head hair root) from Martin as well as swab the skin surface of his hands and arms. They do not need permission to do this. (s61 of PACE)
- Time limits: on detention: section 41 allows police to authorise detention up to 36 hours but further detention up to 96 hours requires authorisation by magistrates. Martin's detention should be reviewed after 6 hours and then every 9 hours thereafter by a review officer not involved in the case: section 40 of PACE.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	<p style="text-align: center;">8-10 marks</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent application of legal rules and principles to Martin’s situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. The legal argument is detailed, fully developed and persuasive.
3	<p style="text-align: center;">5-7 marks</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good application of legal rules and principles to Martin’s situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. The legal argument is generally detailed, developed and persuasive.
2	<p style="text-align: center;">3-4 marks</p> <ul style="list-style-type: none"> • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. Response includes some detail which is developed in places. 	<p style="text-align: center;">4-7 marks</p> <ul style="list-style-type: none"> • Adequate application of legal rules and principles to Martin’s situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. The legal argument includes some detail which is developed in places.
1	<p style="text-align: center;">1-2 marks</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic application of legal rules and principles to Martin’s situation. • Basic presentation of a legal argument using minimal legal terminology relating to the legality of the actions of the police. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

Or,

0 8

Malia is the President of the Student Union at a local university. She has organised a protest march against a rise in tuition fees. On the day of the protest, around 100 people turned up for the march. They set off towards the university, with Malia in the lead. Already at the university were Sergeant Beveridge and PC Bruce. Sergeant Beveridge thought it would be better if the march divided into two groups as the city centre was very busy and two smaller groups would be easier to manage. Malia wanted everyone to stay together and so refused to comply. Sergeant Beveridge then saw a group of 20 nursery children being led by their teacher in the direction of the marchers. The march had come to a stop as their path was obstructed by the police and the children. Sergeant Beveridge told Malia that the march should reroute down a different street which would not take them past the university. Malia tried to explain that the march would have more impact if it went past the university. Sergeant Beveridge's response was to call for further officers and to order PC Bruce to arrest Malia. When the marchers at the front of the group saw what was happening they shouted at the police and waved their placards which said 'Enough is enough. Action now'. Fearing further unrest, Sergeant Beveridge told the officers to arrest as many people as they could.

Advise Malia as to whether the police were acting within their powers to control public order situations, applying your knowledge and understanding of legal rules and principles.

[25]

Indicative content

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

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

AO1

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

The response might consider issues such as:

- Discussion of the Public Order Act 1986, including the duties of an organiser of a march under s11.POA 1986.
- The power of the police to impose conditions and controls of marches under s12 POA 1986
- Controls of assemblies under s14 POA 1986 and the power to impose conditions. Also the power to arrest for failure to comply with the conditions.
- Possible public order offences ss. 1 – 5 POA 1986, namely riot, violent disorder, affray, fear or provocation of violence and causing harassment, alarm or distress and disorderly behaviour.
- Common law offence of breach of the peace.

AO2

Candidates are expected to apply the full range of legal rules and principles to Malia, including the Public Order Act 1986 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Public Order Act 1986.
- Under s11 of the POA 1986, Malia, the organiser of a procession is required to give notice six clear days in advance stating the date of the procession, the start time, the proposed route and the name and address of at least one person organising it. The notice must be delivered by hand or by post to a police station in the area where the procession is to start. Failure to give notice is a summary offence punishable by a fine.
- It is not the case that organisers require permission from the police, nor do they have to wait for police permission before going ahead. Failure to give notice is an offence as above, but the procession is not illegal. Under s13 the Chief Constable can apply to the district council to ban all processions of a particular type in the area for up to three months, subject to approval by the Home Secretary: organising or participating in a banned procession is a summary offence under s13.
- Section 11 is one of the few sections of the POA 1986 which did not give the police a power to arrest, but since the SOCPA amendments to PACE 1984, s24, the police have power to arrest for any offence.
- The police have power under s.12 of the POA 1986 to impose conditions on processions: these may be imposed in advance by the Chief Constable in writing (s12(3)), or by the senior police officer present at the scene (s12(2)(a)). The grounds for imposing conditions (s12(1)) are that the senior officer reasonably believes that the procession may result in serious public disorder, or serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is to intimidate others into doing something which they have a right not to do, or refraining from doing something which they have a right to do. These grounds are commonly called the “four triggers”.
- Conditions which may be imposed: s12(1) states that the officer may impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation. S12(1) specifies that these may include conditions as to the route to be followed and that the procession is not to enter some particular public place, but presumably extends beyond these.
- Since the HRA 1998, conditions imposed must be “proportionate” in order not to breach Art.11 of the ECHR.
- Refusal to comply with a condition is an offence (s12(4) for organisers, s12(5) for participants).
- The placards: s5 of the POA 1986 creates the offence of causing harassment, alarm or distress. This may be committed in two ways: by using threatening, abusive or insulting words or behaviour, or by engaging in disorderly behaviour. The behaviour must take place within the sight of hearing of a person likely to be caused harassment, alarm or distress thereby (s5(1)). This can include a police officer: DPP -v- Orum. Cases: DPP –v- Clarke; DPP -v- Fidler. The arrest power under s5 required the officer first to give a warning, and only arrest if this was ignored, but this has been superseded by the amended s24 of PACE 1984.
- Once a procession comes to a standstill, it becomes an assembly and the police may impose conditions under s14. The triggers are identical to s12 and the police can impose virtually any conditions they consider necessary.
- Discussion of breach of the peace.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.
4	<p style="text-align: center;">8-10 marks</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the law of public order. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent application of legal rules and principles to Malia’s situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the law of public order. The legal argument is detailed, fully developed and persuasive.
3	<p style="text-align: center;">5-7 marks</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system and legal rules and principles relating to the law of public order. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good application of legal rules and principles to Malia’s situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the law of public order. The legal argument is generally detailed, developed and persuasive.
2	<p style="text-align: center;">3-4 marks</p> <ul style="list-style-type: none"> • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the law of public order. Response includes some detail which is developed in places. 	<p style="text-align: center;">4-7 marks</p> <ul style="list-style-type: none"> • Adequate application of legal rules and principles to Malia’s situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the law of public order. The legal argument includes some detail which is developed in places.
1	<p style="text-align: center;">1-2 marks</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles relating to the law of public order. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic application of legal rules and principles to Malia’s situation. • Basic presentation of a legal argument using minimal legal terminology relating to the law of public order. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted	