



GCE A LEVEL MARKING SCHEME

SUMMER 2023

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

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.

GCE A LEVEL LAW
COMPONENT 3 – PERSPECTIVES OF SUBSTANTIVE LAW
SUMMER 2023 MARK SCHEME

Section A

Law of Contract

Either,

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 Discuss the extent to which the rules on intention to create legal relations are in need of reform. [25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including intention to create legal relations, the English legal system and the law of contract. For example, a response may include reference to the rules of intention to create legal relations and when the rules can be rebutted, including case law and inconsistencies.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the rules of intention to create legal relations within the law of contracts.

The response might consider issues such as:

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

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

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the rules on intention to create legal relations are in need of reform, 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 is in need of reform.

The response might consider issues such as:

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

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<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 intention to create legal relations. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to intention to create legal relations. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding intention to create legal relations, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	<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 intention to create legal relations. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to intention to create legal relations. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding intention to create legal relations. Including a valid judgement. • Good citation of supporting case law and legal authorities.
2	<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 intention to create legal relations. 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 analysis of legal rules, principles, concepts and issues relevant to intention to create legal relations. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding intention to create legal relations. Including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	<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 intention to create legal relations. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to intention to create legal relations. Analysis includes minimal detail. • Basic evaluation of the principles regarding intention to create legal relations. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Or,

1	2
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 The law on discharge of a contract by frustration has developed into a set of fair and just principles. Discuss. [25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the law on discharge of a contract by frustration, the English legal system and law of contract. For example, a response may include reference to whether the law is fair and just.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to discharge of a contract by frustration in the law of contract.

The response might consider issues such as:

- Frustration is one way in which contractual obligations can be discharged.
- Historically, parties were obliged to perform their responsibilities under a contract. *Paradine v Jane* (1647).
- This doctrine of frustration has developed over time and now provides a set of rules for courts to follow.
- Frustration occurs where one party to a contract is prevented from, or is unable to, carry out their obligations under the contract. This is due to a change in circumstances, which is not the fault of either of the parties.
- Where frustration occurs each party is discharged from future obligations under the contract and neither party can sue for a breach of contract. *Taylor v Caldwell* (1863).
- Development of this doctrine includes a 'force majeure' clause whereby liability is excluded for delay in performance or non-performance if there are extraordinary events.
- Frustration will occur in certain circumstances. For instance where there is an impossibility of performance. *Jackson v Union Marine Insurance Company Limited* (1874).
- Frustration will occur in a contract for services when the party who is performing the contract becomes unavailable. *Condor v The Barron Knights* (1966).
- Frustration occurs where the contract becomes illegal to perform. *Re Shipton Anderson and Harrison Brothers* (1915).
- Where the contract is based on a particular event and that event cannot take place the contract may be frustrated. It depends upon the commercial intent. See the conflicting case law in this area. *Krell v Henry* (1903) and *Herne Bay Steamboat Company v Hutton* (1903).

- There are situations when frustration cannot apply. This includes self-induced frustration, Where the frustrating event is in the control of one of the parties. *Maritime National Fish Ltd v Ocean Trawlers Ltd (1935)*.
- Or the contract becomes less profitable or more difficult to complete. *Davis Contractors Ltd v Fareham Urban District Council (1956)*.
- Or the event being a foreseeable risk or the event was mentioned in the contract. *Amalgamated Investment & Property Co. Ltd v John Walker & Sons Ltd. (1977)*.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the discharge of a contract by frustration, 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 discharge of a contract by frustration is fair and just.

The response might consider issues such as:

- The situation prior to the doctrine of frustration could be seen as unfair. For instance in *Paradine v Jane (1647)* where a party had to pay the rent on land despite being forced off it by an invading army.
- The frustrating event must not be the fault of the parties. This seems fair and just as they are not at fault and so should not be penalised in any way.
- It may be fair when a party in a contract for service is ill and can't perform the contract. Illness does not usually occur deliberately.
- Perhaps when a contract becomes illegal to perform frustration is the fair and just outcome. It would make a mockery of the law if a party could be sued for failing to carry out an illegal act.
- Conflicting cases of where the contract is based on a particular event and that event cannot take place *Krell v Henry (1903)* and *Herne bay Steamboat Company v Hutton (1903)*. Is this fair?
- Situations that cannot be considered to be frustration may be seen to be fair. For example self-induced frustration. Otherwise it would mean a party could take such a course of action to avoid obligations under a contract.
- Or is it unfair where the courts are almost adding implied terms to a contract. For instance in *Jackson v Union Marine Insurance Company Limited (1874)* where the court agreed there was an implied term in the contract that a ship should be available for loading in a reasonable time so a long delay frustrated the contract. Is it the court's role to do this?
- Does the doctrine give effect to the demands of justice? As stated by Lord Bingham in the *Super Servant Two (1990)*.
- Arguments suggesting fair or unfairness are expected to address the issue in the questions.

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	<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 discharge of a contract by frustration. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the significance of the law of discharge of a contract by frustration. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the law of discharge of a contract by frustration, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 discharge of a contract by frustration. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the law of discharge of a contract by frustration. 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 of discharge of a contract by frustration. Including a valid judgement. • Good citation of supporting case law and legal authorities.
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 discharge of a contract by frustration. 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 analysis of legal rules, principles, concepts and issues relevant to the significance of the law of discharge of a contract by frustration. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the law of discharge of a contract by frustration, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
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 discharge of a contract by frustration. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the law of discharge of a contract by frustration. Analysis includes minimal detail. • Basic evaluation of the principles regarding the law of discharge of a contract by frustration. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Section B

Law of Tort

Either,

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- Analyse and evaluate whether the law of trespass to land is fair to both landowners and trespassers. [25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the law on trespass to land, the English legal system and law of tort. For example, a response may include reference to the law on trespass to land and whether it is fair to both landowners and trespassers with comments relating to the definition of trespass.

AO1

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

The response might consider issues such as:

- Definition of trespass - the voluntary unjustifiable and direct interference with land which is in the immediate and exclusive possession of another.
- The interference must be direct, such as physical entry or throwing something onto the land. *Southport Corporation v Esso Petroleum* [1954].
- The interference must be voluntary. *Stone v Smith* (1647).
- There is no need for the defendant to be aware that they are trespassing. An **innocent** trespass is still a trespass.
- Mistake is no defence in trespass. *Conway v George Wimpey & Co* [1951].
- There is no need for the claimant to experience harm or loss. Trespass to land is actionable *per se*. (In itself).
- Cuius est solum, eius est usque ad coelum et ad inferos – ‘who owns the land, owns to the heavens and down to hell’. *Bernstein v Skyviews and General Ltd* (1977).
- The Infrastructure Act 2015 states that land that is 300 meters or more below the surface can be exploited.
- Consideration of how the above allows fracking without the landowner’s permission.
- Trespass by ‘Ab Initio’, is a form of trespass that occurs when a person enters land with authority given by law rather than with the permission of the person possessing the land subsequently commits an act that is an abuse of that authority.
- Discussion of defences such as legal authority, consent (licence) or necessity.
- Discussion of remedies including damages, injunctions, orders for possession and abatement (self-help).

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the law on trespass to land, 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 trespass to land is fair to both the landowner and trespassers.

The response might consider issues such as:

- The element of a direct interference does not particularly favour an owner. They may want some action taken despite the lack of direct interference.
- For example an overhanging tree is not trespass but may not please an owner. However, if a person cuts down a tree and throws the cut branches into a neighbour's garden, then it is direct interference and is likely to be a trespass. Perhaps this tries to be fair to both the landowner and the public.
- The voluntary aspect seems to favour the trespasser rather than the owner. *Stone v Smith* (1647).
- The fact that a trespasser does not need to be aware of the trespass favours the owner. As mistake is no defence, this may be unfair on the trespasser and unjustly favours an owner. So if a trespasser wrongly believes they have permission to enter land, they can still be liable. Is this an attempt to strike a fair balance?
- As trespass is actionable per se, this favours the claimant. They may be successful in an action, despite not suffering any harm. This seems unfair on the trespasser.
- The Latin maxim, *cuius est solum, eius est usque ad coelum et ad inferos*, or who owns the land, owns to the heavens and down to hell, can be seen as very controversial.
- However, the decision in *Bernstein v Skyviews and General Ltd* (1977) regarding airspace did not favour the landowner. This could be seen as trying to strike a balance between the landowner and the trespasser. As the airspace above land is not owned entirely by a landowner but only the right to that airspace as is necessary for the ordinary use and enjoyment of land buildings.
- The Infrastructure Act 2015 s43 is very controversial as regards fracking. As it allows the drilling into land without liability for trespass. This could be seen to be unfair to the landowner and not attempting to be fair to all given the controversial nature of fracking.
- Trespass by 'Ab Initio', is where the authority is cancelled retrospectively and the entry is deemed to have been a trespass from the beginning. However this only occurs where there is an abuse of power. For example, where the police exceed their authority given to them with a search warrant when seizing stolen goods during a search of premises. Is this an attempt to be fair to both the landowner and trespasser? (Note such actions are now rare due to increased police powers).
- Defences available to a person who is alleged to have trespassed can be seen as trying to be fair to both the landowner and trespasser. Discussion of legal authority, consent and necessity can be credited.
- Remedies such as damages and injunctions can be seen as trying to be fair to both the landowner and trespasser.
- Orders for possession are more in favour of a landowner as they instruct a person to leave the land by a particular date.

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	<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 trespass to land. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the law of trespass to land. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the law of trespass to land, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 trespass to land. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the law of trespass to land. 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 of trespass to land, including a valid judgement. • Good citation of supporting case law and legal authorities.
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 trespass to land. 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 analysis of legal rules, principles, concepts and issues relevant to the law of trespass to land. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the law of trespass to land, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
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 trespass to land. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the law of trespass to land. Analysis includes minimal detail. • Basic evaluation of the principles regarding the law of trespass to land. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Or,

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 Analyse and evaluate whether the law of private nuisance tries to strike a balance between those with an interest in land. [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 rules on private nuisance, the English legal system and law of tort. For example, a response may include reference to the extent to which the law of private nuisance, including factors considered by the courts when considering liability, strikes a balance between those with an interest in land.

AO1

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

The response might consider issues such as:

- Definition of private nuisance. An unlawful interference for a substantial length of time with a person's right to enjoy or use his land in a reasonable way and is actionable in tort'.
- Private nuisance involves competing rights of individuals to enjoy their land. One to use the land as they see fit and the other to have a peaceful enjoyment of their land.
- Examples of private nuisance include noise, smells, flooding, tree branches and disturbance from a brothel.
- In an action for private nuisance the claimant must be someone with a legal interest in the land. *Hunter v Canary Wharf* 1997.
- The defendant does not need any interest in the land but must be the creator of the nuisance or the occupier who continues the activities of the creator. *Sedleigh-Denfield v O'Callaghan* 1940.
- Landlords can be liable for actions of tenants if they authorise/approve the actions of the tenants *Tetley v Chitty* 1968.
- There are 2 types of interference, direct and indirect. Direct occurs when the defendant comes onto the land. Indirect occurs when something done on a piece of land affects people next to it.
- Interference must be continuous rather than a one off.
- People can generally use their land as they see fit. It is actionable when the use becomes unreasonable.
- The courts will consider a number of factors when deciding if it is unreasonable. These are the nature of the locality/neighbourhood, duration, sensitivity and malice.
- Locality of the events, such as residential or industrial - *Sturges v Bridgman* 1879.

- Whilst a one off event can amount to a nuisance, generally liability may be easier to establish the longer the event lasts and the occurrence in unsociable hours.
- If a claimant is using their property for an extra-sensitive use then they are not entitled to sue in circumstances where a reasonable use would not need protection. *McKinnon v Walker* 1951.
- Where malice is behind activities then in these situations it can make unlawful something that might not otherwise be a nuisance. *Hollywood Silver Fox Farm v Emmett* 1936.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the law on private nuisance 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 of private nuisance strikes a balance between those with interests in land.

The response might consider issues such as:

- The rule regarding the need for a claimant to have an interest in the land tries to strike a balance by preventing just anyone taking action against a defendant. *Hunter v Canary Wharf* 1997.
- Again, a balance can be seen when a person may be liable if they continue the nuisance but were not the creator. Otherwise there may be no recourse for a claimant.
- The legal position of a landlord can be seen as striking a balance between legal interests as if they authorise a nuisance they too could be liable.
- However merely renting out land to the creator of a nuisance does not attract liability. *Smith v Scott & Others* 1973.
- The law tries to allow people to use their land as they see fit but tries to also strike a balance between different interests when the use becomes unreasonable. The principle of give and take is appropriate here.
- The factors that a court considers when deciding if interference is unreasonable or not, can be seen as the law trying to strike a balance between interests. For instance, certain activities will be lawful in some sets of circumstances but not in others.
- For example locality of the event means that a nuisance may be more likely if the land is in a quiet residential area rather than an industrial area. *Sturges v Bridgman* 1879.
- As regards the duration of the nuisance, the courts are more likely to consider a nuisance unreasonable if it lasts for a long time or occurs during unsociable hours. *Bolton v Stone* 1951.
- If a nuisance is caused for malicious reasons, the claim is more likely to succeed e.g. if the defendant deliberately does something with no purpose other than to annoy the claimant *Hollywood Silver Fox Farm v Emmett* 1936.

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	<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 private nuisance. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the law on private nuisance. 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 private nuisance, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 private nuisance. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the law on private nuisance. 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 private nuisance, including a valid judgement. • Good citation of supporting case law and legal authorities.
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 private nuisance. 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 analysis of legal rules, principles, concepts and issues relevant to the law on private nuisance. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the law on private nuisance, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
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 private nuisance. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the law on private nuisance. Analysis includes minimal detail. • Basic evaluation of the principles regarding the law on private nuisance. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Section C

Criminal Law

Either,

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 The law of theft is in a state of confusion and needs reforming. Discuss. [25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the law of theft, the English legal system and the criminal law. For example, a response may include reference to the definition of theft and recent cases concerning dishonesty which have impacted upon the law of theft.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules concerning the offence of theft.

The response might consider issues such as:

- The definition of theft as per s1 Theft Act 1968. A person is guilty of theft if they dishonestly appropriates property belonging to another with the intention to permanently deprive the other of it.
- Discussion of appropriation under s3(1) – any assumption by a person of the rights of an owner. *R v Pitman and Hehl* (1977). Only one right needs to be assumed *Morris* (1983). Appropriation can even take place when the owner has consented, *Gomez* (1993), or when property has been given by way of a gift. *Hinks* (2000).
- Definition of property from s4 Theft Act 1968 – Property includes money and all other property, real or personal, including things in action and other intangible property. *Oxford v Moss* (1979) states that knowledge of the questions on an exam paper was held not to be property.
- Definition of belonging to another from s5 Theft Act 1968, including possession or control or any proprietary interest in the property. This is a wide definition. *Turner (No.2)* (1971). Consideration of the exceptions of (i) property received under an obligation, *Davidge v Burnett* (1984), (ii) property obtained by mistake *A-Gs Reference (No1 of 1983)* (1985) and (iii) and trust property.
- Discussion of the requirement of dishonestly under s2 Theft Act 1968. No definition in the Act. However there are 3 situations where D's appropriation of property belonging to another is not to be regarded as dishonest (escape routes).

- The old test from the case of Ghosh was used for many years. The 2-stage test stated someone would be dishonest where their conduct would be regarded as dishonest by ordinary standards of reasonable and honest people (objective) and secondly they knew that their conduct was so regarded (even if they did not regard it as dishonest by their own standards) (subjective).
- However the new test for dishonesty can be found in *Ivey v Genting Casinos UK Ltd* (2017). Here the Supreme Court felt that the second part of the Ghosh test was inappropriate as it allowed a lower level of dishonesty for some defendants. This test was confirmed in *Barton and Booth v R* [2020].
- Discussion of intention to permanently deprive under s6 Theft Act 1968. It does not matter whether the appropriation is made with a view to a gain or for D's own benefit. The key issue is that the defendant deprives the other person of the property or whether they treated the item as their own. Velumyl (1989). Borrowing or lending will only amount to an intention to permanently deprive where it is for a period and in circumstances making it equivalent to outright taking or disposal of it.
- Conditional intention is where the defendant picks up property to see if it is worth stealing. If he then decides it is not worth stealing and returns it there is no theft. This happened in *Easom* (1971).

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the law of theft is in a state of confusion and needs reforming, 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 of theft is in a state of confusion and reform of this area of law is needed.

The response might consider issues such as:

- When the Theft Act 1968 was passed, the definition was meant to be in simple everyday language. However there have been some cases on the various elements of the offence which make it more difficult to understand the law.
- The word appropriation was specifically chosen because it was thought to be easily intelligible for the average juror. However this has been interpreted as any right, including an honest shopper choosing goods in a shop. Is this what parliament intended?
- It appears to be appropriate for only one right to be assumed. Hence defendants in the position of *Morris* (1983) and swapping price labels without purchasing the goods are considered to have appropriated them.
- It could be argued the decision in *Gomez* (1993) makes the law more confusing. It decided that there could be appropriation even though the owner consented to it. This means that many cases of fraud could also be charged as theft.
- The law is even more confusing following the House of Lords decision in *Hinks* (2000). Here it was decided that even where the consent to the appropriation was genuine, the appropriation could still amount to theft. The items, in the case, were gifts to the defendant, so it means someone can be guilty of theft in circumstances where, as regards civil law, they would be considered the lawful owner of the property because he is the recipient of a valid gift. Again confusion exists.
- The definition of 'property' is very wide and includes almost everything. Things not covered are usually covered by other offences, such as copyright laws or theft of electricity.

- The definition of 'belonging to another' is a wide definition. However Turner (No.2) (1971) allows a person to be guilty of stealing their own property. This decision caused surprise when the judge directed the jury to ignore the question of lien. The decision on Appeal was based on the fact that the garage had possession and control. Is it confusing that a person can be guilty of stealing your own property?
- A lack of a definition of dishonesty in the Act has led to a number of problems. A person's behaviour can still be dishonest where they are willing to pay for the property s2(2). This may seem harsh but it prevents people just taking what they want when items are not for sale.
- Confusion may be seen in the 3 escape routes. For instance if a defendant cannot bring himself within the scope of one of the three negative definitions, why isn't the defendant automatically regarded therefore as dishonest?
- Probably the Ghosh test is no longer applicable to the finding of liability for theft, as regards dishonesty. It did incur many criticisms such as leaving too much to the jury and therefore a risk of inconsistent decisions.
- Ivey v Genting Casinos UK Ltd (2017) now contains the appropriate test for dishonesty. However this is a civil case rather than criminal. The law is still a little confusing in this area. However note the decision in Barton and Booth v R [2020] which seems to have ended confusion and confirmed the Ivey test as the criminal test for dishonesty. No longer will a jury have to be separately satisfied that the 'subjective test' is met, but instead the accused's state of mind will simply form part of the fact pattern against which the "objective standard" of dishonesty will be applied.
- Is intention to permanently deprive needed? If someone dishonestly takes property belonging to another, does it matter whether they intend permanently to deprive that person of the property? This would make it possible to convict of theft in situations such as Lloyd where a film was copied and then returned.
- Conditional intention to deprive can provide confusion. Easom was not guilty of theft because a conditional intention to deprive is not enough to convict. If the word 'permanent' were replaced by 'temporary' such defendants would be convicted. This would bring the law in line with the law of burglary.

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	<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 theft. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the law of theft. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the law of theft, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 theft. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the law of theft. 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 of theft, including a valid judgement. • Good citation of supporting case law and legal authorities.
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 theft. 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 analysis of legal rules, principles, concepts and issues relevant to the law of theft. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the law of theft, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
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 theft. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the law of theft. Analysis includes minimal detail. • Basic evaluation of the principles regarding the law of theft. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Or,

1 6

Analyse and evaluate the extent to which the courts are prepared to recognise consent as a defence. [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 defence of consent, the English legal system and criminal law. For example, a response may include reference to the establishment of the defence, development through case law and the extent to which the courts are prepared to recognise consent as a defence.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the defence of consent.

The response might consider issues such as:

- The defence of consent, when successful, can lead to a full acquittal.
- It is often linked to non-fatal offences against the person, where the offences rests on a lack of consent.
- Once consent is raised, the onus is on the prosecution to prove lack of consent.
- Consent must be real and valid. Those who have a lack of capacity cannot give consent. *Burrell v Harmer (1967)*.
- An honestly held belief in consent may be a good defence.
- As regards consent obtained by fraud the identity of the person must be considered. (*Richardson 1998*) and the 'nature & quality' of the act, as in *Tabassum (2000)*.
- There are numerous limitations on the use of the defence of consent.
- Public policy has developed to allow consent to assault for lower levels - assault, and battery, where force is at a low level.
- However consent is not available for actual bodily harm s47 Offences Against the Person Act 1861 or s.20 and s.18 grievous bodily harm OAPA 1861
- There is a non-exhaustive list of exceptions to the above rule.
- Sports & dangerous pastimes. Officially arranged boxing matches conducted under the Queensbury rules are an exception due to their entertainment value. However bare-knuckle street fights are not included.
- As regards other sports there is often a distinction between on and off the ball incidents. Where on the ball incidents can provide implied consent if within rules of the sport. Factors such as the nature of the act and surrounding circumstances, degree of force, degree of risk of injury, state of mind of the accused and whether or not the whistle had been blown.
- Medical procedures allow consent to be obtained from the patient. This includes sex change operations and cosmetic surgery.
- Consent is permitted for tattooing & other forms of branding. *R v Wilson (1996)*.
- Consent is permitted for sexual activity. *R V Slingsby (1995)*.

- However sado – masochism activity for sexual gratification is not tolerated by the law. R v Brown & others (1993).
- Consent can be valid for instances of rough horseplay as the law does not want to get involved in normal community life. Jones & others (1986) and Aitken & others (1992).

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the legal defence of insanity is outdated and in serious need of reform, 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 extent to which the courts are prepared to recognise consent as a defence.

The response might consider issues such as:

- It could be argued that consent is not a defence in the usual sense, as if there is consent then there is no offence. However, the defence is allowed to an extent.
- This defence does cause much public debate as it often involves the freedom of an individual, against public policy.
- Case law has developed to provide a general set of principles on the law of consent. This however includes limitations of when it is and is not available.
- Potentially there is a lack of clarity behind some of the decisions.
- Public policy allows consent to be available as a defence where something less than actual bodily harm is intended or caused or which falls within the permitted exceptions. So the defence is limited in its extent.
- The defence is extended in its availability by exceptions to allow it beyond minor injury. In Barnes (2004), it was said that prosecutions in sports should be reserved for situations that were 'sufficiently grave to be categorised as criminal'.
- However at times decisions can cause confusion. For example in Aitken (1992), consent was available, due to the rough horseplay exception, despite the victim suffering serious burns.
- Consent is allowed in sexual activity but restricted if the aim is to cause harm. R v Brown and others (1993). This may be a little confusing when considered alongside R v Wilson (1993). Perhaps consent is something that should be reflected in the sentence rather than a verdict?
- The extent of consent is restricted to protect the young and vulnerable Burrell v Harmer (1967). However, this seems a reasonable restriction.
- Mistaken consent has been allowed, as in Richardson v Irwin (1999), but not always genuine consent as in Brown (1993). Does this cause confusion over the extent of this defence?
- Consent is not available for assisted dying. This is a controversial area where some argue there should be an element of consent. Pretty (2002), Purdy (2009). The latter case did result in guidelines for the DPP which could be argued as developing the extent of the defence.
- The Law Commission has put forward proposals that the harm, for which consent is available, should be limited, but as with the current law there should be exceptions that are developed by common law. Such activities should include tattooing, circumcision and ear piercing. See the consultation paper 'Consent and Offences Against the Person' 1994.
- It can be argued that a person's body is their own and the law should not dictate what they do with it. However, as an individual may also need the law to provide protection, perhaps the extent that consent is available as a defence will always vary?

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	<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 defence of consent. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the defence of consent. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the defence of consent, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 defence of consent. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the defence of consent. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the defence of consent, including a valid judgement. • Good citation of supporting case law and legal authorities.
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 defence of consent. 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 analysis of legal rules, principles, concepts and issues relevant to the defence of consent. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the defence of consent, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
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 defence of consent. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the defence of consent. Analysis includes minimal detail. • Basic evaluation of the principles regarding the defence of consent. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Section D

Human Rights Law

Either,

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|---|---|

 The powers of the police far outweigh the rights of suspects during detention. Discuss. [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 laws on police powers and rights of suspects in police detention, the English legal system and human rights law. For example, a response may include reference to statutory provision including the Police and Criminal Evidence Act 1984 and the Criminal Justice and Public Order 1994.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the law on police powers and suspects rights.

The response might consider issues such as:

- Many of the suspect's rights are contained in the Police and Criminal Evidence Act 1984. (P.A.C.E.).
- Following an arrest a suspect must be taken to a designated police station as soon as possible. S30 .PACE.
- Once at the police station a suspect's time in custody is overseen by the custody officer who ensures there is sufficient evidence to warrant detention. S36 PACE.
- S37 a suspect may be detained for the purposes of questioning. This allows the police to obtain evidence.
- Once a custody officer has authorised detention they must produce and keep updated the custody record with all the information about the suspect's time in custody. Coke C s37.
- Review of detention takes place after the first 6 hours and then every 9 hours by the custody officer. S40 PACE.
- Detention can be extended by the police to 24 hours (s41 PACE) and to 36 hours, by the Criminal Justice Act 2003.
- S44 allows for an extension of custody to 96 hours by approval of a magistrates court.

- S54 provides for a search of an arrested person, at the police station, to remove any item they believe might be used to cause physical injury to themselves, other or used to damage property. Also to interfere with evidence, assist them to escape or may be evidence relating to an offence.
- An intimate search of an arrested person's body orifices is possible under s, 55, if a high ranking officer so authorises. They must have reasonable grounds for believing that the suspect has concealed an object that can be used to cause physical injury to themselves or others. This applies if they believe a class A drug is concealed. The search has to be carried out by a registered medical professional or a registered nurse.
- S65 PACE as amended by the Criminal Justice and Public Order 1994 allows a police officer to conduct a search of the mouth as it is no longer considered to be an intimate search.
- S62 PACE allows for the taking of intimate samples such as blood, saliva and semen.
- S63 PACE allows for non-intimate samples to be taken from the arrested person, if authorisation has been given by an Inspector or above. These could include hair and nail clippings.
- S54 PACE allows for the extraction of DNA from samples.
- S61 PACE allows the police to take fingerprints from an arrested person.
- S61 A PACE as amended by Serious Organised Crime and Police Act 2005. (SOCAPA) 2005 allows for impressions of footwear to be taken.
- The arrested person also has certain rights during detention and interrogation. Under s60 PACE the interview must be recorded. In some areas the police also video interviews.
- S56 PACE contains a right to have someone informed of an arrested person's detention.
- S58 right is to consult a legal representative privately and free of charge.
- During an interview s57 requires an appropriate adult to be available for a vulnerable person such as those under 17 years or those suffering from a mental illness.
- During detention arrested persons must be given food, refreshments, sleep and breaks. The interview room must be adequately lit, ventilated and heated with the suspect being allowed to sit.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the law on police powers and the rights of a suspect in police custody, 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 police powers and whether they outweigh the rights of suspects during detention.

The response might consider issues such as:

- The duty to take a suspect to a designated police station as soon as possible prevents any extension of detention time.
- S36 and the involvement of the custody officer ensures an independent element in the decision-making process relating to the suspect. If any of the police officers in the investigation were in charge this would be a conflict of interest.
- The custody record must record reasons for detention and a copy can be obtained later in the case should the need arise. It can help prove the police have acted correctly or they have exceeded their powers.

- Consider the time for review of detention. Is 9 hours appropriate?
- Is the power for the police to increase detention from 24 hours to 36 appropriate? Or does it lack objectivity?
- The decision to extend custody time beyond 36 hours is taken by magistrates and therefore could be considered independent. In addition the suspect can be represented by a lawyer. The magistrate does not have to go straight to 96 hours but can grant a lower amount of time.
- A s54 search of someone in custody is based on safety reasons or protection of evidence, which seems appropriate. Alternatively the grounds may seem too wide.
- It could be argued that s55 searches lack an independent element as authorisation comes from within the police. However it seems appropriate for it to be carried out by a medical professional.
- S65 PACE as amended by the Criminal Justice and Public Order 1994 means that the police can conduct a search of the mouth, due to it no longer being an intimate search. This allows it to take place speedily, rather than the need to wait for a medical professional. This prevents someone from hiding drugs in their mouths and attempting to destroy evidence.
- S62 PACE taking an intimate sample must have the authority of an Inspector or above and the consent of the arrested person. This would otherwise be an assault on the person.
- As regards DNA and s64 such samples should not be retained indefinitely if the person has not been charged or charged and acquitted. (The Protection of Freedom Act 2012). This favours civil liberties.
- Taking fingerprints under s61 allows the police to use reasonable force. At times this may be difficult to carry out considering the act involved.
- The requirement to record all police interviews allows for an accurate record of what is said. However, nothing can be seen unless it is also videoed.
- The rights in s56 & s58 PACE can be suspended for up to 36 hours if it is felt that the person chosen may interfere in the investigation in some way. This helps to protect evidence from being destroyed or other being alerted to the situation.
- S57 provides protection for those who are vulnerable with an appropriate adult requirement.
- The rights of a suspect during detention, such as a break every 2 hours, allows for admissible evidence to be obtained. Denial of any right could lead to inadmissibility of evidence.
- A conclusion about whether or not police powers outweigh a suspects rights during police detention.

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	<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 police powers and the rights of a suspect in police custody. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to police powers and the rights of a suspect in police custody. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding police powers and the rights of a suspect in police custody, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 police powers and the rights of a suspect in police custody. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to police powers and the rights of a suspect in police custody. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding police powers and the rights of a suspect in police custody, including a valid judgement. • Good citation of supporting case law and legal authorities.
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 police powers and the rights of a suspect in police custody. 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 analysis of legal rules, principles, concepts and issues relevant to police powers and the rights of a suspect in police custody. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding police powers and the rights of a suspect in police custody, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
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 police powers and the rights of a suspect in police custody. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to police powers and the rights of a suspect in police custody. Analysis includes minimal detail. • Basic evaluation of the principles regarding police powers and the rights of a suspect in police custody. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Or,

1 8

The law surrounding the right to a private life has developed into a set of clear principles which are imposed by the courts. Discuss.

[25]

Indicative content

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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 laws on a right to a private life in common law, article 8 ECHR and a breach of confidentiality.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to a right to a private life.

The response might consider issues such as:

- Traditionally, there is no specific right to privacy, as outlined in the case of *Kaye v Robertson* (2003).
- *Hosking v Runting* (2204) discussed the concepts of privacy and confidence, clearly separating the two.
- Privacy is regarded as “the right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information. The Calcutt Commission 1990.
- Breach of confidence is a civil remedy giving protection against the disclosure or use of information which is not generally known, and which has been entrusted in circumstances imposing an obligation not to disclose it without authorisation.
- Breach of confidence can be traced back to the 1800's with the case of *Prince Albert v Strange* (1849). Involving a display of sketches made by the Royals.
- Breach has developed to include photographs as well as information in *HRH Princess of Wales v MGN Newspapers Ltd* (1993) and sexual orientation in *Stephens v Avery* (1988).
- Article 8 of the European Convention on Human Rights: “Everyone has the right to respect for his private and family life, his home and his correspondence” *Spencer v UK* (1998), *Von Hannover v Germany* (2005).
- The above must be considered alongside Article 10 of the European Convention on Human Rights involving freedom of expression eg the case of *Goodwin v UK*.
- Credit knowledge of the use of “super injunctions” to protect the identity of the claimant updates following Leveson, including the need for the establishment of Independent Press Standards Organisation which has been set up to regulate the media.
- Credit consideration of the public interest defence. *AG v Guardian Newspapers Ltd (No.2)* (1990).
- Section 12(4) of the HRA 1998 states that UK courts must have particular regard to the convention right to freedom of expression, and where the material in question is journalistic, literary or artistic material, to the extent to which is in the public interest for it to be published, and any relevant privacy code.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the public order laws strike a fair balance between freedom of assembly and the right to a private life, 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 surrounding the right to a private life has developed into a set of clear principles which are imposed by the courts.

The response may include:

- Analysis and evaluation of breach of confidence which has been developed by the courts so as to provide some protection for privacy.
- A major change in the law to form a tort of privacy must be carried out in statutory form. It is beyond the remit of the judiciary to change the common law to such an extent. *Wainwright v Home Office* (2003).
- The balancing act between freedom of expression, Article 10 and an individual's privacy, Article 8. Both are important interests and can often be seen to be competing against each other.
- *Associated Newspapers Ltd v Prince of Wales* (2006) came down in favour of confidentiality. Similarly so did *Venables v Thompson v News Group Newspapers* (2001).
- Claims for a breach of confidentiality were dismissed in *Murray v Express Newspapers* (2008).
- Consideration of the decisions by Lord Woolf in *A v B and C* and Lord Goff in *A-G v Guardian Newspapers (No.2)*.
- Analysis and evaluation of the case of *Venables v News Group Newspaper*.
- Examples of cases which illustrate the balance between the freedom of expression of the media and the individual's right to privacy e.g. *Prince Albert v Strange*; *Argyll v Argyll*; *Stephens v Avery*; *Douglas v Hello!*; *Campbell v MGN*. Such examples can show the development of the law and the stand taken by the courts.
- It appears that courts are willing to enforce confidentiality if the information was given in confidence. Clearly, this is where one party mentions it in the nature of the conversation, but the courts have gone further and are prepared to imply that information was disclosed in confidence. See *Farnie (Deceased) and Others v Reed*.
- Analysis and evaluation of the further legal controls available such as trespass, nuisance, copyright and breach of confidence.
- Just because there is no clear law on privacy does not mean that the courts refuse to protect people's privacy. There is the common law, Article 8 and breach of confidentiality that can be used by the courts.
- At times the balancing act between article 8 and Article 10 can be difficult and so a clear set of laws governing privacy would be desirable.

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	<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 right to a private life. Response is clear, detailed and fully developed. 	<p style="text-align: center;">12-15 marks</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the right to a private life. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the development of the right to a private life, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 right to a private life. Response is generally clear, detailed and developed. 	<p style="text-align: center;">8-11 marks</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the right to a private life. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the right to a private life, including a valid judgement. • Good citation of supporting case law and legal authorities.
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 right to a private life. 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 analysis of legal rules, principles, concepts and issues relevant to the right to a private life. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the right to a private life. Including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
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 right to a private life. Response includes minimal detail. 	<p style="text-align: center;">1-3 marks</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the right to a private life. Analysis includes minimal detail. • Basic evaluation of the principles regarding the right to a private life. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	