



GCE A LEVEL MARKING SCHEME

SUMMER 2025

**A LEVEL
LAW – UNIT 3
THE PRACTICE OF SUBSTANTIVE LAW
1150U30-1**

About this marking scheme

The purpose of this marking scheme is to provide teachers, learners, and other interested parties, with an understanding of the assessment criteria used to assess this specific assessment.

This marking scheme reflects the criteria by which this assessment was marked in a live series and was finalised following detailed discussion at an examiners' conference. A team of qualified examiners were trained specifically in the application of this marking scheme. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners. It may not be possible, or appropriate, to capture every variation that a candidate may present in their responses within this marking scheme. However, during the training conference, examiners were guided in using their professional judgement to credit alternative valid responses as instructed by the document, and through reviewing exemplar responses.

Without the benefit of participation in the examiners' conference, teachers, learners and other users, may have different views on certain matters of detail or interpretation. Therefore, it is strongly recommended that this marking scheme is used alongside other guidance, such as published exemplar materials or Guidance for Teaching. This marking scheme is final and will not be changed, unless in the event that a clear error is identified, as it reflects the criteria used to assess candidate responses during the live series.

WJEC GCE A LEVEL LAW

UNIT 3: THE PRACTICE OF SUBSTANTIVE LAW

SUMMER 2025 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Unit 3

The questions assess AO1 and AO2. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate 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 the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising 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 because 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

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

Advise Tesni as to whether any public order offences have been committed, applying your knowledge and understanding of legal rules and principles. [50]

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.

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

The response might consider issues such as:

- Public Order Act 1986; Police, Crime Sentencing and Courts Act 2022 and the Public Order Act 2023
- Under s.11 of the POA 1986, Tesni, the organiser of a procession is required to give notice six clear days in advance stating the date of the procession, the start time, the proposed route and the name and address of at least one person organising it. The notice must be delivered by hand or by post to a police station in the area where the procession is to start. Failure to give notice is a summary offence punishable by a fine. It is not the case that organisers require permission from the police, nor do they have to wait for police permission before going ahead. Failure to give notice is an offence as above, but the procession is not illegal. Under s.13 the Chief Constable can apply to the district council to ban all processions of a particular type in the area for up to three months, subject to approval by the Home Secretary: organising or participating in a banned procession is a summary offence under s.13. Section 11 is one of the few sections of the POA 1986 which did not give the police a power to arrest, but since the SOCPA amendments to PACE 1984, s.24, the police have power to arrest for any offence.

- The police have power under s.12 of the POA 1986 to impose conditions on processions: these may be imposed in advance by the Chief Constable in writing (s.12(3)), or by the senior police officer present at the scene (s.12(2)(a)). The grounds for imposing conditions (s.12(1)) are that the senior officer reasonably believes that the procession may result in serious public disorder, or serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is to intimidate others into doing something which they have a right not to do, or refraining from doing something which they have a right to do. These grounds are commonly called the “four triggers”.
- **Section 12 has been amended by PCSC 2022** to add another trigger in the case of a “noisy protest”- noise generated having a significant impact by causing harassment, intimidation, alarm or distress to people in the area. PCSC 2022 - examples of serious disruption include significant delay to the delivery of a time sensitive product, prolonged disruption of access to any essential goods or services
- Conditions which may be imposed: s.12(1) states that the officer may impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation. S.12(1) specifies that these may include conditions as to the route to be followed and that the procession is not to enter some particular public place but presumably extends beyond these.
- Since the HRA 1998, conditions imposed must be “proportionate” in order not to breach Art.11 of the ECHR. Refusal to comply with a condition is an offence (s.12(4) for organisers, s.12(5) for participants).
- Potential public order offences:
- Discussion of offences in sections 1 to 5 POA 1986
- The placards/ banners: s.5 of the POA 1986 creates the offence of causing harassment, alarm or distress. This may be committed in two ways: by using threatening, abusive or insulting words or behaviour, or by engaging in disorderly behaviour. The behaviour must take place within the sight or hearing of a person likely to be caused harassment, alarm or distress thereby (s.5(1)). This can include a police officer: DPP -v- Orum. Cases: DPP -v- Clarke; DPP -v- Fidler. The arrest power under s.5 required the officer first to give a warning, and only arrest if this was ignored, but this has been superseded by the amended s.24 of PACE 1984.
- **Section 1 and 2 POA 2023** - locking on and going equipped to lock on
- **Section 6 POA 2023**- obstructing major transport works
- Once a procession comes to a standstill, it becomes an assembly, and the police may impose conditions under s.14. The triggers are identical to s.12 and the police can impose virtually any conditions they consider necessary.
- Discussion of breach of the peace; Austin -v- Metropolitan Police Commissioner (2007), the House of Lords held that the practice of confining demonstrators (“kettling”) was lawful as an exercise of the power to impose conditions under s.14, even if the police did not have these in mind. There was no breach of Art.5: freedom of movement, where the confinement was only for the time necessary to prevent serious public disorder; if a cordon was maintained beyond this merely to punish the demonstrators, it would be a breach of Art.5; Laporte (2007)
- Obstruction of the highway- s.137 Highways Act 1980
- Obstruction of the police- Police Act 1996

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	Excellent, detailed knowledge and understanding of legal rules and principles relating to the law of public order.
3	11-15	Good knowledge and understanding of legal rules and principles relating to the law of public order
2	6-10	Satisfactory knowledge and understanding of legal rules and principles relating to the law of public order
1	1-5	Basic knowledge and understanding of legal rules and principles relating to the law of public order.
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25-30	- Excellent, detailed application of legal rules and principles to Tesni's situation. - Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to public order law.
4	19-24	- Very good application of legal rules and principles to Tesni's situation. - Very good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to public order law.
3	13-18	- Good application of legal rules and principles to Tesni's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to public order law.
2	7-12	- Satisfactory application of legal rules and principles to Tesni's situation. - Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to public order law.
1	1-6	- Basic application of legal rules and principles to Tesni's situation. - Basic presentation of a legal argument, using minimal legal terminology relating to public order law.
	0	Response not creditworthy or not attempted.

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

Advise Ellie as to the legality of the actions of the police, applying your knowledge and understanding of legal rules and principles. [50]

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.

In advising Ellie candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of police powers. Candidates are expected to apply the full range of legal rules and principles to Ellie's situation, including the Police and Criminal Evidence Act 1984 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Police and Criminal Evidence Act 1984
- Power to stop and search: ss 1-3 and Code A
- Applying the requirement for reasonable suspicion to the scenario: Code A – should not be based on personal factors alone, must be based on objective factors and not subjective. Applying the requirements for a valid search to the search of Ellie
- information to be given under s.2; failure renders search invalid: *Osman*; *Bristol*
- Procedure following search: s.3
- Applying the power of arrest to Ellie: s.24 as amended by the Serious Organised Crime and Police Act 2005, S.110, and code G police may arrest anyone who is, or is reasonably suspected to be, about to commit an offence; or in the act of committing an offence; or is guilty of committing an offence; or is reasonably suspected to be guilty of having committed an offence
- Arrest power must only be exercised if the officers have reasonable grounds to believe it is necessary s.24(5) the grounds are: to enable the name and address of the person to be ascertained if it is not known, or the police believe it to be false; to prevent the person causing physical injury to himself or another, suffering physical injury, causing loss or damage to property, committing an offence against public decency, or causing unlawful obstruction of the highway; to protect a child or other vulnerable person; to allow the prompt and effective

investigation of the offence of the conduct of the person; to prevent any prosecution for the offence being hindered by the disappearance of the person
Applying the procedural requirements of a valid arrest: Ellie should be informed of the fact she is under arrest and also the ground for arrest (s.28) and she should be cautioned

- Treatment of Ellie in police custody: Code C
- Right to take fingerprints and DNA samples under sections 61-63
- Ellie's right to have someone informed of his arrest: s.56
- Ellie's right to legal advice: s.58
- Ellie's - age, is she a juvenile? s.57 PACE
- Ellie's time limits on detention: s.41 - 44 allows police to authorise detention up to 36 hours but further detention up to 96 hours requires authorisation by magistrates
- Ellie's detention should be reviewed after 6 hours and then every 9 hours by a review officer not involved in the case- s 40
- Potential remedies- sue for false imprisonment, complain to IOPC, breach of human rights, Arts 3, 5 and 6

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	• Excellent, detailed knowledge and understanding of legal rules and principles relating to police powers
3	11-15	• Good knowledge and understanding of legal rules and principles relating to police powers
2	6-10	• Satisfactory knowledge and understanding of legal rules and principles relating to police powers
1	1-5	• Basic knowledge and understanding of legal rules and principles relating to police powers
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25-30	• Excellent, detailed application of legal rules and principles to Ellie situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the powers of the police.
4	19-24	• Very good application of legal rules and principles to Ellie's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to the powers of the police.
3	13-18	• Good application of legal rules and principles to Ellie's situation. • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to the powers of the police.
2	7-12	• Satisfactory application of legal rules and principles to Ellie's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to relating to the powers of the police.
1	1-6	• Basic application of legal rules and principles to Ellie's situation. • Basic presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to the powers of the police.
	0	Response not creditworthy or not attempted.

Section B

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

Advise Emma as to whether there was a misrepresentation, applying your knowledge and understanding of legal rules and principles. [50]

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.

In advising Emma candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to misrepresentation. Candidates are expected to apply the full range of legal rules and principles to Emma's situation, including the Misrepresentation Act 1967 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Nature of misrepresentation and differentiating between the different types of misrepresentation.
- Statutory misrepresentation under the Misrepresentation Act 1967
- Fraudulent misrepresentation and remedies available
- Innocent misrepresentation and remedies available
- Negligent misrepresentation and remedies available
- The distinction between fact and opinion.
- Relevant citation, for example, Doyle v Olby; Royscot Trust v Rogerson
- Discussion and application to Emma's situation of statutory misrepresentation under the Misrepresentation Act 1967
- Was there fraudulent misrepresentation here? If so, the remedies available
- Was Jack's statement an innocent misrepresentation? If so, the remedies available
- Whether there was negligent misrepresentation by Jack and the remedies available
- Candidates should refer to section 2(1) of the Misrepresentation Act 1967 in respect of the issue of damages

- Jack, as a professional vintage car dealer, had a duty to exercise reasonable care and diligence in verifying the accuracy of the information he provided to potential buyers
- Application of the distinction here between fact and opinion.

Relevant citation

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	• Excellent, detailed knowledge and understanding of legal rules and principles relating to misrepresentation
3	11-15	• Good knowledge and understanding of legal rules and principles relating to misrepresentation.
2	6-10	• Satisfactory knowledge and understanding of legal rules and principles relating to misrepresentation
1	1-5	• Basic knowledge and understanding of legal rules and principles relating to misrepresentation
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25-30	• Excellent, detailed application of legal rules and principles to Emma's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to misrepresentation
4	19-24	• Very good application of legal rules and principles to Emma's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to misrepresentation
3	13-18	• Good application of legal rules and principles to Emma's situation. • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to misrepresentation
2	7-12	• Satisfactory application of legal rules and principles to Emma's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to misrepresentation
1	1-6	• Basic application of legal rules and principles to Emma's situation. • Basic presentation of a legal argument, using minimal legal terminology, relating to misrepresentation
	0	Response not creditworthy or not attempted.

Rhiannon enters into a contract to renovate her kitchen with Builder's Choice Ltd. The contract stipulates that the work will commence on January 1st and be completed within two months. Rhiannon pays a deposit of £2,000 as per the agreement. However, Builder's Choice Ltd fails to start work on the agreed-upon date. Rhiannon contacts them several times, but they keep delaying the start date without providing a valid reason. By mid-February, Builder's Choice Ltd still hasn't commenced any work, and Rhiannon is becoming increasingly frustrated and worried about the delay. Meanwhile, Rhiannon's friend offers to renovate her kitchen at a similar price and guarantees completion within one month. Fed up with Builder's Choice Ltd.'s constant delays and breach of contract, Rhiannon decides to terminate the agreement with them and hires her friend instead to carry out the renovation work.

Advise Rhiannon on whether a discharge of contract has occurred with Builder's Choice Ltd, applying your knowledge and understanding of legal rules and principles. [50]

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.

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

The response might consider issues such as:

- Different ways of discharging a contract
- Discharge by agreement: parties agree to terminate a contract
- Bilateral discharge: Parties get a different benefit from a new agreement
- Unilateral discharge: Benefit is only to be gained by one party
- Discharge by breach: A party fails to perform an obligation or does it defectively
- Actual breach: A party does not perform their obligations at all: Platform Funding Ltd v Bank of Scotland plc (2008), Pilbrow v Pearlless de Rougemont & Company (1999), Modahl v British Athletic Federation Ltd (1999), Abramova v Oxford Institute of Legal Practice (2011)
- Anticipatory breach: A party indicates in advance that they will not be performing their obligations: Frost v Knight (1872), Avery v Bowden (1855), Fercometal Sarl v Mediterranean Shipping Company (1989), White and Carter Ltd v McGregor (1962)
- Discharge by performance: All obligations under the contract have been met Cutter v Powell (1795)
- Substantial performance: If a party has done substantially what was required under the contract: Dakin & Company v Lee (1916), Hoeing v Isaacs (1952), Bolton v Mahadeva (1972)
- Severable contracts: Payment due at various stages of performance
- Acceptance of part performance: One of the parties has performed the contract but not completely but other party will accept this: Sumpter v Hedges (1898)
- Prevention of performance: One party prevents the other from carrying out their obligations: Planche v Colburn (1831), Startup v Macdonald (1843)

- Discharge by frustration: Performance of the contract becomes impossible: Taylor v Caldwell (1863)
- Three reasons for frustration:
 - Impossibility
 - Illegality
 - Commercial sterility
- Law Reform (Frustrated Contracts) Act 1943 outlines the legal consequences when a contract has been frustrated
- Application - Builder's Choice Ltd has breached the contract by failing to commence work on the agreed-upon date. This constitutes a breach of contract. A breach occurs when a party fails to perform its obligations under the contract. In this case, Builder's Choice Ltd.'s failure to start work on time violates the terms of the contract.
- Remedies for Breach: Rhiannon has several options for remedies due to the breach by Builder's Choice Ltd:
 - Damages: Rhiannon may claim damages from Builder's Choice Ltd for any losses she incurs as a result of their breach. This could include any additional costs she has to pay her friend for the renovation work.
 - Termination: Rhiannon has the right to terminate the contract due to Builder's Choice Ltd.'s breach. Termination discharges both parties from their obligations under the contract.
 - Specific Performance: Rhiannon could seek an order from the court requiring Builder's Choice Ltd to perform their obligations under the contract. However, given the delays and lack of performance thus far, this may not be a practical remedy in this scenario.
- Discharge by Frustration: Alternatively, Rhiannon may argue that the contract has been discharged by frustration. Frustration occurs when an unforeseen event occurs, making it impossible to fulfill the contract or fundamentally changing the obligations under the contract. In this case, the constant delays and failure to commence work by Builder's Choice Ltd could be considered frustrating events. Additionally, Rhiannon's decision to hire her friend due to Builder's Choice Ltd.'s inability to start work may also constitute frustration of the contract.
- Rhiannon is entitled to terminate the contract with Builder's Choice Ltd due to their breach of contract. She may also seek damages for any losses she incurs as a result of their breach. Alternatively, Rhiannon may argue that the contract has been discharged by frustration due to the unforeseen events and hire her friend to complete the renovation work

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	• Excellent, detailed knowledge and understanding of legal rules and principles relating to discharge of contract
3	11-15	• Good knowledge and understanding of legal rules and principles relating to relating to discharge of contract
2	6-10	• Satisfactory knowledge and understanding of legal rules and principles relating to relating to discharge of contract
1	1-5	• Basic knowledge and understanding of legal rules and principles relating to discharge of contract
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25-30	• Excellent, detailed application of legal rules and principles to Rhiannon's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to discharge of contract
4	19-24	• Very good application of legal rules and principles to Rhiannon's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to discharge of contract
3	13-18	• Good application of legal rules and principles to Rhiannon's situation • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to discharge of contract
2	7-12	• Satisfactory application of legal rules and principles to Rhiannon's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to discharge of contract
1	1-6	• Basic application of legal rules and principles to Rhiannon's situation • Basic presentation of a legal argument, using minimal legal terminology, relating to discharge of contract
	0	Response not creditworthy or not attempted.

Section C

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

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

[50]

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.

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

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

The response might consider issues such as:

- Sam – His words essentially show that he is not a threat – *Tuberville v Savage* (1669). Students may consider self defence in hitting Alex – Consider how Sam considered the situation to be and whether the use of force was reasonable in those circumstances.
- Alex – assault (s39 Criminal Justice Act 1988) and battery (s39) re grabbing Sam’s shirt – Battery is committed if A ‘intentionally or recklessly inflicts unlawful force on another person’ – *Collins v Wilcock* (1984) grabbing someone’s clothes = battery and the threat ‘I am not too drunk to sort you out’ is the assault regardless of whether Sam was afraid or not – Apprehension of immediate, unlawful personal violence. Intention or recklessness will do – *Fagan v Met Police Commissioner* [1969]
- Mark – Battery for punching Sam in the face – could argue ABH s.47 OAPA 1861. Any injury that is more than ‘transient and trifling’ can be classified as ABH and therefore can be subject to more serious criminal charges (and penalties) however, the CPS Charging standards advise that battery will be the appropriate charge where either...No injury occurs or injuries which are not serious occur. In determining ‘seriousness’ we need to consider things like significant medical

intervention and/or permanent effects of the injury. The mens rea for s47 is the intention or recklessness to commit an assault, meaning the intention or recklessness to cause the victim fear of unlawful force or applying unlawful force. Could argue - s20, mens rea is the intention or recklessness to cause some harm (some injury or ABH) but the actus reus or the outcome has to be a wound or serious injury/GBH. Do Sam's injuries constitute a wound or GBH?

- Consider Mark's impact on James – assault – brandishing a broken bottle and making verbal threats. An assault is when Mark puts James in fear of immediate unlawful force. This can be a thing said or done, signs or even silence. The mens rea for assault is intention or recklessness as to causing the victim to fear immediate unlawful force, while the actus reus can be as little as fear. Mark causes James to feel fear and so he is liable.
- S18 requires the intention to cause serious injury/GBH or to wound. The actus reus is a wound which breaks all layers of the skin or a serious injury. Sam kicks and punches Alex repeatedly which clearly shows he has the intention to cause serious injury. As Scott's ribs are broken this is enough for serious injury/GBH. Alex is liable.
- Consider the actus reus before the mens rea and then reach a conclusion.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	• Excellent, detailed knowledge and understanding of the legal rules and principles relating to non-fatal offences against the person
3	11-16	• Good knowledge and understanding of the legal rules and principles relating to non-fatal offences against the person
2	6-10	• Satisfactory knowledge and understanding of the legal rules and principles relating to non-fatal offences against the person
1	1-5	• Basic knowledge and understanding of the legal rules and principles relating to non-fatal offences against the person
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25-30	• Excellent, detailed application of legal rules and principles to Alex, Mark and Sam's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person
4	19-24	• Very good application of legal rules and principles to Alex, Mark and Sam's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person
3	13-18	• Good application of legal rules and principles to Alex, Mark and Sam's situation. • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to non-fatal offences against the person
2	7-12	• Satisfactory application of legal rules and principles to Alex, Mark and Sam's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to relating to non-fatal offences against the person
1	1-6	• Basic application of legal rules and principles to Alex, Mark and Sam's situation. • Basic presentation of a legal argument, using minimal legal terminology, relating to non-fatal offences against the person
	0	Response not creditworthy or not attempted.

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

Advise Sarah as to whether she may have any defences to a charge of murder, applying your knowledge and understanding of legal rules and principles. [50]

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.

In advising Sarah candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to homicide and defences. Candidates are expected to apply the full range of legal rules and principles to Sarah's situation, including murder and the defences of diminished responsibility, loss of control and self defence, and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Applying the actus reus of murder to Sarah's case: that the defendant must cause the death of a human being. Causation – both factual and legal causation can be explained. Further advice in this area can include factual causation – 'but for' test, e.g. *White Dalloway* and legal causation, operating and substantial cause
- Applying mens rea of murder to Sarah's case: the intention to kill or cause grievous bodily harm to Tim. Advice should include reference to both direct and oblique intention. Support may come from discussion of virtual certainty test: *Woollin*; *Nedrick*.
-
- Partial defence of loss of control- s54 and s55 Coroners and Justice Act 2009. There must be a loss of control - s.54 does not have to be sudden. Although, the defence does not apply if it is an act of revenge. As seen in *R v Hatter* (2013), where the defendant had 'accidentally' stabbed his ex-girlfriend in the chest and wrist in the middle of the night. He was convicted of murder as there was no evidence that he had lost his control.
- Secondly, the loss of self-control had a qualifying trigger. Under s.55 the qualifying triggers could be a fear of serious violence from Tim to Sarah or things said and done, which are extremely grave in nature and Sarah has a justifiable sense of being wronged. As seen in *R v Bowyer* (2013), where the defendant went to the victim's house to burgle him but when the victim taunted him about his girlfriend being a prostitute, Bowyer lost his control and killed him. However, it was held that the defendant had no justifiable sense of being wronged thus, the defence was not available to him. The third element requires a reasonable person

to have acted in the same way. S.54(i) gives the objective test to find whether a person of the defendant's sex and age, with an ordinary level of tolerance and self-restraint, and in similar circumstances, might have acted in a similar way to the defendant.

- Diminished responsibility: Coroners and Justice Act, 2009, s.52 – This must be proven by the defence that Sarah was suffering from diminished responsibility at the time of the offence on the balance of probabilities. There are three elements to diminished responsibility.
- The first element is whether Sarah is suffering from an abnormality of mental functioning which arose from a recognised medical condition. 'Abnormality' was defined in *R v Byrne* (1960) as "a state of mind so different from that of an ordinary person that the reasonable man would term it abnormal".
- The second element is whether the abnormality is caused by a recognised medical condition Sarah has depression and this has been classed as a recognised medical condition as seen in the case of *Seers*.
- The third element is that Sarah's abnormality of mental functioning must have substantially impaired her ability to: understand the nature of her conduct; Or form a rational judgement; or exercise self-control. As seen in *R v Golds* (2014), where the defendant was convicted of murder as it could not be argued that there was substantial impairment to the defendant's ability to take responsibility. Effect of defence: reduces murder to voluntary manslaughter.
- Candidates- may refer to insanity also, due to the depression- rules in *M'Naghten* (1843) The defence of insanity would require Sarah to prove that at the time of the offence she was labouring under such a defect of reason (*R v Clarke*) caused by a disease of the mind, that she did not know either the nature and quality of the act, or if she did not know it, that she did not know what she was doing was wrong. (*R v Windle*)/
- Self defence- *R v Palmer* (1971)- 2 questions- Did the D honestly believe that the use of force was necessary? (This is a subjective test).
- Did the D use a reasonable amount of force in the circumstances as he believed them to be? (An objective test with a subjective element, the jury will determine if the force is excessive).
- The test for reasonable force is also now found in: s.76 of the Criminal Justice and Immigration Act 2008:
- Whether, on the facts as the D. believed them to be, a reasonable person would regard the force used as reasonable (i.e. proportionate) in self-defence?
- S.76 says: In deciding whether the force used is reasonable in the circumstances:
- That a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of necessary action; and
- That evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose. See cases of *Read v Wastie* Jury are not to use the 'jeweller's scales'; *Palmer*: "if there has been an attack so that the use of force to defend is necessary, it will be recognised that a person defending themselves cannot weight to a nicety the exact measure of his defensive action"
- S.76 allows for a person who is facing an attack, is under stress and cannot be expected to work out the exact amount of force needed in the circumstances. If there is evidence that the person 'honestly and instinctively' thought the level of force was reasonable to protect himself or another, or to prevent crime then this is strong evidence that the action taken was reasonable in the circumstances.
- Did Sarah use reasonable force? See *Hussain and another* (2010)
- However, if the force is used after all danger is over (e.g. out of revenge or retaliation) the defence is not available. If Sarah genuinely made a mistake as to

the amount of force, then he is to be judged on the facts as SHE believed them to be, even if the mistake was unreasonable - Williams (Gladstone) case.

- What about a pre-emptive strike? Bird [1985] - Someone who fears an attack can (in certain circumstances) make preparations to defend himself (even if those preparations involve breaches of the law) The main consideration is once again, honest belief. You must ask 'was the use of force necessary to ward off an attack'?
- If the answer is 'yes', then a pre-emptive attack does not preclude a D from relying on self defence.
- Sarah believed that the use of force was necessary to ward off an attack from Tim. If Sarah is the aggressor, however, she will not be able to use the defence - R v Rashford (2005) and R v Keane [2010]. However, if the jury decides that excessive force has been used then Sarah cannot use self defence as a defence. R v Clegg (1995) and R v Martin (Anthony) (2002)
- Can D's characteristics be considered in deciding if she thought that she needed to defend herself? As seen in Martin (2002), his appeal was rejected by the Court of Appeal, they held that personality disorders could not be considered when considering the defence of self-defence the decision in Martin was followed in Cairns (2005) where the court held that when deciding whether the defendant had used reasonable force in self-defence, it was not appropriate to consider whether the defendant was suffering from a psychiatric condition. The law in Martin and Cairns was upheld in Oye (2013)
- Is involuntary manslaughter applicable?
- The possible types of involuntary manslaughter which may be applicable here are unlawful act manslaughter and gross negligence manslaughter.
- Unlawful act manslaughter is when there has been an unlawful act, the act must be dangerous, and it must have caused the death. An unlawful act refers to a crime/criminal offence, there must be foresight of some harm to be dangerous - as seen in the case of JM and SM.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	• Excellent, detailed knowledge and understanding of the legal rules and principles relating to homicide and defences
3	11-16	• Good knowledge and understanding of the legal rules and principles relating to homicide and defences
2	6-10	• Satisfactory knowledge and understanding of the legal rules and principles relating to homicide and defences
1	1-5	• Basic knowledge and understanding of the legal rules and principles relating to homicide and defences
	0	Response not creditworthy or not attempted.

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
5	25-30	• Excellent, detailed application of legal rules and principles to Sarah's situation. • Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to homicide and defences
4	19-24	• Very good application of legal rules and principles to Sarah's situation. • Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to homicide and defences
3	13-18	• Good application of legal rules and principles to Sarah's situation. • Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to homicide and defences
2	7-12	• Satisfactory application of legal rules and principles to Sarah's situation. • Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to homicide and defences
1	1-6	• Basic application of legal rules and principles to Sarah's situation • Basic presentation of a legal argument, using minimal legal terminology, relating to homicide and defences.
	0	Response not creditworthy or not attempted.