



GCE A LEVEL MARKING SCHEME

SUMMER 2025

**A LEVEL
LAW – UNIT 4
1150U40-1**

About this marking scheme

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

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

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

GCE A LEVEL LAW
UNIT 4 - SUBSTANTIVE LAW PERSPECTIVES
SUMMER 2025 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Unit 4

The questions assess assessment objectives AO1 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles, and the ability to analyse and evaluate legal rules, principles, concepts and issues.

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 AO3.

Stage 1 - Deciding on the band

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

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance, if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content.

Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

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

Stage 2 - Deciding on the mark

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

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

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

Section A

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|---|---|
- 'The Human Rights Act 1998 is no longer fit for purpose'. Analyse and evaluate this statement. [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.

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

The response might consider issues such as:

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

income, etc.

- **Bill of Rights** – scope, formation, proposals.
- Evaluation: would it be better to have a **Bill of Rights**? Current debates.
- Only really protects people from actions of state and public authorities – the narrow scope of public authorities – today, the need for protection is often against powerful private institutions like the banks.
- The powers of the courts are circumscribed so that in the last analysis, government is not constrained by the **HRA 1998**.
- Alternatively, the powers of the courts allow them too much scope to interfere with the will of democratically elected bodies.
- The **HRA 1998** cannot prevent any government from acting in violation of the rights it enshrines or even abolishing the **HRA 1998** itself.
- Reference to relevant legal authority/reports.

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 on human rights protection.
3	11 - 15	• Good knowledge and understanding of legal rules and principles relating to the law on human rights protection.
2	6 - 10	• Satisfactory knowledge and understanding of legal rules and principles relating to the law on human rights protection.
1	1 - 5	• Basic knowledge and understanding of legal rules and principles relating to the law on human rights protection.
	0	Response not creditworthy or not attempted

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the law on human rights protection. • Excellent evaluation of the debates surrounding the law on human rights protection, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	• Very good analysis of legal rules, principles, concepts and issues relevant to the law on human rights protection. • Very good evaluation of the debates surrounding the law on human rights protection, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	• Good analysis of legal rules, principles, concepts and issues relevant to the law on human rights protection. • Good evaluation of the debates surrounding the law on human rights protection, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the law on human rights protection. • Satisfactory evaluation of the debates surrounding the law on human rights protection, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the law on human rights protection. • Basic evaluation of the debates surrounding the law on human rights protection. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

Analyse and evaluate whether the powers of the police adequately protect the rights of suspects. [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.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the law on police powers. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the extent to which the law relating to police powers adequately protects the rights of suspects. Candidates are expected to consider and debate the full range of issues and arguments surrounding police powers and human rights law, including an analysis and evaluation of powers contained in the Police and Criminal Evidence Act 1984 (and other statutes) and associated safeguards within the European Convention on Human Rights.

The response might consider issues such as:

- **Article 5** of the European Convention on Human Rights is a limited right and permits restrictions on a suspect's liberty.
- **Article 8** of the European Convention on Human rights is a qualified right and provides for the right to a private life, home and correspondence.
- **Article 6** of the European Convention on Human Rights is an absolute right and provides for the right to a fair trial.
- The main provision for police powers is the **Police and Criminal Evidence Act 1984 (PACE)**.
- **S.1 PACE** – stop and search of people and vehicles. Consideration of reasonable grounds to suspect they will find stolen goods or prohibited articles.
- **Code A** – reasonable grounds explained in relation to objective evidence. Not personal factors such as physical appearance.
- Reasonable suspicion is not always needed e.g. under **s. 44 of the Terrorism Act 2000**.
- Neither is it needed under **s.60 Criminal Justice and Public Order Act 1994 (CJPOA)**. –belief that serious violence will take place stop and search can be authorised for up to 24 hours for instruments or offensive weapons.
- **S.2 PACE** – reasonable steps to follow correct procedure. Impact of failure to do so seen in **R V Bristol 2007**
- **S.2 PACE** – written record of search.
- **S.4** – road checks can be authorised.
- **S.8 PACE** – search of premises with a warrant.
- **S.17 & 18** – search of premises without a warrant.
- **S. 24 PACE** (amended by **s.110 SOCPA**) power to arrest. – including necessary requirement.
- **PACE** allows for detention and interrogation. **S.30** requires a suspect to be taken to the police station as soon as possible after arrest.
- Role and powers of the custody officer.
- Search powers after arrest. Power to take samples **s.62 – 65**.

Analysis and evaluation of these concepts considering the question posed.

- **PACE** and other legislation allow police to exercise powers over individuals but also provide for safeguards and remedies if the powers are exercised inappropriately
- The law does provide for action against police e.g. civil action for compensation,

disciplinary action or an apology.

- The **Royal Commission on Criminal Procedure (RCCP)** or the Philips Commission 1981 acknowledged there needs to be a balance between the need to detect and prevent crime and the rights and liberties of individuals.
- **Code A** develops the need for reasonable grounds and insists on an objective test. This promotes protection of unnecessary intervention. As there must be suspicion based on facts, information and or intelligence of some specific behaviour.
- Personal factors alone cannot be reasonable suspicion and so prevents action being taken merely because of the way people look. This prevents stereotyping.
- However, to prevent terrorism the regulations are often different because of the threat it presents **s. 44 of the Terrorism Act 2000**. Successful challenge in **Gillan and Quinton v the UK 2010**.
- However, **s.60 CJPOA** powers seem to be weighted in favour of state intervention.
- Arguably the failure to follow correct procedure balances this area as could mean the actions are illegal and evidence found could be excluded.
- **Code B** provides guidelines for the search of premises e.g. reasonable time, reasonable force. Allows protection to individual's rights.
- **Under s.24 PACE** the police must have reasonable grounds to believe it is necessary to arrest.
- **Code G** tries to protect an individual's liberty from an illegal arrest – **O'Hara v UK 2000**.
- Without the power to use reasonable force in **s.117 PACE** the police would be unable to carry out their role. This allows for state intervention.
- The requirement for the custody officer to oversee detention allows for some element of independence. However, it is a police officer and therefore may not be independent.
- The rights of a suspect whilst at the police station are to safeguard individuals. For example, the right to independent legal advice. DNA – **S Marper case**.
- Miscarriage of justice could occur if vulnerable suspects did not have the protections under PACE.
- If procedures are not adhered to this can impact on the admissibility of evidence.
- Evaluation relating to the need to balance police powers and an individual's rights.

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 the extent to which the law relating to police powers adequately protects the rights of suspects.
3	11-15	• Good knowledge and understanding of the legal rules and principles relating to the extent to which the law relating to police powers adequately protects the rights of suspects.
2	6 - 10	• Satisfactory knowledge and understanding of the legal rules and principles relating to the extent to which the law relating to police powers adequately protects the rights of suspects.
1	1 - 5	• Basic knowledge and understanding of the legal rules and principles relating to the extent to which the law relating to police powers adequately protects the rights of suspects.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the extent to which the law relating to police powers adequately protects the rights of suspects. • Excellent evaluation of the issues relating to the extent to which the law relating to police powers adequately protects the rights of suspects including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	• Very good analysis of legal rules, principles, concepts and issues relevant to the extent to which the law relating to police powers adequately protects the rights of suspects. • Very good evaluation of the issues relating to the extent to which the law relating to police powers adequately protects the rights of suspects, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	• Good analysis of legal rules, principles, concepts and issues relevant to the extent to which the law relating to police powers adequately protects the rights of suspects. • Good evaluation of the issues relating to the extent to which the law relating to police powers adequately protects the rights of suspects, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the extent to which the law relating to police powers adequately protects the rights of suspects. • Satisfactory evaluation of the issues relating to the extent to which the law relating to police powers adequately protects the rights of suspects, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the extent to which the law relating to police powers adequately protects the rights of suspects. • Basic evaluation of the issues relating to the extent to which the law relating to police powers adequately protects the rights of suspects. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

Section B

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 Analyse and evaluate whether the law on discharge of contracts should be reformed. [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.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to discharge of contracts. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the extent to which the rules on discharge of contracts should be reformed, including analysis and evaluation of relevant supporting case law. In order to reach a judgment about this issue, candidates will offer a debate and come to a substantiated judgment regarding the extent of the need for reform. For example, a response may include reference to the different ways a contract can be discharged and the importance of the law on discharge of contracts.

The response might consider issues such as:

- Explanation of the four ways in which a contract may be discharged.
- Agreement - The parties themselves can agree to end the contract, form a new contract or vary the original one.
- Performance - The contract comes to an end when both parties perform their contractual obligations. Performance must substantially correspond with what the parties agreed allowing for minor or trivial defaults.
- Frustration - A contract automatically comes to an end if it is discharged by frustration. Explanation of the conditions that must be satisfied for frustration to discharge a contract.
- Breach- Where one of the parties fails to perform their side of the contract the innocent party may be able to terminate the contract and commence proceedings for damages or other appropriate remedy.

Analysis and evaluation of damages may consider issues such as:

- Discharge by performance - General Rule: *Cutter v Powell* (1795) - if a contract requires entire performance, and a party fails to perform the contract in its entirety, they are entitled to nothing under the contract from the other party. There are ways in which the harshness of this rule can be mitigated: Substantial performance; Severable contracts; Acceptance of part performance; Prevention of performance.
- Discharge by frustration - General Rule: *Taylor v Caldwell* (1863) – action failed because performance of the contract had become impossible due to a building where a concert was due to take place, burning down. The doctrine will operate in three main types of circumstance: Impossibility; Illegality; Commercial sterilisation
- Discharge by agreement - Bilateral discharge: here the assumption is that both parties are to gain a fresh but different benefit from the new agreement. Unilateral discharge: the benefit is only to be gained by one party, who is therefore trying to convince the other party to let them off the obligations arising under the original agreement
- Discharge by breach – actual breach - This is where a party to a contract does not perform their obligations under the contract at all. Key Cases: *Platform Funding Ltd v Bank of Scotland plc* (2008); *Pilbrow v Pearlless de Rougemont &*

Co (1999); Modahl v British Athletic Federation Ltd (1999); Abramova v Oxford Institute of Legal Practice (2011); Anticipatory breach - This is where a party indicates in advance that they will not be performing their obligations as agreed. Key Cases: Frost v Knight (1872); Avery v Bowden (1855); Fercometal Sarl v Mediterranean Shipping Co (1989) [The Simona]; White and Carter Ltd v McGregor (1962).

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 contracts and whether the law should be reformed.
3	11 - 15	Good knowledge and understanding of legal rules and principles relating to discharge of contracts and whether the law should be reformed.
2	6 - 10	Satisfactory knowledge and understanding of legal rules and principles relating to discharge of contracts and whether the law should be reformed.
1	1 - 5	Basic knowledge and understanding of legal rules and principles relating to discharge of contracts and whether the law should be reformed.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25-30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to discharge of contracts and whether the law should be reformed. • Excellent evaluation of the law relating to discharge of contracts and whether the law should be reformed. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19-24	• Very good analysis of legal rules, principles, concepts and issues relevant to discharge of contracts and whether the law should be reformed. • Very good evaluation of the law relating to discharge of contracts and whether the law should be reformed. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13-18	• Good analysis of legal rules, principles, concepts and issues relevant to discharge of contracts and whether the law should be reformed. • Good evaluation of the law relating to discharge of contracts and whether the law should be reformed. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7-12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to discharge of contracts and whether the law should be reformed. • Satisfactory evaluation of the law relating to discharge of contracts and whether the law should be reformed. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1-6	• Basic analysis of legal rules, principles, concepts and issues relevant to discharge of contracts and whether the law should be reformed. • Basic evaluation of the law relating to discharge of contracts and whether the law should be reformed. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted

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.

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the regulation of exclusion clauses. Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the approach adopted by the common law, the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015 in regulating exclusion clauses in contract law. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the extent to which the rules on exclusion clauses are clear and understandable, including analysis and evaluation of relevant supporting case law. In order to reach a judgment about this issue, candidates will offer a debate and come to a substantiated judgment regarding the extent of the protection offered.

The response might consider issues such as:

An exclusion clause is a contractual term by which one party attempts to cut down either the scope of their contractual duties or regulate the other parties right to damages or other possible remedies for breach of contract.

- It means that the exemption clause is a phrase in an agreement that gives a limitation towards contracting parties.
- The exemption clause generally is called as exclusion clauses as well.
- The law has tried to control or regulate these clauses by both common law and statute as they can be unfair to the consumer.
- Under common law – such clauses usually disapproved of, especially if one party is in a stronger bargaining position.
- Under common law – 2 questions are asked, (i) has the clause been incorporated into the contract? and (ii) does the clause cover the alleged breach?
- The clause can be incorporated into the contract by signature, reasonable notice or by previous course of dealing.
- By a signature – if a document is signed at the time of making the contract, its contents become terms of that contract, regardless of whether they have been read and understood. *L'Estrange v Graucob* (1934).
- By reasonable notice – if separate written terms are presented, those terms only become part of the contract if it can be said that the recipient had reasonable notice of them. *Parker v Southeastern Railway* (1877).
- By a previous course of dealing – if two parties have previously made a series of contracts between them, and those contracts contained an exclusion clause, that clause may also apply to a subsequent transaction, even if the usual steps to incorporate the clause had not been taken. *Spurling v Bradshaw* (1956).
- The courts will also check to see if the clause covers the breach that has occurred, using the *contra proferentem* rule – which states where there is ambiguity about the clause it will be interpreted in a way least favourable to the person relying on it.
- Regulation by statute – Unfair Contract Terms Act 1977 (UCTA) - for non-consumer contracts. Consumer Rights Act 2015 – for a trader and a consumer contract.
- UCTA s.2 liability for negligence – death or personal injury resulting from

negligence cannot be excluded – any clause which attempts to do this, will be rendered ineffective.

- S.3 liability for non-performance – applies where there exists a standard form contract. The provisions are subject to the reasonableness test in s11 and provide restrictions on the ability to (i) exclude or restrict liability for breach of contract (ii) provide substantially different performance to that reasonably expected or (iii) provide no performance at all
- S.6 – exclusion of liability in contracts for the sale of goods – clauses that are implied by statute, such as those in the Consumer Rights Act 2015 cannot be excluded.
- S.11 – test of reasonableness – the court should ask itself whether the term in question is “fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made”. State and explain schedule 2 factors. For example, the strength of the bargaining position of the parties, whether the customer received an inducement to accept the terms and whether the customer knew or ought to have known of the term.
- Further statutory provision can be found in the Consumer Rights Act 2015 for contracts between consumers and traders.
- S. 65 renders all clauses attempting to exclude liability for personal injury void.
- Other loss or damage arising from negligence has to pass the fairness test.
- Any attempt to exclude liability for the implied terms s.9-14 are void.
- Consider the fairness test to exclude liability for loss or damage other than personal injury.

Evaluation might consider issues such as:

- The law clearly takes regulating exclusion clauses seriously and has used both common law and statutes to do so.
- Regulation of exclusion clauses by common law incorporation by signature adheres to the overarching principle of laissez faire in contract law.
- Courts control the creation of these clauses by the rule of incorporation. This protects the unwary but not those who do not read the documents as they can be inserted via document or notice.
- Consider the fairness, or otherwise, of the contra proferentem rule.
- The regulations, for both consumer contracts and business contracts can be seen to be fair with the inability to exclude negligence for personal injury. This should promote a safer environment whether parties to a contract are aware that they will be held to account for any negligent action.
- Other attempts at excluding liability for negligence are not automatically void but have to pass either the reasonable test or the fairness test, depending on which act applies.
- The Schedule 2 UCTA factors try to balance the bargaining power between the parties and bring about a fair result
- The Consumer Rights Act 2015 is a recent and up to date piece of legislation replacing the Unfair Terms in Consumer Contracts Regulations and the Unfair Contract Terms Act 1977 in consumer contracts and notices.
- Arguably the CRA tries to balance the bargaining position of the parties by enhancing that of the consumer. Consumers do not have to wait for common law precedent to filter down from the senior courts. It has statutory provision.
- Any attempt to exclude liability for the implied terms in s.9-14 CRA are void. This is fair and consistent as it would be a strange position if the law insisted on certain implied terms to them allow them to be excluded.
- The above terms in s9-14 include aspects such as satisfactory quality and fit for purpose. These protect the consumer.

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 exclusion clauses.
3	11 - 15	Good knowledge and understanding of legal rules and principles relating to exclusion clauses.
2	6 - 10	Satisfactory knowledge and understanding of legal rules and principles relating to exclusion clauses.
1	1 - 5	Basic knowledge and understanding of legal rules and principles relating to exclusion clauses.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues.
5	25 - 30	- Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. - Excellent evaluation of the extent to which the rules on exclusion clauses are clear and understandable, including a valid and substantiated judgement. - Excellent use of supporting case law and legal authorities. - Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	- Very good analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. - Very good evaluation of the extent to which the rules on exclusion clauses are clear and understandable, including a valid judgement. - Very good use of supporting case law and legal authorities. - Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	- Good analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. - Good evaluation of the extent to which the rules on exclusion clauses are clear and understandable, including reference to a judgement. - Good use of supporting case law and legal authorities. - Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	- Satisfactory analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. - Satisfactory evaluation of the extent to which the rules on exclusion clauses are clear and understandable, including reference to a judgement. - Satisfactory use of supporting case law and legal authorities. - Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	- Basic analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. - Basic evaluation of the extent to which the rules on exclusion clauses are clear and understandable. - Basic use of supporting case law and legal authorities. - Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

Section C

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'The present law on murder in England and Wales is outdated and in need of reform.'
Analyse and evaluate this statement. [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.

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 murder, the English legal system and criminal law. For example, a response may include reference to the age of the law, the mandatory life sentence and the proposals from the Law Commission.

The response might consider issues such as:

- **Lord Coke's** definition of murder is very old and out of date. Perhaps the suggestion of it being outdated and in need of reform is understandable. It is a common law crime with many case decisions
- Human being - **AG's Reference (No 3 of 1994) (1994)**
- Death - **R v Malcherek and Steel (1981)**. – Considered to be when a person is brain dead but this was stated obiter. – Courts will decide on a case-by-case basis.
- King's Peace.
- Year and a day – **Law Reform (Year and a Day Rule) Act 1996**.
- Can be an act or omission – **Gibbins v Proctor (1918)**.
- Defendant must have caused the death. Prosecution must prove the defendant's act caused the death.
- Cause in fact or factual causation – but for test **R v White 1910**. But for the actions of the defendant the victim would not have died as and when they did.
- Cause in law or legal causation – is the defendant's act operating and substantial cause of death? **Kimsey 1996**. (De minimis rule).
- Thin skull test – defendant must take the victim as they find them. **Blaue (1975)**.
- Chain of causation. – Must be a clear link between the actions of the defendant and the victim's death.
- Intervening acts may break the chain of causation. – **Pagett (1983)**.
- Negligent medical treatment is rarely sufficient to break the chain of causation. **Smith (1959), Cheshire (1991) and Jordan (1956)**.
- The mens rea of murder – malice aforethought.
- Now known as an intention to kill or intention to cause grievous bodily harm. Can be either express or implied. **Vickers (1957)**.
- Foresight of consequences – **Moloney (1985)**.
- Direct intent – Defendant desires a result and sets out to achieve it.
- Indirect/oblique intent – defendant intends one thing, but another result actually occurs as a result of his/her actions.
- Indirect intent – **Woollin (1998)** – the jury should be directed that they are not entitled to find necessary intention unless they feel sure that death or serious bodily harm was a virtual certainty.

- Actus reus and mens rea need to be present at the same time for the defendant to be successfully convicted. – **Thabo Meli v R (1954)**

Analysis and evaluation of these concepts in light of the question posed:

- **Lord Coke's** definition of murder can from 1628 and is therefore almost 400 years old. Perhaps the suggestion of it being archaic and in need of reform is understandable. It is a common law crime with 400 years of case decisions.
- **The Law Commission, in 2006**, produced a report, **Murder, Manslaughter and Infanticide**, the report identified many problems with the existing law on murder: it stated the present law of murder in England & Wales is a mess.' It suggests that the law has developed piecemeal and is not a coherent whole.'
- There is no defence available if excessive force is used in self-defence.
- The defence of duress is not available as a defence for murder.
- The mandatory life sentence does not allow sufficient differentiation in sentencing to cover the different levels of blameworthiness in the current law on murder.
- It has been suggested that different kinds of murders could be graded to recognise the seriousness of the offence.
- At present one sentence must be given in all types of murder from mercy killings to serial or contract killings. The current law fails to make provisions for a benign motive. There has been support for lesser degrees of murder (as in the American legal system).
- The words malice aforethought are misleading, for instance as regards aforethought there is no need for premeditation.
- A defendant can be convicted of murder even though there was only intention to cause serious harm.
- The meaning of intention has been the subject of several major cases over recent years (**Hyam, Maloney, Hancock & Shankland and Woollin**) with the definition of intention ranging from probable to highly probable to certain to **Woollin** confirming virtual certainty but still leaving the matter to the jury. (Jury entitled to find intention –**Matthews & Alleyne**).
- Credit reference to the partial and special defences of loss of control and diminished responsibility. Evaluation to be in relation to their impact on the law of murder. Credit for relevant legal citation.

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 the law on murder.
3	11 - 15	• Good knowledge and understanding of the legal rules and principles relating to the law on murder.
2	6 - 10	• Satisfactory knowledge and understanding of the legal rules and principles relating to the law on murder.
1	1 - 5	• Basic knowledge and understanding of the legal rules and principles relating to the law on murder.
	0	Response not creditworthy or not attempted.

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the law on murder. • Excellent evaluation of the extent to which the law on murder is outdated and in need of reform, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	• Very good analysis of legal rules, principles, concepts and issues relevant to the law on murder. • Very good evaluation of the extent to which the law on murder is outdated and in need of reform, including a valid and substantiated judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	• Good analysis of legal rules, principles, concepts and issues relevant to the law on murder. • Good evaluation of the extent to which the law on murder is outdated and in need of reform, including a valid and substantiated judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the law on murder. • Satisfactory evaluation of the extent to which the law on murder is outdated and in need of reform, including a valid and substantiated judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the law on murder. • Basic evaluation of the extent to which the law on murder is outdated and in need of reform, including a valid and substantiated judgement. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.

'The presumption in favour of a right to bail is balanced by rules which allow bail to be refused.' Analyse and evaluate this statement. [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.

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including bail, the English legal system and criminal law. For example, a response may include reference to the ways in which the law on bail does not place enough emphasis on the presumption of innocent until proven guilty.

The response might consider issues such as:

- Court bail - **Bail Act 1976, s.4** – presumption of entitlement to bail.
- **Police and Criminal Evidence Act 1984, s.38** – power of custody officer to grant bail
- from the police station following charge.
- Bail before charge; Time limits on police bail – **Policing and Crime Act 2017** and the reforms under the **Police, Crime, Sentencing and Courts Act 2022** – 'Kay's law'.
- Circumstances in which bail need not be granted: **Bail Act 1976 Schedule 1** (e.g., defendant is likely to fail to surrender, commit further offences or interfere with witnesses or the administration of justice).
- Circumstances in which police bail may be refused: **s.38** – e.g., where the custody officer has reasonable grounds to believe that the name or address given by the suspect may not be genuine; where the custody officer has reasonable grounds to believe that the suspect will commit further offences, interfere with witnesses or the administration of justice; where detention is necessary for the suspect's own protection or for the protection of others; where the charge is murder (**Coroners and Justice Act 2009**).
- Prosecution right of appeal against the granting of bail by a Crown Court judge. This change is contained in the **Legal Aid and Sentencing and Punishment of Offenders Act 2012**.
- Defendant's right of appeal against the bail decision.
- Types of bail – conditional and unconditional.

Analysis and evaluation of these concepts considering the question posed:

- Factors to be taken into account when considering whether bail should be granted.
- Consideration of human rights issues such as **Articles 5 and 6**. Difficulties in striking the right balance.
- Modification of the general presumption in favour of bail – e.g., bail can only be granted in exceptional circumstances where the defendant is charged with murder (**Coroners and Justice Act 2009**), manslaughter or rape, or where previously charged with a specified serious offence or where the offence was

committed while already on bail (***Criminal Justice and Public Order Act 1994 s.25*** as amended by ***Crime and Disorder Act 1998***).

- 'No real prospect' test – ***Legal Aid Sentencing and Punishment of Offenders Act 2012***.
- Exceptions to the right of bail in domestic violence cases - ***Legal Aid Sentencing and Punishment of Offenders Act 2012***.
- Right of the prosecution to appeal against grant of bail: ***Bail Amendment Act 1993***.
- Changes to pre-charge bail (Kay's law) under ***Police, Crime, Sentencing and Courts Act 2022***.
- Powers of police and courts to impose bail conditions and appropriateness of these in light of the question posed. Powers of arrest for breach of bail conditions.
- Evaluation of when it is appropriate to refuse bail, e.g. risk of reoffending, risk of absconding, challenge of bail hostels, prison overcrowding, complexity of the law on bail.
- However, there are advantages to the granting of bail – respect for human rights, preventing suicide, easing prison overcrowding.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
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3	11 - 15	• Good knowledge and understanding of the legal rules and principles relating to the law on bail.
2	6 - 10	• Satisfactory knowledge and understanding of the legal rules and principles relating to the law on bail.
1	1 - 5	• Basic knowledge and understanding of the legal rules and principles relating to the law on bail.
	0	Response not creditworthy or not attempted

Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
5	25 - 30	• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the extent to which the presumption in favour of a right to bail is balanced by rules which allow bail to be refused.. • Excellent evaluation of the extent to which the presumption in favour of a right to bail is balanced by rules which allow bail to be refused, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities. • Writing demonstrates accurate grammar, punctuation and spelling.
4	19 - 24	• Very good analysis of legal rules, principles, concepts and issues relevant to the extent to which the presumption in favour of a right to bail is balanced by rules which allow bail to be refused.. • Very good evaluation of the extent to which the presumption in favour of a right to bail is balanced by rules which allow bail to be refused, including a valid judgement. • Very good use of supporting case law and legal authorities. • Writing demonstrates mostly accurate grammar, punctuation and spelling.
3	13 - 18	• Good analysis of legal rules, principles, concepts and issues relevant to the extent to which the presumption in favour of a right to bail is balanced by rules which allow bail to be refused.. • Good evaluation of the extent to the presumption in favour of a right to bail is balanced by rules which allow bail to be refused, including reference to a judgement. • Good use of supporting case law and legal authorities. • Writing demonstrates generally accurate grammar, punctuation and spelling.
2	7 - 12	• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the extent to which the presumption in favour of a right to bail is balanced by rules which allow bail to be refused.. • Satisfactory evaluation of the extent to the presumption in favour of a right to bail is balanced by rules which allow bail to be refused, including reference to a judgement. • Satisfactory use of supporting case law and legal authorities. • Writing demonstrates some errors in grammar, punctuation and spelling.
1	1 - 6	• Basic analysis of legal rules, principles, concepts and issues relevant to the extent to which the presumption in favour of a right to bail is balanced by rules which allow bail to be refused.. • Basic evaluation of the extent to the presumption in favour of a right to bail is balanced by rules which allow bail to be refused.. • Basic use of supporting case law and legal authorities. • Writing demonstrates many errors in grammar, punctuation and spelling.
	0	Response not creditworthy or not attempted.