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# **GCE A LEVEL MARKING SCHEME**

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**SUMMER 2023**

**A LEVEL  
LAW – UNIT 4  
1150U40-1**

## **INTRODUCTION**

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

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

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

**GCE A LEVEL LAW**  
**UNIT 4 - SUBSTANTIVE LAW PERSPECTIVES**  
**SUMMER 2023 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

### Human Rights Law

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- Analyse and evaluate the extent to which the law relating to obscenity amounts to an unjustifiable restriction upon the right to freedom of expression. [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 law of obscenity. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the law of obscenity. Candidates are expected to consider and debate the full range of issues and limits of the law of obscenity, including an analysis and evaluation of the conflict between freedom of expression and the law of obscenity. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding the extent to which the law relating to obscenity amounts to an unjustifiable restriction upon the right to freedom of expression.

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

The response might consider issues such as:

- Right to freedom of expression under Art. 10 of the ECHR – qualified right, may be restricted, inter alia, for the protection of moral (Art. 10(2)).
- Margin of appreciation allowed under the Convention – Handyside v UK.
- Outline of main statutory provisions dealing with obscenity Obscene Publications Acts 1959 and 1964; Indecent Displays (Control) Act 1981.

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the law on obscenity does restrict freedom of expression, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law does restrict the right to freedom of expression.

The response might consider issues such as:

- Right to freedom of expression under Art. 10 of the ECHR – Has been held by Court of Appeal in Perrin (obscene website) that the offences under the Obscene Publications Act 1959 s.2 are not incompatible with Art. 10 because the interference is justified under Art. 10(2) notwithstanding the uncertainty in the addition of obscenity
- Definition of obscenity: OPA 1959 s.1 Deprave and corrupt test; cases such as Hicklin, R v Penguin Books, DPP v Whyte, Calder and Boyuer.
- Defence of public under the Obscene Publications Act 1959: s.4 allows for evidence to be admitted as to artistic etc. merits.
- Control of indecent displays at common law, Gibson.
- Common law offences: conspiracy to corrupt public morals, Shaw v DPP; offence of outraging public decency: Kneller v DPP.
- Censorship of films and video recordings – British Board of Film Classification: classification system. Cinemas Act 1985 – 2-tier controls through power of local authorities to refuse licence. Video Recordings Act 1984, as amended by the Criminal Justice and Public Order Act 1994 – make it an offence to supply an unclassified video (with limited exceptions).

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the law of obscenity.</li> </ul>
<b>3</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of legal rules and principles relating to the law of obscenity.</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>• Satisfactory knowledge and understanding of legal rules and principles relating to the law of obscenity.</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of legal rules and principles relating to the law of obscenity.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted

<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the law of obscenity.</li> <li>• Excellent evaluation of the debates surrounding the law of obscenity, including a valid and substantiated judgement.</li> <li>• Excellent use of supporting case law and legal authorities.</li> <li>• Writing demonstrates accurate grammar, punctuation and spelling.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>• Very good analysis of legal rules, principles, concepts and issues relevant to the law of obscenity.</li> <li>• Very good evaluation of the debates surrounding the law of obscenity, including a valid judgement.</li> <li>• Very good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates mostly accurate grammar, punctuation and spelling.</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the law of obscenity.</li> <li>• Good evaluation of the debates surrounding the law of obscenity, including reference to a judgement.</li> <li>• Good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates generally accurate grammar, punctuation and spelling.</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the law of obscenity.</li> <li>• Satisfactory evaluation of the debates surrounding the law of obscenity, including reference to a judgement.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> <li>• Writing demonstrates some errors in grammar, punctuation and spelling.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the law of obscenity.</li> <li>• Basic evaluation of the debates surrounding the law of obscenity.</li> <li>• Basic use of supporting case law and legal authorities.</li> <li>• Writing demonstrates many errors in grammar, punctuation and spelling.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

Analyse and evaluate the extent to which the law relating to defamation provides an adequate balance between freedom of expression and the right to a private life. [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 defamation. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the extent to which the law relating to defamation provides an adequate balance between freedom of expression and the right to a private life. Candidates are expected to consider and debate the full range of issues and arguments surrounding defamation, including an analysis and evaluation of Articles 10 and 8, their scope as qualified rights and the restrictions on freedom of expression under defamation laws. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding the extent to which the law relating to defamation provides an adequate balance between freedom of expression and the right to a private life.

The response might consider issues such as:

- Article 10 of the European Convention on Human Rights is a qualified right and permits restrictions that 'are prescribed by law, necessary and proportionate in a democratic society and fulfils a legitimate aim' such as for the protection of morals, rights of others, etc.
- 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.
- Concept of proportionality and margin of appreciation may be covered.
- Nature of defamation: publication of untrue, defamatory statements libel and slander.
- Elements of defamation. Defamation Act 2013
  - Does the statement refer to the claimant? Or can it be taken to refer to the claimant?
  - Is the statement defamatory? s.1
  - Has the statement been published?
  - Does at least one of the defences apply?
- Analysis and evaluation of the elements and the balance between arts 8 and 10.
- The statement must refer to the claimant. By name or context.
- Is the statement defamatory? s.1 Defamation Act 2013.
- Definition: A statement which would tend to lower the claimant in the eyes of right thinking persons generally: *Sim v Stretch*, *Byrne v Dean*.
- Photographs and headlines must be considered in terms of its effects on the ordinary reasonable reader who reads the whole article, and not just someone who glances at it: *Charlesworth v NGN*.
- Innuendo – Cases: *Tolley v Fry*, *Cassidy v Daily Mirror*.
- The statement must be published. Repetition of a libel by the same publisher will no longer create a fresh claim for defamation (s.8 Defamation Act 2013)
- Defences – A defendant can defend their statements on a variety of grounds. If he succeeds it does not matter whether the claimant proved the three elements because the defendant will have a defence to an action for defamation. The Defamation Act 2013 has codified and simplified the law in this area.

- The main defences are:
  - Truth - Section 2 of the Defamation Act 2013
  - Honest Opinion - Section 3 of the Defamation Act 2013
  - Responsible Publication on a Matter of Public Importance - section 4 of the Defamation Act 2013
  - Absolute Privilege
  - Qualified Privilege
  - Offer of Amends.
- Analysis and evaluation of whether the defences provide an adequate balance between arts 8 and 10.
- Section 11 of the Defamation Act 2013 provides that defamation actions will be tried without a jury unless the court orders otherwise so a judge will decide the damages as well as the verdict. Claims must usually be brought within a year of publication: there is some discretion to extend the limitation period.
- There are two main remedies for defamation:
  - Damages
  - Injunction
- Section 12 of the Defamation Act 2013 gives the court power, if the claimant wins, to order the defendant to publish a summary of the judgment.
- Breach of confidence
  - Has the threshold test of a reasonable expectation of privacy been passed?
  - Should the limiting factor that the information is in the public domain be applied?
  - Is the publication of the information in the public interest (the speech/privacy balancing act)?
- Analysis and evaluation of these concepts in light of the question posed.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of the legal rules and principles relating to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> </ul>
<b>3</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the legal rules and principles relating to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>• Satisfactory knowledge and understanding of the legal rules and principles relating to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the legal rules and principles relating to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.



<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> <li>• Excellent evaluation of the issues relating to the principle of freedom of expression, right to a private life and the law relating to defamation, including a valid and substantiated judgement.</li> <li>• Excellent use of supporting case law and legal authorities.</li> <li>• Writing demonstrates accurate grammar, punctuation and spelling.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>• Very good analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> <li>• Very good evaluation of the issues relating to the principle of freedom of expression, right to a private life and the law relating to defamation, including a valid judgement.</li> <li>• Very good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates mostly accurate grammar, punctuation and spelling.</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> <li>• Good evaluation of the issues relating to the principle of freedom of expression, right to a private life and the law relating to defamation, including reference to a judgement.</li> <li>• Good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates generally accurate grammar, punctuation and spelling.</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> <li>• Satisfactory evaluation of the issues relating to the principle of freedom of expression, right to a private life and the law relating to defamation, including reference to a judgement.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> <li>• Writing demonstrates some errors in grammar, punctuation and spelling.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> <li>• Basic evaluation of the issues relating to the principle of freedom of expression, right to a private life and the law relating to defamation.</li> <li>• Basic use of supporting case law and legal authorities.</li> <li>• Writing demonstrates many errors in grammar, punctuation and spelling.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

## Section B

### Law of Contract

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 Analyse and evaluate the importance of the doctrine of the privity of contract. [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 doctrine of the privity of contract. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the doctrine of the privity of contract. Candidates are expected to consider and debate the full range of issues and arguments surrounding remedies, including an analysis and evaluation of the doctrine of the privity of contract. In order to reach a judgment about these issues, candidates will offer a debate and come to a substantiated judgment regarding the importance of the doctrine of the privity of contract. For example, a response may include reference to the impact of judicial decisions within privity of contract, and the need for development and reform of contract law in this area.

The response might consider issues such as:

- the meaning of privity of contract: a contract does not confer rights or impose obligations arising under it on any person except the parties to the contract
- the Common Law exceptions such as under the Road Traffic Act, restrictive covenants and trusts.
- relevant cases including *Dunlop v Selfridge*, *Dunlop v Lambert* and *Tulk v Moxhay*.
- an analysis of the basic rule: this can be supported by *Dunlop v Selfridge* especially that contract does not automatically confer rights or obligations on third parties.
- evaluation of the impact of the Rule especially that it unfairly prevents third parties identified as gaining rights under a contract from enforcing those rights
- evaluation of the Common Law exceptions. These may include:
  - Road Traffic Act 1988: motorists are obliged to take out third party liability insurance
  - Trusts: a trust beneficiary can sue the trustee if the trustee is not following the contract
  - Restrictive Covenants: no matter who buys the property, the buyer has to abide by the restrictions on the property; support can be provided by cases such as *Tulk v Moxhay*
  - The *Dunlop v Lambert* case involving goods lost at sea
  - Cases known as 'holiday cases' – the loss of enjoyment by a family, where the holiday did not meet the specification meant that the holiday company was liable and the family could sue; support can be provided by cases such as *Jackson v Horizon Holidays*
- the importance of the large numbers of exceptions which seemed to indicate that there were problems with the doctrine and so there was a need for reform which came from the 1999 Act.

- statutory Exceptions including the Contract (Rights of Third Parties) Act 1999; Lord Denning's decision in *Beswick v Beswick* has been given effect in this statute that a party intending to benefit from a contract can enforce it in specified circumstances.
- relevant citation which helps evaluate the importance of the doctrine of the privity of contract.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the doctrine of privity of contract.</li> </ul>
<b>3</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of legal rules and principles relating to the doctrine of privity of contract.</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>• Satisfactory knowledge and understanding of legal rules and principles relating to the doctrine of privity of contract.</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of legal rules and principles relating to the doctrine of privity of contract.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the doctrine of privity of contract.</li> <li>• Excellent evaluation of the law relating to the doctrine of privity of contract.</li> <li>• Excellent use of supporting case law and legal authorities.</li> <li>• Writing demonstrates accurate grammar, punctuation and spelling.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>• Very good analysis of legal rules, principles, concepts and issues relevant to the doctrine of privity of contract.</li> <li>• Very good evaluation of the law relating the doctrine of privity of contract.</li> <li>• Very good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates mostly accurate grammar, punctuation and spelling.</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the doctrine of privity of contract.</li> <li>• Good evaluation of the law relating the doctrine of privity of contract.</li> <li>• Good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates generally accurate grammar, punctuation and spelling.</li> </ul>

<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the doctrine of privity of contract.</li> <li>• Satisfactory evaluation of the law relating to the doctrine of privity of contract.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> <li>• Writing demonstrates some errors in grammar, punctuation and spelling.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the doctrine of privity of contract.</li> <li>• Basic evaluation of the law relating to the doctrine of privity of contract.</li> <li>• Basic use of supporting case law and legal authorities.</li> <li>• Writing demonstrates many errors in grammar, punctuation and spelling.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted

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“The rules for communication of offer and acceptance have developed with changes in society; however some areas of the law are still unclear.” 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 legal rules and principles relevant to the rules for communication of offer and acceptance. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the rules for communication of offer and acceptance, 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 rules of communication of offer and acceptance. For example, a response may include reference to how the rules of communication of offer and acceptance have developed and whether the law is still unclear in this area.

The response might consider issues such as:

- Explain the difference between a bilateral offer and a unilateral offer *Carlill v Carbolic Smoke Ball Company*
- Explain the general rules for acceptance of a bilateral offer, that it must be unconditional and communicated, *Hyde v Wrench*
- Explain the postal rule of acceptance, acceptance being effective on posting, *Adams v Lindsell* Explain the exceptions to the postal rule, offer made by instant means, mistake made in posting, postal rule excluded, *Holwell Securities v Hughes*
- Explain the rules of acceptance by instant means, that the acceptance takes effect on arrival subject to sound business practice.
- Analysis and evaluation of Issues concerning offer: well-established nature of the rules; established in response to specific cases; pragmatic in application; problems with distinction between offer, invitation to treat, statements of price; problems with adaptation to modern methods of communication.
- Issues concerning acceptance: strengths as above; problems with distinction between acceptance, requests for further information, counter offer; problems with particular modes of acceptance – postal rule, and modern forms of electronic communication.
- Suggestions for reform: proposals may concentrate on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications.
- Relevant citation

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the rules for communication of offer and acceptance.</li> </ul>
<b>3</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of legal rules and principles relating to the rules for communication of offer and acceptance.</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>• Satisfactory knowledge and understanding of legal rules and principles relating to the rules for communication of offer and acceptance.</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of legal rules and principles relating to the rules for communication of offer and acceptance.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues.</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the rules for communication of offer and acceptance.</li> <li>• Excellent evaluation of the extent to which the rules for communication of offer and acceptance are unclear.</li> <li>• Excellent use of supporting case law and legal authorities.</li> <li>• Writing demonstrates accurate grammar, punctuation and spelling.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>• Very good analysis of legal rules, principles, concepts and issues relevant to the rules for communication of offer and acceptance.</li> <li>• Very good evaluation of the extent to which the rules for communication of offer and acceptance are unclear, including a valid judgement.</li> <li>• Very good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates mostly accurate grammar, punctuation and spelling.</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the rules for communication of offer and acceptance.</li> <li>• Good evaluation of the extent to which the rules for communication of offer and acceptance are unclear, including reference to a judgement.</li> <li>• Good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates generally accurate grammar, punctuation and spelling.</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the rules for communication of offer and acceptance.</li> <li>• Satisfactory evaluation of the extent to which the rules for communication of offer and acceptance are unclear, including reference to a judgement.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> <li>• Writing demonstrates some errors in grammar, punctuation and spelling.</li> </ul>

1	1-6	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the rules for communication of offer and acceptance.</li> <li>• Basic evaluation of the extent to which the rules for communication of offer and acceptance are unclear.</li> <li>• Basic use of supporting case law and legal authorities.</li> <li>• Writing demonstrates many errors in grammar, punctuation and spelling.</li> </ul>
	0	Response not creditworthy or not attempted.

## Section C

### Criminal Law

- 5 0** "The Offences Against the Person Act 1861 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.*

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the OAP Act 1861. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the OAP Act 1861.

Candidates are expected to consider and debate the full range of issues and arguments surrounding the OAP Act 1861, including an analysis and evaluation of whether it is in need of reform and the reform proposals. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding the extent to which OAP Act 1861 is outdated. For example, a response may include reference to the offences of assault, battery, ABH, GBH and s.18, the suggestions for reform from the Law Commission and recent judicial decisions.

Responses may consider issues such as:

- A definition of assault.
- A definition of battery
- A definition of ABH – s.47 Offences Against the Person Act 1861.
- A definition of GBH – s.20 OAP Act 1861
- A definition of s.18 OAP Act 1861.
- Relevant case law.

Analysis and evaluation of:

- Parliament has yet to update the law.
- Main areas for reform are:
- The wording - Many of the words used to define non-fatal offences have been criticised as out-of-date and ambiguous. For example – assault, battery, 'grievous' and 'breaking of the skin.'
- Discussion of the antiquated language in the OAPA 1861 – 'grievous' and 'actual bodily harm' not in keeping with modern language use. Problems with the use of the word 'maliciously' under s.18 and s.20.
- Inconsistencies in the use of language – 'inflict' in s.20 and 'occasion' in s.47. Discussion of the OAP Act 1861 as a consolidating statute, in need of modernisation now.
- Discussion of the sentencing anomalies with the non-fatal offences. E.g. 6 months for assault and battery and 5 years for both ABH and GBH. Then jumps to life for s.18.
- Discussion of the difficulties with mens rea element – intention or recklessness for all offences apart from s.18.
- Discussion of plea bargaining.



- **The arrest element of s.18** - the inclusion of 'resisting arrest' in the definition of s.18 GBH is a confusing concept, which allows a defendant to be charged with GBH when they have caused GBH whilst intentionally resisting arrest.
- The 'breaking of the skin' element of s.20 arguably lesser degree of harm than a 'serious' ABH.
- Definitions of the offences are a confusing **mixture of common law and statute** – appropriate for their definitions to be codified in an Act of Parliament?
- **Plea bargaining** It is quite common for a person to be charged with a lesser offence than the one that they have actually committed. The prosecution may also charge the defendant with a lesser offence if they will agree to a guilty plea.

#### Reform:

#### Law Commission Report 1993

- The **Law Commission** produced '*Offences Against the Person and General Principles*' in 1993. This report re-drafted the non-fatal offences and criticised the current offences. Their three main criticisms of the current law was for its;
  - complicated, obscure and old-fashioned language
  - complicated and technical structure
  - complete unintelligibility to the layman

The Law Commission also produced a draft Criminal Law Bill which re-defined the offences.

This report has never been adopted.

#### Home Office Report 1998

- The Labour Government produced a draft 'Offences Against the Person Bill' following the **Home Office Report** '*Violence: Reforming the Offences Against the Person Act 1861*'. The new offences would be:
  - Clause 4 – Assault
  - Clause 3 – Intentional or Reckless Injury
  - Clause 2 – Reckless Serious Injury
  - Clause 1 – Intentional Serious Injury
- The sentences have stayed the same with the exception of clause 2. This replaces s.20 GBH which used to carry a punishment of five years imprisonment. The new clause 2 would be increased to seven years imprisonment.

Band	Marks	AO1: Demonstrate knowledge and understanding of legal rules and principles
4	16-20	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of the legal rules and principles relating to the OAP Act 1861.</li> </ul>
3	11-15	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the legal rules and principles relating to the OAP Act 1861.</li> </ul>
2	6-10	<ul style="list-style-type: none"> <li>• Satisfactory knowledge and understanding of the legal rules and principles relating to the OAP Act 1861.</li> </ul>
1	1-5	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the legal rules and principles relating to the OAP Act 1861.</li> </ul>
	0	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed analysis of legal rules, principles, concepts and issues relevant to the OAP Act 1861.</li> <li>• Excellent evaluation of the extent to which the OAP Act 1861 is outdated and in need of reform, including a valid and substantiated judgement.</li> <li>• Excellent use of supporting case law and legal authorities.</li> <li>• Writing demonstrates accurate grammar, punctuation and spelling.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>• Very good analysis of legal rules, principles, concepts and issues relevant to the OAP Act 1861.</li> <li>• Very good evaluation of the extent to which the OAP Act 1861 is outdated and in need of reform, including a valid and substantiated judgement.</li> <li>• Very good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates mostly accurate grammar, punctuation and spelling.</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the OAP Act 1861.</li> <li>• Good evaluation of the extent to which the OAP Act 1861 is outdated and in need of reform, including a valid and substantiated judgement.</li> <li>• Good use of supporting case law and legal authorities.</li> <li>• Writing demonstrates generally accurate grammar, punctuation and spelling.</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>• Satisfactory analysis of legal rules, principles, concepts and issues relevant to the OAP Act 1861.</li> <li>• Satisfactory evaluation of the extent to which the OAP Act 1861 is outdated and in need of reform, including a valid and substantiated judgement.</li> <li>• Satisfactory use of supporting case law and legal authorities.</li> <li>• Writing demonstrates some errors in grammar, punctuation and spelling.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the OAP Act 1861.</li> <li>• Basic evaluation of the extent to which the OAP Act 1861 is outdated and in need of reform, including a valid and substantiated judgement.</li> <li>• Basic use of supporting case law and legal authorities.</li> <li>• Writing demonstrates many errors in grammar, punctuation and spelling.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

Analyse and evaluate the extent to which intoxication provides a defence to a criminal charge. [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 defence of intoxication. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the extent to which intoxication provides a defence to a criminal charge, including an analysis and evaluation of relevant supporting case law. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding the defence of intoxication including both voluntary and involuntary intoxication.

The response might consider issues such as:

- Intoxication may come about by alcohol or other substances, such as glue-sniffing. Intoxication does not provide a defence as such, but is relevant as to whether the defendant has the required mens rea for the offence. If he or she does not have the required mens rea because of his/her intoxicated state, s/he may be **not guilty**.
- Whether the defendant is guilty or not depends on:
  - whether the intoxication was **voluntary** or **involuntary**, and
  - whether the offence charged is one of **specific** or **basic** intent
- Voluntary intoxication is where the defendant has chosen to take an intoxicating substance. This can be by taking alcohol, illegal drugs or other intoxicants such as through sniffing glue. It can also occur where the defendant knows that the effect of a prescribed drug will be to make him intoxicated.

#### Voluntary intoxication and specific intent offences

- Voluntary intoxication can negate the mens rea for a specific intent offence. If the defendant is so intoxicated that they have not formed the mens rea for the offence, they are not guilty. This rule comes from **DPP v Beard (1920)**.
- An example of where it was found that the defendants were so drunk that they did not have the mens rea for murder is **R v Sheehan and Moore (1975), R v Coley (2013)**
- It has been held that a drunken intent is still an intent. This was shown **by A-G for Northern Ireland v Gallagher (1963)**.

#### Voluntary intoxication and basic intent offences

- Where the offence charged is one of basic intent then intoxication is not a defence. This is because voluntarily becoming intoxicated is considered a reckless course of conduct, and recklessness is enough to constitute the necessary mens rea. The leading case on this is **DPP v Majewski (1977)**.

#### Past intoxication

- Where the defendant is suffering from a mental disorder brought on by past voluntary intoxication, he can use this as a defence. **R v Harris (2013)**

### **Involuntary intoxication**

- Involuntary intoxication covers situations where the defendant did not know he or she was taking an intoxicating substance. This may be where, for example, a soft drink has been 'laced' with alcohol or drugs. It also covers situations where prescribed drugs have the unexpected effect of making the defendant intoxicated.
- The test is, did the defendant have the necessary mens rea when he or she committed the offence? If so, as decided in **R v Kingston (1994)**, he or she will be guilty.
- Where, however, the defendant did not have the necessary intent s/he will be not guilty. He or she has no mens rea and so cannot be guilty of a specific intent offence. Neither can s/he be guilty of a basic intent offence. This is because the defendant has not been reckless in getting intoxicated. An example of this is **R v Hardie (1984)**.

### **Intoxicated mistake**

- If the defendant is mistaken about a key fact because s/he is intoxicated, then it depends on what the mistake was about as to whether s/he has a defence or not.
- Where the mistake is about something which means that the defendant did not have the necessary mens rea for the offence, then for specific intent offence s/he has a defence. However, where the offence is one of basic intent then the defendant has no defence. An example of this was the case of **R v Lipman (1970)**.
- If the mistake is about another aspect, for example the amount of force needed in self-defence, the defendant will not have a defence. This was stated in **R v O'Grady (1987)** and confirmed in **R v Hatton (2005)**.

### **Criminal Justice and Immigration Act 2008**

- This Act now makes it clear that a mistaken belief caused through the defendant's voluntary intoxication cannot be used for of self-defence, defence of another or prevention of crime.
- Further, s 76 of the **Criminal Justice and Immigration Act 2008** states that reasonable force may be used for purposes of self-defence, defence of another or prevention of crime. However, s 76(5) says that this 'does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced'.

### **Exception**

An exception to the rule on intoxicated mistake is **Jaggard v Dickinson (1980)**.

### **Evaluation of the law on intoxication**

- The interests competing in the operation of this defence are those of personal autonomy and social paternalism.
- On the one hand an adult can make a choice to spend as much of their own money on buying intoxicating substances as they wish. Subject to some timing restrictions, an adult can spend as much time as they choose consuming alcohol in public - in pubs, bars and restaurants.
- On the other hand, there is the view that excessive consumption of alcohol, and particularly consumption of drugs, causes problems with health and welfare of the individual and potentially requires reliance on the health service, on social services and, at times, the intervention of the criminal justice system.
- Mens rea - Some areas of the law on intoxication appear to be contrary to the normal rules on mens rea and actus reus. In particular this is seen in the decision in DPP v Majewski (1977). This point was considered by the Law Commission in a Consultation Paper in 1993. It said in that paper that the Majewski rule was arbitrary and unfair.

- **Specific intent/basic intent** - Where a defendant is charged with murder or a s.18 offence they can use intoxication as a defence. However, because intoxication is not a defence to a basic intent offence, a defendant can be found guilty of a lower level offence. These include manslaughter or s.20 OAPA 1861. However, for other crimes, there is often no 'fallback' offence. If a defendant is charged with theft and successfully claims that they did not form the mens rea for theft because they were too intoxicated, they will be not guilty of any offence.
- **Involuntary intoxication** - A final point where the law could be thought to be in need of reform is where the defendant's inhibitions are broken down by being made intoxicated involuntarily. The decision in Kingston (1994) makes such a defendant guilty if they formed the necessary mens rea. This ignores the fact that the defendant was not to blame for the intoxication. Such a defendant would be not guilty of a basic intent offence where the prosecution relied on recklessness (as in Hardie (1984)). This appears to be unfair to defendants in **Kingston's** situation.

### Proposals for reform

After previous proposals to reform the law on intoxication were rejected or abandoned the Law Commission looked again at the defence in its 2009 report, 'Intoxication and Criminal Liability', (Law Com No. 314). This report recommended that:

- the distinction between voluntary and involuntary intoxication should be kept
- the use of the terms 'specific intent' and 'basic intent' should be abolished;
- instead offences should be categorised as those where mens rea is an integral fault element (e.g. where there has to be intention as to a consequence) and those where mens rea is NOT an integral fault element (e.g. because the offence merely requires proof of recklessness).

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