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# **GCE A LEVEL MARKING SCHEME**

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**AUTUMN 2020**

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

## **INTRODUCTION**

This marking scheme was used by WJEC for the 2020 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

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

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

**EDUQAS GCE A LEVEL LAW**  
**COMPONENT 2: SUBSTANTIVE LAW IN PRACTICE**  
**AUTUMN 2020 MARK SCHEME**

**Marking guidance for examiners**

**Summary of assessment objectives for Component two**

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

**The structure of the mark scheme**

The mark scheme for each question has two parts:

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

**Stage 1 - Deciding on the band**

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

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

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

## **Stage 2 - Deciding on the mark**

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

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

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

## Section A

### Law of Contract

0.1 Paul had a monthly film magazine called *Final Cut*. He advertised widely in other magazines and newspapers, offering various subscription deals to his film magazine, 'Final Cut'. One deal provided a subscription for three years and required payment of £100 to be made by 30th May. Orders received after that date would be charged at £150. Richie sent an order with a cheque for £100, which he posted on the 25th of May. His order was not delivered until the afternoon of 30th of May because of a delay with the post. Paul could not put the cheque in the bank as the bank had already closed for the day. Paul processed the order but would not supply any magazines until Richie paid a further £50. Sara paid £75 for a two-year subscription but, after 14 months, was informed that unexpected increases in printing costs made it necessary to charge an extra £15. Paul would not send any more magazines until the additional payment was made. Tim wrote some film reviews for *Final Cut*. A few months later, Paul told Tim that he could have a free, one-year subscription to 'Final Cut', as a reward for the reviews he had written. Tim received no magazines.

Advise Richie, Sara and Tim of the rights and remedies available to them against Paul in connection with the subscriptions to *Final Cut* magazine, applying your knowledge and understanding of legal rules and principles. [25]

### Indicative content

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

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

### AO1

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

The response might consider issues such as:

- offer/invitation to treat
- the terms of acceptance ('payment' by 30<sup>th</sup> May and whether satisfied by posting or receipt)
- Status of order if not an acceptance
- Breach, if any, and consequent remedies, repudiation, damages.

## AO2

Candidates are expected to apply the full range of legal rules and principles to Richie's, Sara's and Tim's situation, including offer and acceptance and relevant case law, in order to present a legal argument

The response might consider issues such as:

- Consideration of the legal status of the advertisement - is it an offer or an invitation to treat? The legal significance of the difference between the two could be considered. If it is an invitation to treat, supporting case law might be added to support this such as *Partridge v Crittenden*
- In relation to Richie's rights and remedies against Paul - offer/invitation to treat - the terms of acceptance ('payment' by 30<sup>th</sup> May) and whether satisfied by posting or receipt status of order if not an acceptance, breach, if any, and consequent remedies (repudiation, damages).
- In relation to Sara's rights and remedies against Paul- offer and acceptance (agreement), terms, consideration – performance of an existing duty as consideration, nature of any breach and consequent remedy (repudiation, damages)
- In relation to Tim's rights and remedies against Paul - offer and acceptance (agreement), terms, past consideration and prior promises to pay, nature of any breach and consequent remedy (damages).

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

- 0.2. Andrea's husband David is a keen walker and mountain climber and in preparation for his next big 50 mile walk, in two weeks' time, Andrea went into Hiker's Heaven to buy new boots for David. The shop had a sale on and there was a sign next to a pair of boots which stated, "Tough, hard-wearing walking boots. Slightly discoloured. Sold as seen. £55". Andrea bought the boots. At the bottom of the receipt, in big letters, was the statement, "No refunds on sale goods once they have left the shop". David, in preparation for his big walk, wore the boots most days around the house to ensure they fitted him properly before the big event. A couple of days before he was due to start he noticed that the sole had begun to separate from the upper part of one boot. Hiker's Heaven refused to discuss David's complaints about the boots or to give Andrea her money back.

Advise Andrea and David of the rights and remedies against Hiker's Heaven in connection with the walking boots, applying your knowledge and understanding of legal rules and principles. [25]

### **Indicative content**

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

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

#### **AO1**

In advising Andrea and David candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of implied and express terms.

The response might consider issues such as:

- the Consumer Rights Act 2015
- satisfactory quality/fitness for purpose
- remedies: significance of consumer contracts; alternative dispute resolution under the new Act; right to reject; repair and replacement; repeat performance or price reduction
- Consumer Contracts (information, cancellation and additional charges) Regulations 2013 — 14 day cooling off period.

#### **AO2**

Candidates are expected to apply the full range of legal rules and principles to Andrea and David's situation, including the Consumer Contracts Act 2015 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Andrea's and David's rights against Hiker's Heaven: • implied term as to satisfactory quality in Consumer Rights Act 2015; sale price, use to which David puts the walking boots. Implied term as to fitness for purpose in Consumer Rights Act 2015; sale price, use to which David puts the walking boots.
- Remedies available for breach, and impact of exclusion clause: rejection and the loss of the right to reject; repair, replacement, reduction in price; damages • common law requirements for incorporation of exclusion clause; ineffectiveness of exclusion clause by virtue of Unfair Contract Terms Act 1977.
- Privity of contract and David's rights and remedies: general notion of privity; provisions of the Contract (Rights of Third Parties) Act 1999; benefit of rights and remedies (including restrictions on exclusion).



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

## Section B

### Law of Tort

0.3 Ashley was a semi-professional rugby player employed by Ridgeway Rugby Club. The club had the final league match coming up in a week's time against their old rivals Grange Rugby Club. Ridgeway Rugby Club were desperate to win the title as they had lost to Grange Rugby Club on three previous occasions. During the course of the match, the referee had to warn several of the players on both sides about their unreasonable behaviour and language. Ashley got angry, at what he thought was unwarranted warnings from the referee, and lashed out at the player who he felt was responsible for all the trouble. He ran over to Geraint, a player on the opposite team, and punched him, causing a serious head injury.

Advise Geraint as to whether the club is vicariously liable for the consequences of Ashley's tort in injuring him, applying your knowledge and understanding of legal rules and principles. [25]

### Indicative content

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

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

### AO1

In advising Geraint candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to vicarious liability.

The response might consider issues such as:

- Vicarious liability is where one person is held liable for the torts of another, even though that person did not commit the act itself. It is therefore a form of strict liability. The most common form of vicarious liability is when employers are held liable for the torts of their employees that are committed during the course of employment.
- In order to establish liability on the part of the employer, several requirements must be satisfied. Firstly, the wrongdoer must be an employee (as opposed to an independent contractor), the employee must have committed a tort and the tort must have been committed in the course of employment

## AO2

Candidates are expected to apply the full range of legal rules and principles to Geraint's situation, including vicarious liability, in order to present a legal argument.

The response might consider issues such as:

- For Geraint to succeed an employer, Ridgeway Rugby Club is vicariously liable for the torts of its employees committed in the course of their employment.
- Where the wrongful conduct could fairly and properly be regarded as done while acting in the course of the employment, it would ordinarily be fair and just to hold the employer liable. An employer will only be liable for the torts of their employees if they are committed during the course of employment rather than, as the courts put it, 'on a frolic of his own' (*Storey v Ashton*). The traditional test for determining this is the Salmond test which states that a tort will be committed in the course of employment if it is either (a) a wrongful act authorised by the master, or (b) a wrongful and unauthorised mode of doing some act authorised by the master.
- Application to the scenario as to whether there was a close connection between the punch and Ashley's employment - *Lister v Hesley Hall*. The decision in *Lister* widened the scope of this area of law by making it easier to find an employer liable for the torts of their employees. See also the cases of *Mattis v Pollock* *Maga v The Trustees of the Birmingham Archdiocese of the Roman Catholic Church* (2010)
- The crucial issue for Geraint is whether the connection between the work and the tort is sufficiently close or whether the job has merely provided the opportunity to commit the tort.

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

0.4 One hot summer evening Adrian decided to have a party in his garden. He invited several of his friends and cooked the food for them on his barbecue. It was a particularly breezy night and the smoke damaged his neighbour, Josh's washing and also caused some damage to Josh's wooden patio furniture, staining it a dull grey colour. With Josh's permission Adrian went into Josh's garden to paint the stained patio furniture, to do so he had to take it apart, he painted some of it then left the rest on the grass. Adrian also has a remote controlled drone that he enjoys flying across his garden, and his neighbour's gardens, at a height of about 4 metres. Josh is concerned about the drone and does not like it disturbing him when he is in his garden. Furthermore Adrian is fed up of Josh's apple trees which hang over into his garden. Adrian keeps the apples that have fallen into his garden, and he also cuts any overhanging branches.

Advise Adrian and Josh whether they are liable for trespass to land, applying your knowledge and understanding of legal rules and principles. [25]

### Indicative content

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

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

#### AO1

In advising Adrian and Josh candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of trespass to land.

The response might consider issues such as:

- Trespass to land – concerns direct interference with land
- Trespass to land occurs where a person directly enters upon another's land without permission, or remains upon the land, or places or projects any object upon the land.
- This tort is actionable per se without the need to prove damage.
- By contrast, nuisance is an indirect interference with another's use and enjoyment of land, and normally requires proof of damage to be actionable.

#### AO2

Candidates are expected to apply the full range of legal rules and principles to Adrian and Josh's situation, including trespass to land, in order to present a legal argument.

The response might consider issues such as:

- Entering upon land -Walking onto land without permission, or refusing to leave when permission has been withdrawn, or throwing objects onto land are all example of trespass to land. For example, see *Basely v Clarkson* (1681)
- Trespass to the airspace -Trespass to airspace above the land can be committed. In *Kelsen v Imperial Tobacco Co*. Defendant committed trespass by allowing an advertising board to project eight inches into P's property at ground level and another above ground level.
- Possession of land -this tort developed to protect a person's possession of land, and so only a person who has exclusive possession of land may sue.
- Continuing trespass -A continuing trespass is a failure to remove an object (or the defendant in person) unlawfully placed on land. It will lead to a new cause of action each day for as long as it lasts (*Holmes v Wilson and others* (1839); *Konskier v Goodman Ltd* [1928])
- Mistaken or negligent entry -Trespass to land is an intentional tort. However, intention for the act is required, not an intention to trespass. Consequently, deliberate entry is required and lack of knowledge as to trespass will not be a defence (*Conway v George Wimpey & Co* [1951]).

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

## Section C

### Criminal Law

**0.5** Anita was feeling depressed, as she had recently split up with her husband who was now threatening to divorce her. Anita's friend Poppy decided to cheer her up and invited Anita and some other friends to her house for a girl's night in. The girls shared several bottles of champagne, and Poppy gave Anita some of her own valium tablets, which had been prescribed by her doctor. Anita decided to stay the night at Poppy's and at the end of the evening, when all the other girls had left, Anita and Poppy settled down to watch a horror movie on TV. Both girls fell asleep on the sofa before the end of the movie. Anita was often prone to having terrifying dreams and the mixture of the valium tablets with the champagne caused Anita to have a nightmare in which Poppy had turned into a flesh eating monster and was trying to kill her. Believing that she was fighting for her life, Anita grabbed the necklace that Poppy was wearing and twisted it tightly until Poppy let her go. When Anita woke up, she discovered that she had strangled Poppy to death.

Advise Anita as to whether she might have any defences to a charge of murder, applying your knowledge and understanding of legal rules and principles. [25]

### Indicative content

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

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

### AO1

In advising Anita candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of defences against a murder charge.

The response might consider issues such as:

- Elements of diminished responsibility: Coroners and Justice Act 2009.
- Possible defences: automatism, intoxication, possibly also insanity
- Intoxication: distinction between crimes of basic and specific intent.

## AO2

Candidates are expected to apply the full range of legal rules and principles to Anita's situation, including the possible defences of automatism and intoxication, and possibly also insanity or diminished responsibility, and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Diminished responsibility: Coroners and Justice Act, 2009, s.52 – Anita suffering from an abnormality of mental functioning, arising from a recognised medical condition, which was a significant contributory factor to the killing. In *Dietschmann* (2003) D was suffering from depression but was also drunk: court accepted diminished responsibility. There is doubt as to whether depression would count as a recognised medical condition under the new law: if it does, then the key issue is whether it was a significant contributory factor regardless of whether D was also intoxicated. Effect of defence: reduces murder to voluntary manslaughter.
- Possible defences: automatism, intoxication, possibly also insanity or diminished responsibility. Candidates should be credited for defences which would be unlikely to succeed so long as they are at least plausible and explained and applied in a coherent way.
- Automatism: where an action is done without any control by the mind, e.g., concussion, sleepwalking: *Bratty v A-G for Northern Ireland*, *Hill v Baxter*.
- Automatism may be insane or non-insane depending on whether the cause is internal (insane) or external (non-insane). Where the cause is external, such as a drug, the outcome depends on whether automatism was involuntary or self-induced. Case: *Bailey* – self-induced automatism not a defence where (a) D was reckless in becoming an automaton, or (b) if automatism was caused by illegal drink or drugs. However, it was said that (c) automatism is available if D did not know that his actions were likely to result in automatism, as he would not have been reckless in becoming an automaton. Case: *Hardie* – D reckless in becoming an automaton.
- Automatism is a complete defence to specific intent crimes and also to basic intent crimes when not self-induced as above – hence Anita may have a complete defence to murder and manslaughter.
- Intoxication – not a true defence in itself, but Anita may adduce evidence of intoxication to show lack of mens rea as in automatism. Distinction between voluntary and involuntary intoxication and crimes of specific and basic intent. Involuntary intoxication can result from unforeseen effects of a normally harmless drug: *Hardie*, and can be used both in crimes of specific or basic intent. Voluntary intoxication is regarded as reckless, hence cannot be used in crimes of basic intent, e.g., manslaughter: *Lipman*. If the crime is one of specific intent it can result in acquittal or conviction for a lesser offence of basic intent: *Majewski*.
- Insanity – unlikely here, but Crown might seek to prove that Anita was suffering from insanity under the M'Naghten Rules on the basis that she suffers from a sleep disorder (internal cause) as in *Burgess*.



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

0.6 Claire and Liam work together as fitness instructors at a local gym. At the end of the day when all the clients have gone, they often use the gym equipment and pool. One evening, after a workout Claire is looking for her towel. She can't find hers but sees Liam's towel on the bench, uses it and puts it back in her own locker. Later in the evening, Liam, when tidying up for the night, checks through all the lockers to make sure no customer belongings have been left in them. When he comes to Claire's locker he sees her purse in it with two £20 notes sticking out of it, Liam is very short of money this month so he takes the two £20 notes. Julie, one of Claire's clients pops back into the gym to ask Claire a question about the forthcoming gym instructor's exam that she will be taking. No one is at reception, but Julie sees on the counter the exam paper. She quickly picks it up, rushes to the photocopier behind the desk, photocopies the paper and puts the original back on the counter. As she is leaving the gym, Claire returns. Julie, concerned that Claire may have seen her take a copy of the exam paper, rushes past Claire and knocks her to the floor, causing her to twist her ankle.

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

### **Indicative content**

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

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

### **AO1**

In advising Claire, Liam and Julie candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to the subject of theft.

The response might consider issues such as:

- Define and explain theft – section 1 Theft Act 1968.
- Explain the actus reus and mens rea of theft
- Define and explain robbery

## AO2

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

The response might consider issues such as:

- Define and explain theft – section 1 Theft Act 1968.
- Explain and apply the actus reus of theft: Section 3 – appropriation – any interference with any of owner's rights with or without consent – McPherson, Lawrence, Morris, Gomez; Section 4 – property – this must be tangible – Oxford v Moss; Section 5 – belonging to another – ownership, possession or control – Turner
- Explain and apply the mens rea of theft: Section 2 – dishonesty – no statutory definition but Section 2 (1) (a) – defendant not dishonest if honestly believe have legal right to property; Section 2 (1) (b) – defendant not dishonest if honestly believe owner would consent – Holden; Section 2 (1) (c) – defendant not dishonest if honestly believe owner cannot be found by taking reasonable steps; If none of above apply jury apply common sense.
- If guidance is still needed the jury must decide if the defendant was dishonest by the standards of the reasonable man and, if so, the defendant knew they were dishonest by that standard – **Ghosh**, however now see **Ivey v Genting [2017]**. The fundamental principle of the test remains, to assess whether what the defendant was doing was dishonest by the standard of ordinary and honest people. What a defendant cannot fall back on now is whether he appreciated that what he was doing was dishonest to those ordinary and honest people. The difficulty as the court saw it was primarily based on a Defendant's view of society; whether or not that view was warped. A defendant could appear to a jury to have an honest belief that what he was doing was not dishonest and nor would ordinary and honest people view it that way. This is despite it being patently obvious to the contrary. In those circumstances, the judge would have to direct, on the evidence that the second leg of the test had not been satisfied. This served to highlight the disparity between the objective and subjective elements of the test. Now since the case of Ivey the court now wants juries to look at it this way: Ascertain the individual's knowledge and belief to the facts, and; that his belief must be reasonable, and; once his actual state of mind has been established, assess whether his conduct was honest or dishonest by the standards of ordinary decent people.
- Section 6 – intention to permanently deprive – intention to take forever or for period equivalent to outright taking, even if is intention to return property – Lloyd, Warner
- Define and explain robbery – charged under section 8 Theft Act 1968; Actus reus – theft accompanied by use or threat of force before or at time of stealing and in order to steal – Dawson and James, Hale, Lockley; Mens rea – intention to steal

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

## Section D

### Human Rights Law

0.7 A famous scientist claimed in a scientific journal that recent genetic evidence has proved that there is a genetic link between your ancestors and the ability to inherit a 'criminal gene' from them. Tobias Tubb, a well-known member of Parliament, has recently been on a TV programme, 'Where do you think you come from? tracing his family tree back hundreds of years. During the programme it was revealed that that a member of Tobias's family was convicted of murder in the 1890s. Katie Kittle, the editor of the popular tabloid newspaper, the Daily Deceiver, ran a front-page article under the headline: "The Secret Criminals: Where Are They Hiding?". The article was accompanied by photos of Tobias Tubb next to a photo of his ancestor. Tobias Tubb is currently standing for election as the leader of his party. Tobias feels that the article has completely destroyed his credibility as a politician and wants to sue the Daily Deceiver. Katie, on the other hand, argues that the article was an attempt to inform the public about an important scientific discovery and that as a public figure Tobias is a legitimate target for her newspaper.

Advise Tobias as to whether he can sue for defamation, applying your knowledge and understanding of legal rules and principles. [25]

### Indicative content

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

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

### AO1

In advising Tobias candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to defamation.

The response might consider issues such as:

- provisions of Article 8 European Convention on Human Rights, right to respect for private and family life, home and correspondence
- provisions of Article 10 European Convention on Human Rights, right to freedom of expression. Article 10 exceptions, restrictions
- the meaning of defamation under the Defamation Act 2013, including section 1 which imposes a requirement of serious harm to the reputation of the claimant
- a statement is not defamatory unless its publication has caused, or is likely to cause, serious harm to the claimant's reputation eg *Sim v Stretch*, *Byrne v Dean*. Reference may be made to *Cassidy v Daily Mirror*, *Charlesworth v MGN* on the impact of photos
- elements of defamation: the statement must be defamatory; it must refer to the claimant, and it must have been published
- possible defences that may be used including reference to the pre-Defamation Act 2013; these will also include: justification –it has to be shown that the statement is substantially true; fair comment – rebranded "honest comment" in *Spiller v Joseph* and now replaced with "honest opinion" under s. 3 of the Defamation Act 2013; the Reynolds defence of publication in the public interest – *Reynolds v Times Newspaper* and now replaced with defence of Publication on a matter of public interest, under s.4 of the Defamation Act 2013; the Post Defamation Act 2013 – the defence of justification has been abolished and replaced by the defence of truth: s.2 Defamation Act 2013.

## AO2

Candidates are expected to apply the full range of legal rules and principles to Tobias's situation, including the Defamation Act 2013 and relevant case , in order to present a legal argument.

The response might consider issues such as:

In the case of whether the defamatory statements refer to the claimant

- in advising Tobias, the newspaper article and picture refers to him, as required by the Defamation Act 2013. There is a picture of Tobias and the article refers to him

In the case of whether the statements are defamatory

- almost certainly the damage to Tobias's reputation by the newspaper article/photo would be considered as causing serious damage as required by section 1 *Defamation Act 2013*. Tobias's reputation been adversely affected or put at risk by the statement and he May not be elected as a result.
- Reference may be made to *Sim v Stretch*; right thinking members of society would consider Tobias's reputation lowered. Reference may be made to *Byrne v Dean*

In the case of whether the statements have been published

- publishing means that the information has passed from the defendant to a person other than the claimant or the defendant's spouse. In Tobias's case, the information has passed to the public via a newspaper article/headline/photos. Publication can also be online as in the case of the Twitter comments

In the case of whether there are any defences applicable

- truth as a defence - it has to be shown that the statement is substantially true under section 2 of the *Defamation Act 2013*. In this case, the article is not true
- other defences that might apply – s. 4 DA 2013 responsible publication on a matter of public interest – does not apply as it is not responsible publication though defendant could argue they reasonably believe the publication was a matter of public interest
- s. 3 DA 2013 – honest opinion

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

0.8 The local council decided to demolish the youth centre to sell off the land to developers, who wanted to build expensive detached houses. Hannah, who runs the centre, organised a protest against the closure. The next Saturday around three hundred people turned up and set off to march to the council offices, with Hannah in the lead. Some of the marchers carried home-made placards saying: 'Down with the Council, money matters more than people'. Some of the placards also showed pictures of teenagers hanging round street corners using drugs, in an attempt to show what would happen to the local youths if the centre were to be closed. As the marchers came near to the council offices, Sergeant Smith arrived in a police car, accompanied by PC Jones. Sergeant Smith told Hannah that they were blocking the road and disrupting people who were trying to do their shopping and that he would have to reroute them. Hannah refused, so Sergeant Smith arrested her. While this was going on, PC Jones ordered the marchers who were carrying placards to put them down. Some of the marchers waved their placards in anger, so PC Jones arrested them. The march came to a stop as the rest of the marchers tried to find out what was happening. Fearing trouble, Sergeant Smith radioed for reinforcements. Several police vans arrived filled with officers, who imposed a tight cordon around the marchers and kept them there for seven hours.

Advise Hannah as to whether the police were acting within their powers to control these public order situations, applying your knowledge and understanding of legal rules and principles. [25]

### **Indicative content**

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

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

### **AO1**

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

The response might consider issues such as:

- The governing statute is the Public Order Act 1986.
- Controls of marches s.12 POA 1986
- Controls of assemblies under s.14 POA 1986
- Possible public order offences ss. 1 – 5 POA 1986
- Common law offence of breach of the peace.



## AO2

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

The response might consider issues such as:

- Public Order Act 1986.
- Under s.11 of the POA 1986, Hannah, the organiser of a procession is required to give notice six clear days in advance stating the date of the procession, the start time, the proposed route and the name and address of at least one person organising it. The notice must be delivered by hand or by post to a police station in the area where the procession is to start. Failure to give notice is a summary offence punishable by a fine.
- It is not the case that organisers require permission from the police, nor do they have to wait for police permission before going ahead. Failure to give notice is an offence as above, but the procession is not illegal. Under s.13 the Chief Constable can apply to the district council to ban all processions of a particular type in the area for up to three months, subject to approval by the Home Secretary: organising or participating in a banned procession is a summary offence under s.13.
- Section 11 is one of the few sections of the POA 1986 which did not give the police a power to arrest, but since the SOCPA amendments to PACE 1984, s.24, the police have power to arrest for any offence.
- The police have power under s.12 of the POA 1986 to impose conditions on processions: these may be imposed in advance by the Chief Constable in writing (s.12(3)), or by the senior police officer present at the scene (s.12(2)(a)).

The grounds for imposing conditions (s.12(1)) are that the senior officer reasonably believes that the procession may result in serious public disorder, or serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is to intimidate others into doing something which they have a right not to do, or refraining from doing something which they have a right to do. These grounds are commonly called the “four triggers”.

- Conditions which may be imposed: s.12(1) states that the officer may impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation. S.12(1) specifies that these may include conditions as to the route to be followed and that the procession is not to enter some particular public place, but presumably extends beyond these.
- Since the HRA 1998, conditions imposed must be “proportionate” in order not to breach Art.11 of the ECHR.
- Refusal to comply with a condition is an offence (s.12(4) for organisers, s.12(5) for participants).
- The placards: s.5 of the POA 1986 creates the offence of causing harassment, alarm or distress. This may be committed in two ways: by using threatening, abusive or insulting words or behaviour, or by engaging in disorderly behaviour. The behaviour must take place within the sight or hearing of a person likely to be caused harassment, alarm or distress thereby (s.5(1)). This can include a police officer: DPP -v- Orum. Cases: DPP -v- Clarke; DPP -v- Fidler. The arrest power under s.5 required the officer first to give a warning, and only arrest if this was ignored, but this has been superseded by the amended s.24 of PACE 1984.
- Once a procession comes to a standstill, it becomes an assembly and the police may impose conditions under s.14. The triggers are identical to s.12 and the police can impose virtually any conditions they consider necessary.
- Discussion of breach of the peace; In Austin -v- Metropolitan Police Commissioner, the House of Lords held that the practice of confining demonstrators (“kettling”) was lawful as

an exercise of the power to impose conditions under s.14, even if the police did not have these in mind. There was no breach of Art.5: freedom of movement, where the confinement was only for the time necessary to prevent serious public disorder; if a cordon was maintained beyond this merely to punish the demonstrators, it would be a breach of Art.5

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