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# **GCE A LEVEL MARKING SCHEME**

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**AUTUMN 2020**

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

## **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.

**GCE A LEVEL LAW**  
**COMPONENT 3 - PERSPECTIVES OF SUBSTANTIVE LAW**  
**AUTUMN 2020 MARK SCHEME**

**Marking Guidance for Examiners**

**Summary of assessment objectives for Component 3**

All the questions in this component assess assessment objectives AO1 and AO3. AO1 focuses on the ability to demonstrate knowledge and understanding of the English legal system and legal rules and principles. AO3 focuses on the ability to analyse and evaluate legal rules, principles, concepts and issues.

**The structure of the mark scheme**

The mark scheme 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 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

### Law of Contract

- 1.1 Discuss the extent to which the remedies available for a breach of contract provide consumers with an adequate solution [25]

#### Indicative content

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

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

#### AO1

Candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to remedies available for a breach of contract.

The response might consider issues such as:

- Common Law remedies: available as of right if a contract has been breached  
Damages: an award of money that aims to compensate the wronged party for the financial losses they have suffered as a result of the breach. General rule is that innocent parties are entitled to such damages as will put them in the position they would have been in if the contract had been performed. Damages can be pecuniary or non-pecuniary
- Equitable remedies: these are not available as of right, they are provided at the discretion of the court, taking into account the behaviour of the both parties and the satisfaction of equitable maxims  
Specific Performance: this is ordered where damages are inadequate and is available for contracts concerning unique items or interests in land. Specific Performance forces the parties to conduct the contract as agreed and can be seen in cases such as *Beswick v Beswick*  
Injunction: this forces the defendant to not do a particular thing. Injunctions can be mandatory, prohibitory or interlocutory
- Remedies agreed at formation:
- Liquidated Damages: a contract will specify the amount of damages to be paid in the event of a breach - *Dunlop Pneumatic Tyres Co v New Garage and Motor Co*  
Penalty Clauses: If the pre-agreed sum is not a genuine estimate of the loss suffered, then this is a penalty clause and the amount of damages will be determined by the ordinary rules of contract law

### AO3

Candidates will offer a discussion of the legal rules, principles, concepts and issues surrounding the granting of common law and equitable remedies. Candidates are expected to consider and debate the full range of issues and arguments surrounding remedies, including an analysis and evaluation of the availability of common law and equitable remedies. In order to reach a judgment about these issues, candidates will offer a debate and come to a substantiated judgment regarding whether the remedies available provide adequate protection for consumers.

- Analysis and evaluation of damages may consider the limitations on awards of damages such as causation, remoteness of damage – *Hadley v Baxendale*, mitigation of loss by the claimant – *Pilkington v Wood*.
- Analysis and evaluation of equitable remedies. Other evaluation and analysis points that may be considered and discussed are the statutory time limits put on claims, the different time limits for equitable claims, the fact that financial loss is very much protected but little consideration is given to other issues such as mental distress, anxiety and the inconvenience of a breach of contract. Other factors that may be considered are the time and effort involved in litigation, including cost factors of bringing the matter to court
- There are also concerns about defendants profiting from their own breach – *Aggravated, Exemplary and Restitutionary Damages*, No 247 (1997) Law Commission.
- Even though satisfactory remedies may be available, consumers may be unable to take advantage of them due to the limitations on legal aid for civil cases. In addition, the recent reforms to 'no win no fee' cases might reduce the amount of damages received. The availability of remedies does not mean consumers will receive adequate satisfaction.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p style="text-align: center;"><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 remedies for breach of 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 analysis of legal rules, principles, concepts and issues relevant to remedies for breach of contract. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding remedies for breach of contract, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</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 remedies for breach of 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 analysis of legal rules, principles, concepts and issues relevant to remedies for breach of contract. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the principles regarding remedies for breach of contract, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</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 remedies for breach of 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 analysis of legal rules, principles, concepts and issues relevant to remedies for breach of contract. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the principles regarding remedies for breach of contract, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</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 remedies for breach of 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 analysis of legal rules, principles, concepts and issues relevant to remedies for breach of contract. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding remedies for breach of contract.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

## Law of Contract

1.2 Analyse and evaluate the importance of the doctrine of the privity of contract. [25]

### Indicative content

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

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

### AO1

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

The response may include:

- 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*.

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the doctrine of the privity of contract, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the extent of the importance of the doctrine of the privity of contract.

The response may include:

- 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>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</b>
<b>4</b>	<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 privity of 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 analysis of legal rules, principles, concepts and issues relevant to privity of contract. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding privity of contract, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
<b>3</b>	<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 underlying privity of 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 analysis of legal rules, principles, concepts and issues relevant to privity of contract. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the principles regarding privity of contract, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
<b>2</b>	<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 privity of 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 analysis of legal rules, principles, concepts and issues relevant to privity of contract. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the principles regarding privity of contract, including reference to a judgement.</li> <li>• Adequate citation of case law and legal authorities.</li> </ul>
<b>1</b>	<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 privity of 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 analysis of legal rules, principles, concepts and issues relevant to privity of contract. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding privity of contract.</li> <li>• Basic citation of case law and legal authorities.</li> </ul>
<b>0</b>	Response not creditworthy or not attempted.	

## Section B

### Law of Tort

- 1.3 Discuss the extent to which the remedies available in the law of tort provide adequate redress for an injured claimant. [25]

#### Indicative content

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

*This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including damages and injunctions, the English legal system and law of tort. For example, a response may include reference to how well an award of damages can fully compensate a claimant.*

#### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the essential requirements of the remedies available in the law of tort.

The response may include:

- Two main remedies: damages and injunctions.
- A claimant who successfully proves his case in negligence will be entitled to a remedy. Damages are one form of remedy.
- Damages aim to place the claimant, where possible, in the same position as if the tort had never happened. Not always possible for serious, life changing injuries.
- Damages can be divided into general and special damages:
  - Special damages – These comprise quantifiable financial losses up to the date of trial and are assessed separately from other awards because the exact amount to be claimed is known at the time of the trial. The major types of damages are as follows:-
    - Loss of earnings.
    - Medical Expenses.
    - Expenses to cover special facilities.
  - General damages - This term covers all losses that are not capable of exact quantification and they are further divided into pecuniary and non -pecuniary damages.
    - Pecuniary damages - The major type of pecuniary damages is future loss of earnings. The courts calculate this amount using the multiplicand (a sum to represent the claimant's annual net lost earnings) and the multiplier (a notional figure that represents a number of years for which the claimant was likely to have worked). These are multiplied together in order to calculate the future losses.
    - Non-pecuniary damages – pain and suffering, loss of amenity, damages for the injury itself.

- Injunctions as an equitable remedy. Explanation of nature of equitable remedies – not a right. Possible reference to equitable maxims.
  - Prohibitory injunctions
  - Mandatory injunctions
  - Interlocutory injunctions

### AO3

Candidates will offer a discussion of the legal rules, principles, concepts and issues that affect the award of a remedy in the law of tort, including analysis and evaluation of relevant supporting examples and case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether remedies are sufficient

The response might consider issues such as:

- The nature of the award of a remedy in tort law – compensatory in nature. Possible comparison with the nature of remedies in contract law.
- The aim of the award of damages is to place the claimant in the same position as if the tort had not been committed as far as money can do so. This is possible where the claim is for damage to property. However, if the claimant has suffered disabling personal injury, this is not possible.
- Benefits of damages include improvement of quality of life – past and future losses. Also, organisations can be alerted to (and deterred from) dangerous practices. Sense of justice.
- Discussion of provisional damages and the difficulty quantifying such.
- Importance of mitigation of loss.
- Exemplary damages – purpose of punishing the person who has committed the tort rather than as a compensatory remedy for the claimant. Discussion of fairness.
- Discussion of contributory negligence and the impact on the award of damages.
- Further discussion points surrounding the Judicial College guidelines for different types of injury and whether they are too harsh. Recent restrictions on damages for, e.g. whiplash claims.
- Discussion of the awards for e.g. death of a child where an award is quite low compared with an award for future loss of earnings and life long care which can be very high.
- Discussion of the lack of funding available for civil actions. CFAs.
- Discussion of out of court settlements and the importance of a defendant being adequately insured to ensure payment.
- Regarding injunctions – discussion that they are normally granted in cases of nuisance. Possible reference to *Coventry v Lawrence* where use of injunctions may now become more limited.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p style="text-align: center;"><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 remedies in tort. 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 analysis of legal rules, principles, concepts and issues relevant to the remedies in tort. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding the remedies in tort, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</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 remedies in tort. 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 analysis of legal rules, principles, concepts and issues relevant to the remedies in tort. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the principles regarding the remedies in tort, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</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 remedies in tort. 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 analysis of legal rules, principles, concepts and issues relevant to the remedies in tort. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the principles regarding the remedies in tort, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</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 remedies in tort. 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 analysis of legal rules, principles, concepts and issues relevant to the remedies in tort. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding the remedies in tort.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

## Law of Tort

- 1.4 The law on public nuisance provides adequate protection for the 'comfort and convenience of life'. Discuss. [25]

### Indicative content

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

*This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including nuisance, the English legal system and law of tort.*

### AO1

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

The response may include:

- A public nuisance 'materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects' – AG v PYA Quarries Ltd (1958) per Romer LJ.
- Differs from private nuisance on the basis of who is affected by the nuisance.
- Public nuisance is a crime defined in s.17(1) and s.1 Magistrates' Courts Act 1980. Triable either way.
- Foreseeability of risk of type of nuisance rather than intention or recklessness.
- Wagon Mound case
- Cambridge Water Co. v Eastern Counties Leather PLC. Foreseeability of type of damage is a prerequisite of liability and based on rule in Rylands v Fletcher.
- A class of people -

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues concerning public nuisance and its impact on the comfort and convenience of life, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the extent of the offence.

The response might consider issues such as:

- Discussion of the mens rea requirement – foreseeability. Wagon Mound (No 1) (1961), Cambridge Water Co v Eastern Counties Leather PLC.
- Discussion of what amounts to a class of people. R v Ruffell – house party, class of people were local residents. R v Ong – football spectators.
- Discussion of issues surrounding the impact on the community – R vLowrie.
- Discussion, with reference to cases above, of the custodial nature of some sentences. Appeals unsuccessful.
- Discussion of the Law Commission Report – Simplification of Criminal law: Public Nuisance and Outraging Public Decency (Law Com No 358, 2015).

- Discussion of abusive letters and making obscene telephone calls as a form of public nuisance.
- Discussion of civil action against public nuisance – by a realtor action, by a local authority or by an action for tort by a private person.
- Possible discussion of comparisons with private nuisance.
- Possible discussion of overlap between nuisance and negligence.

Band	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</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 public nuisance. 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 analysis of legal rules, principles, concepts and issues relevant to public nuisance. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding public nuisance, including a valid and substantiated judgement.</li> <li>• Excellent use of supporting case law and legal authorities.</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 public nuisance. 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 analysis of legal rules, principles, concepts and issues relevant to public nuisance. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the principles regarding public nuisance, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</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 public nuisance. 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 analysis of legal rules, principles, concepts and issues relevant to public nuisance. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the principles regarding public nuisance, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</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 public nuisance. 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 analysis of legal rules, principles, concepts and issues relevant to public nuisance. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles public nuisance.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

## Section C

### Criminal Law

- 1.5 Discuss the extent to which the law on loss of control provides a defence to a charge of murder. [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.*

*Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the defence of loss of control. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the extent to which loss of control can provide a defence to a charge of murder, including analysis and evaluation of relevant supporting case law. Candidates are expected to consider and debate the full range of issues and limits of the defence of loss of control. 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 loss of control can provide a defence to a charge of murder.*

#### AO1

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

The response might include issues such as:

- Coroners and Justice Act 2009
- Section 54: Requirements of the defence of loss of control: D's acts must have resulted from D's loss of self-control; the loss of self-control must have had a qualifying trigger;
- a person of D's age and sex with a normal degree of tolerance and self restraint, and in the circumstances of D, might have reacted in a same or similar way.
- Explanation of relevant case law.

#### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the defence of loss of control, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue candidates will offer a debate and come to a substantiated judgement regarding the extent to which the defence is available for a charge of murder.

The response might include issues such as:

- Discussion of the fact that the loss of control does not have to be sudden – takes account of the “slow burn” effect.
- The defence is not available if D acted “in a considered desire for revenge”.
- The circumstances of D includes all of D's circumstances except for those whose only relevance is that they have a bearing on D's general capacity for tolerance or self restraint – would exclude, e.g., mental conditions which affect D's capacity for self control – these would normally give rise to the defence of diminished responsibility – restores the distinction which was blurred in Martin and reaffirmed in Holley.



- The need for a qualifying trigger, set out in s.55 – D's loss of self control must be attributable to: D's fear of serious violence from V towards D or another person; or to a thing or things done or said (or both) which constituted circumstances of an extremely grave character and caused D to have a justifiable sense of being seriously wronged; or a combination of both.
- Fear of serious violence is disregarded to the extent that it was caused by something done or said which D incited for the purpose of having an excuse to use violence on V.
- Sexual infidelity on its own is not to be regarded as a qualifying trigger. Case law on this matter.
- The rule that the judge must leave the defence of provocation to the jury if there is any evidence has been tightened – under s.54, there must be sufficient evidence in the opinion of the trial judge on which a properly directed jury could reasonably conclude that the defence might apply.
- If sufficient evidence is adduced, the jury must assume that the defence is satisfied unless the prosecution proves beyond all reasonable doubt that it is not.
- Relevant case law

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p style="text-align: center;"><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 defence of loss of control. 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 analysis of legal rules, principles, concepts and issues relevant to when the defence of loss of control is available for a charge of murder. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding loss of control, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</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 defence of loss of control. 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 analysis of legal rules, principles, concepts and issues relevant to when the defence of loss of control is available for a charge of murder. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the principles regarding loss of control, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</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 defence of loss of control. 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 analysis of legal rules, principles, concepts and issues relevant to when the defence of loss of control is available for a charge of murder. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the principles regarding loss of control, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</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 defence of loss of control. 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 analysis of legal rules, principles, concepts and issues relevant to when the defence of loss of control is available for a charge of murder. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding loss of control.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

## Criminal Law

- 1.6 The Offences Against the Person Act 1861 is outdated and in need of reform. Discuss. [25]

### Indicative content

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

*This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including non-fatal offences, the English legal system and criminal law. 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.*

### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the debate on whether the law on non-fatal offences should be reformed.

The response might include 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.

### AO3

Candidates will offer an analysis and evaluation of the relevant legal rules, principles, concepts and issues in order to discuss the extent to which the law on non-fatal offences needs to be reformed. In order to reach a judgement about these issue candidates will offer a debate and come to a substantiated judgement regarding whether there is a need for reform in this area of law.

The response might include issues such as:

- 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	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles</b>	<b>AO3: Analyse and evaluate legal rules, principles, concepts and issues</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 whether the law on non-fatal offences needs to be reformed. 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 analysis of legal rules, principles, concepts and issues relevant to the debate whether the law on non-fatal offences should be reformed. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the need to reform of the law on non-fatal offences, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</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 whether the law on non-fatal offences needs to be reformed. 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 analysis of legal rules, principles, concepts and issues relevant to the debate whether the law on non-fatal offences should be reformed. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the need to reform of the law on non-fatal offences, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</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 whether the law on non-fatal offences needs to be reformed. 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 analysis of legal rules, principles, concepts and issues relevant to the debate whether the law on non-fatal offences should be reformed. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the need to reform of the law on non-fatal offences, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</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 whether the law on non-fatal offences needs to be reformed. 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 analysis of legal rules, principles, concepts and issues relevant to the debate on whether the law on non-fatal offences should be reformed. Analysis includes minimal detail.</li> <li>• Basic evaluation of the need to reform of the law on non-fatal offences.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

## Section D

### Human Rights Law

- 1.7 To what extent would the protection of human rights in the UK be improved by the repeal of the Human Rights Act 1998? [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.*

*Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the protection of human rights. Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the protection of human rights under the Human Rights Act 1998 and a potential Bill of Rights. Candidates are expected to consider and debate the full range of issues and limits of the Human Rights Act 1998, including an analysis and evaluation of the European Convention on Human Rights (ECHR), the impact of the Human Rights Act 1998 and the arguments surrounding the replacing of the Human Rights Act 1998 (HRA) with a Bill of Rights. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding whether the protection of human rights would be strengthened if the HRA were abolished and replaced with a Bill of Rights.*

#### AO1

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

The response might include issues such as:

- Nature of human rights protection in the UK
- Background with reference to the ECHR. Examples of some of the rights protected – freedom of expression article 10, etc). Categories of right – absolute, qualified, limited. Examples of each.
- Incorporation of the ECHR via the Human Rights Act 1998.
- Key sections – s.7, 2, 3, 4, 6, 10, 19. Possible reference to s.8, 12. Citation of relevant case law.
- Explanation of the debate surrounding the potential repeal of the HRA and replacement with a Bill of Rights. Current position.

#### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that surround the debate on human rights protection in the UK. Candidates are expected to consider and debate the safeguards surrounding the limitations of the Human Rights Act 1998 and the possible features of a Bill of Rights.

The response might include issues such as:

- Discussion of the UK's constitutional position - lack of a written constitution setting out the rights of people in the UK.
- Almost all developed countries have a Bill of Rights.
- The Human Rights Act 1998 is a piece of ordinary legislation which could be repealed by any government. It is not entrenched.

- Discussion of the fact the HRA 1998 is based on the ECHR, which is 60 + years old and does not provide for social, economic or political rights – arguably out of date, and inadequate to reflect the needs of the UK.
- Discussion surrounding the fact that many ECHR rights are qualified in ways that allow them to be effectively circumvented by the UK government. Courts have found it difficult to balance competing rights – e.g. arts 8 and 10. Citation of relevant case law.
- The HRA 1998 does not prevent the government from passing laws which are incompatible with Convention rights.
- Discussion of the fact that the HRA 1998 depends upon the willingness of the judges to uphold human rights.
- Discussion of the possible features of a BOR:
  - A Bill of Rights could be tailored to the needs of the UK.
  - A Bill of Rights would be entrenched.
  - A Bill of Rights would place permanent limits upon the actions of the executive.
  - A Bill of Rights would make the government more accountable for its actions.
- Discussion of some of the potential difficulties – e.g. Good Friday agreement, Devolution, entrenchment and Parliamentary sovereignty.

Band	AO1 Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3 Analyse and evaluate legal rules, principles, concepts and issues
4	<p style="text-align: center;"><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 repeal of the HRA. 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 analysis of legal rules, principles, concepts and issues relevant to the extent to which the protection of human rights in the UK be improved by the repeal of the Human Rights Act 1998. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>Excellent evaluation of the law regarding the repeal of the HRA, including a valid and substantiated judgement.</li> <li>Excellent citation of supporting case law and legal authorities.</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 repeal of the HRA. 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 analysis of legal rules, principles, concepts and issues relevant to the extent to which the protection of human rights in the UK be improved by the repeal of the Human Rights Act 1998. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>Good evaluation of the law regarding the repeal of the HRA, including a valid judgement.</li> <li>Good citation of supporting case law and legal authorities.</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 repeal of the HRA. 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 analysis of legal rules, principles, concepts and issues relevant to the extent to which the protection of human rights in the UK be improved by the repeal of the Human Rights Act 1998. Analysis includes some detail with some supporting evidence.</li> <li>Adequate evaluation of the law regarding the repeal of the HRA, including reference to a judgement.</li> <li>Adequate citation of supporting case law and legal authorities.</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 repeal of the HRA. 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 analysis of legal rules, principles, concepts and issues relevant to the extent to which the protection of human rights in the UK be improved by the repeal of the Human Rights Act 1998. Analysis includes minimal detail.</li> <li>Basic evaluation of the law regarding the repeal of the HRA.</li> <li>Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	



## Human Rights Law

- 1.8 Analyse and evaluate whether the law on contempt of court provides adequate protection for freedom of expression. [25]

### Indicative content

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

*This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including freedom of expression, contempt of court, the English legal system and human rights law. For example, a response may include reference to a discussion of the balance between freedom of expression by the media and an individual's right to privacy and a fair trial.*

### AO1

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

The response might include issues such as:

- at present there is no specific right to privacy in the law of England and Wales eg the Protection of FOE under art 10; conflict with art 6.
- Meaning of contempt of court – conduct tending to interfere with the course of justice.
- Nature of contempt of court: behaviour which interferes with the due administration of justice by the courts – includes abusing a judge or refusal to obey a court order, but the most common form is doing something that prejudices the fairness of legal proceedings.
- Contempt is dealt with summarily, and proceedings are usually brought by the Attorney-General.
- Contempt is a strict liability offence at common law. The law of contempt was reformed by the Contempt of Court Act 1981 in response to Sunday Times -v- UK.
- Contempt of Court Act 1981, s.2(1), limits the scope of the strict liability rule to publications addressed to the public at large – includes speech, writing, broadcast or any other form of communication (e.g., Twitter).
- Removes the uncertainty about when a case has become sub-judice – s.2(3) says that proceedings must be “active”, as defined in Schedule I.
- Criminal proceedings become active once any formal step has been taken, e.g. arrest, issue of a warrant, issue of a summons, and cease to be active after an acquittal, or conviction and sentence, or if the proceedings are discontinued in any other way. Civil proceedings become active once any formal step has been taken, e.g. arrest, issue of a warrant, issue of a summons, and cease to be active after an acquittal, or conviction and sentence, or if the proceedings are discontinued in any other way.
- Civil proceedings become active when arrangements are made for the hearing, or when the hearing begins – in High Court, usually when a case is set down for trial – and remain active until the case is concluded or withdrawn.
- Appeals become active when an intention to appeal is formally notified.
- To amount to contempt, a publication must create a substantial risk of serious prejudice: s.2(2).

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the law on contempt of court. Candidates are expected to consider and debate the full range of issues and controls affecting the media, including an analysis and evaluation of human rights law, privacy and fair trial. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding whether the law on contempt of court provides adequate protection for freedom of expression.

The response might include issues such as:

- analysis and evaluation of Article 10 as a qualified right versus article 6 as an absolute right.
- Discussion of when a case becomes 'active' and whether this is too soon/late – implications for FOE.
- Discussion of "Substantial" risk means a risk which is not remote: in A-G -v- News Group Newspapers (the Ian Botham libel case) the CA said it relates to the proximity of the risk, i.e. whether the publication is close in time to the proceedings, and whether it is widespread or restricted. Examples of cases, e.g., A-G -v- ITN (ephemeral news broadcast, small circulation of early editions of newspapers, length of time to trial, meant the risk of prejudice not substantial).
- Contrast A-G -v- BBC (comments about sons of Robert Maxwell on "Have I Got News For You?" held to be "strikingly prejudicial" to their trial on fraud charges although the trial was six months away).
- Serious prejudice includes pre judging the outcome of a case, turning a jury against a party, criticising a party to a case, trying to force a party to drop a case.
- Examples, e.g. R -v- Bolam (Daily Mirror described man on trial for murder as a vampire); A-G -v- MGN (Geoffrey Knights trial for assault: newspapers raked up earlier libel case, previous prosecutions for violence, etc. – case states that standard of proof is beyond reasonable doubt).
- Not necessary to imply that a defendant is guilty, e.g. A-G -v- Times (the Michael Fagan case – intruder in Buckingham Palace); A-G -v- Express Newspapers and A-G -v- English (the Dr Leonard Arthur case – doctor tried for murder of a Down's syndrome baby: emotive articles about the right to life of children born with disabilities).
- No obligation on law officers to bring proceedings for contempt, e.g., R -v- SolicitorGeneral ex p Taylor (conviction of two sisters for murder quashed because of inaccurate and sensation press coverage).
- Discussion of defences – AG v English. Answered criticisms of Sunday Times v UK?
- further examples of cases which illustrate the balance between the freedom of expression of the media and the individual's right to privacy eg *Prince Albert v Strange*; *Argyll v Argyll*; *Stephens v Avery*; *Douglas v Hello!*; *Campbell v MGN*
- analysis and evaluation of the recent use of "super injunctions" to protect the identity of the claimant
- updates following Leveson, including the need for the establishment of Independent Press Standards Organisation which has been set up to regulate the media.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p style="text-align: center;"><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 contempt of court. 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 analysis of legal rules, principles, concepts and issues relevant to contempt of court. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the law regarding the protection of freedom of expression, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</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 contempt of court. 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 analysis of legal rules, principles, concepts and issues relevant to contempt of court. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the law regarding freedom of expression, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</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 contempt of court. 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 analysis of legal rules, principles, concepts and issues relevant to contempt of court. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the law regarding freedom of expression, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</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 contempt of court. 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 analysis of legal rules, principles, concepts and issues relevant to contempt of court. Analysis includes minimal detail.</li> <li>• Basic evaluation of the law regarding freedom of expression.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	