

CONFERENCE VERSION



GCE AS MARKING SCHEME

AUTUMN 2020

**AS
LAW - COMPONENT 2
UNDERSTANDING SUBSTANTIVE LAW
B150U20-1**

INTRODUCTION

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

EDUQAS GCE AS LAW

COMPONENT 2: UNDERSTANDING SUBSTANTIVE LAW

AUTUMN 2020 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 2

All the questions in this component assess assessment objectives AO1, AO2 and AO3. AO1 focuses on the ability to demonstrate knowledge and understanding of 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 terminology, and AO3 focuses on the ability to analyse and evaluate legal rules, principles and concepts.

The structure of the mark scheme

The mark scheme for Section A and Section B has two parts:

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

Practice Section A

Question 1: Law of Contract

1. (a) Explain what is meant by intention to create legal relations. [6]

Indicative content

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

In explaining what is meant by intention to create legal relations, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the essential elements of a contract. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on all the essential elements of a contract.

The response might consider issues such as:

- Explanation of intention to create legal relations– a basic requirement of a valid contract
- rebuttable presumptions in relation to commercial situations – explained through cases such as *Rose & Frank v Crompton Bros*; *Jones v Vernons Pools*; *Esso Petroleum v Commissioners of Customs and Excise*
- Rebuttable presumptions in relation to social /domestic situations – explained through cases such as *Balfour v Balfour*; *Merritt v Merritt*; *Simpkins v Pays*

Assessment grid for Q1 (a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none">• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to what is meant by intention to create legal relations. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none">• Good knowledge and understanding of the English legal system and legal rules and principles relating to what is meant by intention to create legal relations• Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none">• Basic knowledge and understanding of the English legal system and legal rules and principles relating to what is meant by intention to create legal relations• Response includes minimal detail.
	0	Response not creditworthy or not attempted.

(b) Explain how discharge of contract occurs.

[6]

Indicative content

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

In explaining how discharge or end of a contract occurs, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the essential elements of a contract. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on contract law.

The response might consider issues such as:

- In contract law, discharge or end of a contract occurs when the parties have fully performed their contractual obligations or when events, conduct of the parties or operation of law releases the parties from performance.
- There are three ways where a contract can come to an end –Performance, -Non performance - Breach of contract

Assessment grid for Q1 (b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none">• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to discharge of contract. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none">• Good knowledge and understanding of the English legal system and legal rules and principles relating to discharge of contract. Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none">• Basic knowledge and understanding of the English legal system and legal rules and principles relating to discharge of contract. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

- (c) Assess the various forms of remedies available for breach of contract. [9]

Indicative content

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

In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from areas including the essential requirements of formation of a contract. For example, a response may include reference to the common law remedy of damages: compensatory damages, tests of causation, remoteness of damage, mitigation of loss.

Candidates will offer an assessment of the legal rules, principles and concepts in order to assess the various forms of remedies available for breach of contract.

The response might consider issues such as:

- Common Law remedy of damages: compensatory damages
- Tests of causation
- Remoteness of damage
- Mitigation of loss

Assessment grid for Q1 (c)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	8-9	<ul style="list-style-type: none"> • Excellent analysis of legal rules, principles and concepts relevant to the various forms of remedies available for breach of contract. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the remedies, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	6-7	<ul style="list-style-type: none"> • Good analysis of legal rules, principles and concepts relevant to the various forms of remedies available for breach of contract. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the remedies, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	3-5	<ul style="list-style-type: none"> • Adequate analysis of legal rules, principles and concepts relevant to the various forms of remedies available for breach of contract. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the remedies, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-2	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles and concepts relevant to the various forms of remedies available for breach of contract Analysis includes minimal detail. • Basic evaluation of the remedies. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

The scenario below should be used when assessing part (d).

- (d) In March David agrees with Lovely Landscapes Ltd that they will landscape his garden, with the work to be finished by the end of June, as he wants to hold his 25th wedding anniversary party in his garden in July. Lovely Landscapes Ltd inform David at the beginning of June that they are short of workers and money and will not be able to complete the work by the agreed date. David agrees to pay an extra £1,500 to Lovely Landscapes Ltd to complete the work on time.

Advise Damian whether he is obliged to pay the extra £1000 to Great Gardens.

[9]

Indicative Content

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

In advising David candidates are expected to apply the full range of legal rules and principles relating to consideration. In this case candidates will need to apply the law on consideration and use relevant case law in relation to the given scenario in order to present a legal argument.

The response might consider issues such as:

- Consideration is concerned with the bargain of the contract. A contract is based on an exchange of promises. Each party to a contract must be both a promisor and a promisee. They must each receive a benefit and each suffer a detriment. This benefit or detriment is referred to as consideration.
- Rules of consideration: the consideration must not be past; the consideration must be sufficient but need not be adequate; the consideration must move from the promisee; an existing public duty will not amount to valid consideration; an existing contractual duty will not amount to valid consideration; part payment of a debt is not valid consideration for a promise to forego the balance.
- Consideration must have some value. David would have to pay the £1,500 if following the case of *Williams v Roffey Bros*. David had agreed to pay the extra amount of £1,500 in order to prevent the inconvenience of hiring other workers to do the work instead, or to prevent his wedding anniversary party from suffering. Therefore he would be obliged to pay the amount agreed.
- The claim of Lovely Landscapes Ltd therefore for the £1,500 would be successful. However Lovely Landscapes Ltd are not doing anything more than what they initially contracted to do. Therefore there is no consideration on their behalf which would go against the rule of consideration that both parties should benefit. This would go against the fact that consideration must have some value. There is also the fact that the courts have not followed *Williams v Roffey* in later cases as shown in *Re Selectmove*. This shows how the decision in David's case is unlikely to follow this. The fact that Lovely Landscapes Ltd did not go beyond their existing duty can also result in David following the *Stilk v Myrick* case, where the fact that the crew members didn't go beyond their existing duty meant they did not provide consideration and were doing what they were contractually obliged to do and could not receive the money. If this decision is followed Damian would not have to pay the £1,500.

Assessment grid for Q1 (d)

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	8-9	<ul style="list-style-type: none"> • Excellent application of legal rules and principles to David's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to consideration. The legal argument is detailed, fully developed and persuasive.
3	6-7	<ul style="list-style-type: none"> • Good application of legal rules and principles to David's situation. • Good presentation of a legal argument using appropriate use of legal terminology, case law and other legal authorities relating to consideration. The legal argument is generally detailed, developed and persuasive.
2	3-5	<ul style="list-style-type: none"> • Adequate application of legal rules and principles to David's situation. • Adequate presentation of a legal argument using some appropriate use of legal terminology, case law and other legal authorities relating to consideration. The legal argument includes some detail which is developed in places.
1	1-2	<ul style="list-style-type: none"> • Basic application of legal rules and principles to David's situation. • Basic presentation of a legal argument using minimal legal terminology relating to consideration. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

Question 2: Law of tort

2. (a) Explain the Caparo test for duty of care.

[6]

Indicative content

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

In explaining the Caparo test for duty of care, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the principle of duty of care. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on the essential elements of negligence. In order to explain the Caparo test for duty of care, responses might consider issues such as:

- Duty of Care test redefined in Caparo v Dickman. Three elements must be proved:
- would a reasonable person in the defendant's position have foreseen that the claimant might be injured or suffer damage to his property? Explained through a case such as Kent v Griffiths
- is there proximity by space, time or relationship between claimant and defendant? Explained through cases such as Bourhill v Young, McLoughlin v O'Brien
- is it fair, just and reasonable to impose a duty of care? Explained through cases such as Hill v Chief Constable of West Yorkshire, Mitchell v Glasgow City Council.

Assessment grid for Q2 (a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none">• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the Caparo test for duty of care. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none">• Good knowledge and understanding of the English legal system and legal rules and principles relating to the Caparo test for duty of care. Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none">• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the Caparo test for duty of care. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

(b) Explain breach of duty of care

[6]

Indicative content

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

In explaining what is meant by breach of duty of care, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying negligence. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on negligence.

The response might consider issues such as:

- The objective standard of care and the reasonable - the vase of Blyth
- Special Characteristics – reference to cases such as Bolam, Montgomery, Nettleship
- Risk Factors -When the court considers whether there has been a breach of duty, it will take into account certain factors to decide whether the standard of care should be raised or lowered and ask the question: would the reasonable person take more or fewer risks in the same situation? Reference to cases such as Paris, Roe, Bolton, Latimer

Assessment grid for Q2 (b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none">• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to breach of duty of care. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none">• Good knowledge and understanding of the English legal system and legal rules and principles relating to breach of duty of care. Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none">• Basic knowledge and understanding of the English legal system and legal rules and principles relating to breach of duty of care. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

(c) Assess the differences between primary and secondary victims

[9]

Indicative content

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

In order to achieve the highest marks, candidates must demonstrate their ability to draw together details of the differences between primary and secondary victims

Candidates will offer an assessment of the legal rules, principles and concepts in order to assess the differences between primary and secondary victims. In order to assess this issue, candidates will offer an assessment of the purpose of both primary and secondary victims.

The response might consider issues such as:

- A primary victim is where the claimant is involved, immediately in time, as a participant, e.g. a person who feared for their own safety, injured rescuers or an involuntary participant. They would be present at scene and usually (but not always) have suffered physical injury. It does not matter if the victim is more susceptible to shock.
- A secondary victim is where the claimant has suffered some type of psychiatric injury. To be classified as a secondary victim there must be a proximity in terms of relationship with a primary victim and the secondary victim must have witnessed the accident with his/her own unaided senses.
- Candidates may refer to case law such as *Hambrook v Stokes Bros*; *McCloughlin v O'Brien*; *Page v Smith*; *Alcock v Chief Constable of South Yorkshire Police*.

Assessment grid for Q2 (c)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	8-9	<ul style="list-style-type: none"> • Excellent analysis of legal rules, principles and concepts relevant to the differences between primary and secondary victims. • Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the differences between primary and secondary victims, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	6-7	<ul style="list-style-type: none"> • Good analysis of legal rules, principles and concepts relevant to the differences between primary and secondary victims. • Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the differences between primary and secondary victims, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	3-5	<ul style="list-style-type: none"> • Adequate analysis of legal rules, principles and concepts relevant to the differences between primary and secondary victims. • Analysis includes some detail with some supporting evidence. • Adequate evaluation the differences between primary and secondary victims, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-2	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles and concepts relevant to the award of damages in negligence. • Analysis includes minimal detail. • Basic evaluation of the award of damages in negligence. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

The scenario below should be used when assessing part (d):

Chris, a chemistry teacher, liked making his own fireworks. He took a firework he had just finished to show his neighbour Ben, who invited Chris into his living room. Chris put the firework on Ben's coffee table so that they could admire it. Unfortunately, the fuse on the firework was not secured properly and the firework exploded, wrecking the living room and severely injuring Ben who can no longer work and requires constant care. His life expectancy is greatly reduced as a result. The explosion also damaged an expensive painting hanging on the wall in the living room, which cost £3,000 to repair. In addition, the cost of repairing the living room was £10,000.

- (d) Assume that Chris was found liable in negligence. Advise Ben how the court would calculate his award of damages. [9]

Indicative content

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

In advising Ben, candidates will offer an assessment of the legal rules and principles relating to his situation. In this case, candidates will need to consider how the court will award damages and then apply these to the accident.

The response might consider issues such as:

- Explanation of the calculation of damages
- Aim of damages in tort
- General and special damages; pecuniary and non-pecuniary
- Damage to property + expenses incurred, loss of future earnings, loss of amenity, pain and suffering
- Structure of awards (lump sum or structured settlement)
- Application to Barry - General damages – personal injury, pain and suffering, loss of amenity
- Special damages stated for damage to kitchen (£10 000) and oil painting (£3000) if not too remote
- Possible reference to special damage payable as lump sum, general damages likely to be agreed as structured settlement given nature of injuries

Assessment grid for Q2 (d)

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	8-9	<ul style="list-style-type: none"> • Excellent application of legal rules and principles to Ben's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding the calculation of damages for Ben. The legal argument is detailed, fully developed and persuasive.
3	6-7	<ul style="list-style-type: none"> • Good application of the legal rules and principles to Ben's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities regarding the calculation of damages for Ben. The legal argument is generally detailed, developed and persuasive.
2	3-5	<ul style="list-style-type: none"> • Adequate application of the legal rules and principles to Ben's situation. • Adequate presentation of a legal argument using some appropriate use of legal terminology, case law and other legal authorities regarding the calculation of damages for Ben. The legal argument includes some detail which is developed in places.
1	1-2	<ul style="list-style-type: none"> • Basic application of the legal rules and principles to Ben's situation. • Basic presentation of a legal argument using minimal legal terminology regarding the calculation of damages for Ben. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

Section B: Public Law

Question 3: Criminal Law

3. (a) Explain the meaning of the term 'mens rea' in criminal law. [6]

Indicative Content

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

In explaining the term 'mens rea' in criminal law candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying mens rea. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question set and not simply give a general answer on intention.

The response might consider issues such as:

- Explanation of the meaning of 'mens rea' in general terms (guilty mind); recognition that the courts have developed definitions of common states of mind found in criminal liability.
- These are:
 - direct intent (the defendant's aim or purpose + example, e.g. Mohan)
 - oblique intent (where the consequence is virtually certain, and the defendant goes ahead with his actions knowing that is the case + example, e.g. Woollin)
 - recklessness (the defendant knew there was a risk of the consequence but went ahead with the act anyway + example, eg Cunningham).

Assessment grid for Q3 (a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	• Excellent knowledge and understanding of the English legal system and legal rules and principles in relation to the term 'mens rea' in criminal law. Response is clear, detailed and fully developed.
2	3-4	• Good knowledge and understanding of the English legal system and legal rules and principles in relation to the term 'mens rea' in criminal law. Response is generally clear, detailed and developed.
1	1-2	• Basic knowledge and understanding of the English legal system and legal rules and principles in relation to the term 'mens rea' in criminal law. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

- (b) Explain the actus reus and mens rea of s.18 Offences Against the Person Act 1861. [6]

Indicative Content

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

In explaining the ‘the actus reus and mens rea of s.18 Offences Against the Person Act 1861.candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying non-fatal offences. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on non-fatal offences.

The response might consider issues such as:

- Identification of causing grievous bodily harm with intent under s18 Offences Against the Person Act 1861
- Explanation of actus reus of causing gbh - really serious harm + cases such as Smith
- Explanation of mens rea being intention, ie direct or oblique intention as to causing gbh + cases such as Belfon
- Possible reference to other cases/examples in support such as Bollom, Mowatt, Brown and Stratton

Assessment grid for Q3 (b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system and legal rules and principles in relation to the actus reus and mens rea of s.18 Offences Against the Person Act 1861. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system and legal rules and principles in relation the actus reus and mens rea of s.18 Offences Against the Person Act 1861. Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles in relation to the actus reus and mens rea of s.18 Offences Against the Person Act 1861. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

- (c) Assess the principles used by the courts when deciding whether an offence is one of strict liability. [9]

Indicative Content

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

In order to achieve the highest marks, candidates must demonstrate their ability to draw together the different principles used by the courts when deciding whether an offence is one of strict liability. For example, a response may include reference to the need to reform the law on strict liability with supporting case law to illustrate.

Candidates will offer an assessment of the legal rules, principles and concepts in order to evaluate the current law relating on intention (mens rea).

The response might consider issues such as:

- Nature of strict liability.
- General presumption that mens rea is required: Sweet v Parsley, A-G for Hong Kong v Gammon.
- The principles set out in Gammon as to when the presumption of mens rea can be displaced.
- Examples of case law, e.g., Callow v Tillstone, Sweet v Parsley, DPP v B(A minor), Smedleys v Breed, Shah, Storkwain, Alphacell v Woodward

Assessment Grid for Q3(c)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	8-9	<ul style="list-style-type: none"> • Excellent analysis of legal rules, principles and concepts relevant to the principles used by the courts when deciding whether an offence is one of strict liability. • Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles used by the courts when deciding whether an offence is one of strict liability including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	6-7	<ul style="list-style-type: none"> • Good analysis of legal rules, principles and concepts relevant to the principles used by the courts when deciding whether an offence is one of strict liability. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the principles used by the courts when deciding whether an offence is one of strict liability, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	3-5	<ul style="list-style-type: none"> • Adequate analysis of legal rules, principles and concepts relevant to the principles used by the courts when deciding whether an offence is one of strict liability. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the principles used by the courts when deciding whether an offence is one of strict liability, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-2	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles and concepts relevant to the principles used by the courts when deciding whether an offence is one of strict liability. Analysis includes minimal detail. • Basic evaluation of the principles used by the courts when deciding whether an offence is one of strict liability • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

The scenario below should be used when assessing part (d).

Arthur is a disabled man who lives next door to Joseph. Arthur was angry about Joseph's constant jokey comments about him being disabled and using a wheelchair. Whenever Arthur saw Joseph, he shouted and waved his walking stick at him saying he would 'get' him. After several months of shouting at Joseph, Arthur asked Joseph to come over to his house on the pretence that he needed help unloading his shopping. Arthur was planning to scare Joseph. As soon as Joseph started to walk over, Arthur deliberately fired his air pistol, aiming close to Joseph's feet. However, Arthur could not steady the pistol and the pellets from his shot hit Joseph in the leg. Joseph fell over and bled slightly from his injury.

- (d) Advise Arthur as to whether he would be liable for the injuries caused to Joseph by the shooting. [9]

Indicative Content

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

In advising Arthur candidates are expected to apply the full range of legal rules and principles relating to Arthur's situation. In this case candidates may discuss the s.20 and s.47 of the OAPA 1861 and apply relevant case law to the given scenario in order to present a legal argument.

The response might consider issues such as:

- Identification of wounding s20 Offences Against the Person Act 1861
- Discussion and application of actus reus of wounding (evidenced by breaking both layers of the skin/external bleeding), supported by authority such as *Eisenhower*
- Discussion and application of mens rea of wounding being malicious, i.e. recklessness or intention as to some harm, supported by authority such as *Savage*.

OR

- Identification of ABH s47 Offences Against the Person Act 1861
- Discussion and application of actus reus of s47 based on battery supported by authority
- Discussion and application of meaning of ABH supported by authority eg *Miller / Chan Fook*
- Discussion and application of mens rea of s47 via mens rea of battery supported by authority eg *Savage*

Assessment Grid for Q3 (d)

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	8-9	<ul style="list-style-type: none"> • Excellent application of legal rules and principles to Arthur's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to s.20 and s.47 of the OAPA 1861. The legal argument is detailed, fully developed and persuasive.
3	6-7	<ul style="list-style-type: none"> • Good application of legal rules and principles to Arthur's situation. • Good presentation of a legal argument using appropriate use of legal terminology, case law and other legal authorities relating to s.20 and s.47 of the OAPA 1861. The legal argument is generally detailed, developed and persuasive.
2	3-5	<ul style="list-style-type: none"> • Adequate application of legal rules and principles to Arthur's situation • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to s.20 and s.47 of the OAPA 1861. The legal argument includes some detail which is developed in places.
1	1-2	<ul style="list-style-type: none"> • Basic application of legal rules and principles to Arthur's situation. • Basic presentation of a legal argument using minimal legal terminology relating to s.20 and s.47 of the OAPA 1861. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

Question 4: Human Rights Law

4. (a) Explain the role of the European Convention on Human Rights. [6]

Indicative Content

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

In explaining the role of the European Convention on Human Rights., candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the ECHR. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question set and not simply give a general answer relating to human rights.

The response might consider issues such as:

- ECHR is a list of human rights written by the council of Europe that we should all have.
- The ECHR was originally founded after WWII to ensure the human rights of citizens were upheld.
- The European Court of Human Rights is located in Strasbourg and is the final court of appeal for human rights matters.
- UK signed it but did not make it incorporate and make it law until 1998 by passing the Human Rights Act 1998
- Contains articles of rights – e.g. right to a fair trial (art 6) and right to freedom of expression (art 10).
- Some rights are absolute, some qualified and some are limited.

Assessment grid for Part 4 (a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none">• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to role of the European Convention on Human Rights. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none">• Good knowledge and understanding of the English legal system and legal rules and principles relating to role of the European Convention on Human Rights. Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none">• Basic knowledge and understanding of the English legal system and legal rules and principles relating to role of the European Convention on Human Rights. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

- (b) Explain what is meant by a declaration of incompatibility under section 4 of the Human Rights Act 1998 [6]

Indicative Content

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

In explaining what is meant by a declaration of incompatibility under section 4 of the Human Rights Act 1998 candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the Human Rights Act 1998. In demonstrating this knowledge and understanding, candidates are required to focus on the specific details of section 4, and not simply give a general answer on the Human Rights Act 1998.

The response might consider issues such as:

- Human Rights Act 1998.
- under s.4 - A declaration of incompatibility simply puts the government on notice that a particular provision is incompatible with Convention rights; it does not have any effect on the legislation, and the court must apply the law as it stands, cases such as *A & Others*; *Wilson*, *Bellenger*
- If a court is considering issuing a declaration of incompatibility, under s.5 it must give notice to the Crown so that the relevant Minister can be joined as a party to the proceedings and can argue against the declaration before it is made. The government can also appeal to a higher court against the issue of a declaration.
- The real practical effect is to enable the fast-track amendment procedure to be used: s.10 of the HRA 1998. This allows an amendment to primary or secondary legislation to remove the incompatibility by means of an order laid before Parliament.

Assessment grid for Q4 (b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to what is meant by a declaration of incompatibility under section 4 of the Human Rights Act 1998. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system and legal rules and principles relating to what is meant by a declaration of incompatibility under section 4 of the Human Rights Act 1998. Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles relating to what is meant by a declaration of incompatibility under section 4 of the Human Rights Act 1998. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

Indicative Content

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

In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from areas including the HRA 1998 and a UK Bill of Rights. For example, a response may include reference to an analysis of the HRA 1998 and whether rights would be more adequately protected by the introduction of a UK Bill of Rights.

Candidates will offer an analysis and evaluation of the legal rules, principles and concepts in order to assess whether the UK needs a Bill of Rights. In order to assess this, candidates may consider how rights are currently protected under the HRA 1998.

The response might consider issues such as:

- 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, it is not entrenched, it could be repealed by any government.
- 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.
- Many ECHR rights are qualified in ways that allow them to be effectively circumvented by the UK government.
- The HRA 1998 does not prevent the government from passing laws which are incompatible with Convention rights.
- The HRA 1998 depends upon the willingness of the judges to uphold human rights.
- 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.
- Arguments against a Bill of Rights, e.g., It would increase the power of the unelected judiciary; A Bill of Rights would lack the flexibility to adapt to changing circumstances

Assessment Grid for Q4 (c)

Band	Marks	AO3: Analyse and evaluate legal rules, principles and concepts
4	8-9	<ul style="list-style-type: none"> • Excellent analysis of legal rules, principles and concepts relevant to whether the UK needs a Bill of Rights. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of whether the UK needs a Bill of Rights, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	6-7	<ul style="list-style-type: none"> • Good analysis of legal rules, principles and concepts relevant to whether the UK needs a Bill of Rights. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of whether the UK needs a Bill of Rights, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	3-5	<ul style="list-style-type: none"> • Adequate analysis of legal rules, principles and concepts relevant to whether the UK needs a Bill of Rights. Analysis includes some detail with some supporting evidence. • Adequate evaluation of whether the UK needs a Bill of Rights, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	1-2	<ul style="list-style-type: none"> • Basic analysis of legal rules, principles and concepts relevant to whether the UK needs a Bill of Rights. Analysis includes minimal detail. • Basic evaluation of the whether the UK needs a Bill of Rights. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

The scenario below should be used when assessing part (d):

Stacey Snoop is a journalist who writes for the Daily Dirt, a popular newspaper with a large readership. She was approached by a reality TV star, Lulu Devine, who told her that she was having an affair with a married football star, Harry Balls, and offered to reveal the man's identity in return for £10,000. Stacey, convinced that she had stumbled upon a good story, persuaded her editor to print a photo of Harry and his wife looking sad with Lulu digitally edited in. The words which accompanied the photo was headlined, "Harry Scores with Lulu!" and strongly suggested, that Harry and Lulu were having an affair. As a result of the article Harry has been dropped by his football club. Both Harry and Lulu have strongly denied that there was ever any relationship between them.

(d) Advise Harry whether he can sue for defamation. [9]

Indicative Content

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

In advising Harry candidates are expected to apply the full range of legal rules and principles concerning the law on defamation.

In this case candidates may advise Harry as to the relevant factors a claimant needs to prove to have a potentially successful case.

The response might consider issues such as:

- Nature of defamation: publication of untrue, defamatory statements libel and slander.
- Elements of defamation. Defamation Act 2013
- Does the statement refer to the claimant? Or can it be taken to refer to the claimant?
- Is the statement defamatory? S.1
- Has the statement been published?
- Does at least one of the defences apply?
- The statement must refer to the claimant. By name or context.
- Is the statement defamatory? S.1 Defamation Act 2013. Definition: A statement which would tend to lower the claimant in the eyes of right thinking persons generally: *Sim v Stretch*, *Byrne v Dean*.
- Photographs and headlines must be considered in terms of its effects on the ordinary reasonable reader who reads the whole article, and not just someone who glances at it: *Charlesworth v NGN*.
- Innuendo – the phrase "Harry Scores with Lily" taken in conjunction with the photo at the reported conversation give an impression of a cheating husband. Cases: *Tolley v Fry*, *Cassidy v Daily Mirror*.
- The statement must be published.

Assessment Grid for Q4 (d)

Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	8-9	<ul style="list-style-type: none"> • Excellent application of legal rules and principles to Sarah's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the rights of a detainee in police custody. The legal argument is detailed, fully developed and persuasive.
3	6-7	<ul style="list-style-type: none"> • Good application of legal rules and principles to Sarah's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the rights of a detainee in police custody. The legal argument is generally detailed, developed and persuasive.
2	3-5	<ul style="list-style-type: none"> • Adequate application of legal rules and principles to Sarah's situation. • Adequate presentation of a legal argument using some appropriate use of legal terminology, case law and other legal authorities relating to the rights of a detainee in police custody. The legal argument includes some detail which is developed in places.
1	1-2	<ul style="list-style-type: none"> • Basic application of legal rules and principles to Sarah's situation. • Basic presentation of a legal argument using minimal legal terminology relating to the rights of a detainee in police custody. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.