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# **GCE AS MARKING SCHEME**

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**SUMMER 2018**

**AS  
LAW - COMPONENT 2  
Understanding Substantive Law  
B150U20-1**

## **INTRODUCTION**

This marking scheme was used by WJEC for the 2018 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 AS LAW

## SUMMER 2018 MARK SCHEME

### COMPONENT 2: Understanding Substantive Law

#### 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.

## Section A

### Question 1: Law of Contract

1. (a) Explain when an offer comes into existence and briefly explain how an offer can come to an end through lapse of time, and by revocation of the offer. [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 when an offer comes into existence and how an offer can come to an end through lapse of time, and by revocation of the offer, 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 the essential elements of a contract. The response might consider issues such as:

- Explanation of when an offer comes into existence - when communicated – eg when it is received and read if written or when heard if oral. • Eg cases such as Thornton v Shoe Lane Parking, Carlill v Carbolic Smoke Ball Co
- Explanation of how an offer can come to an end - • lapse of time ends the offer when a fixed time expires, or if no time is set, after a reasonable time – e.g. Ramsgate Victoria Hotel v Montefiore.
- Revocation - withdrawal can be made at any time by communicating revocation whilst the offer is open – eg Routledge v Grant.

#### Assessment grid for Q1 (a)

Band	Marks	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles</b>
<b>3</b>	<b>5-6</b>	<ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to when an offer comes into existence and how an offer can come to an end through lapse of time, and by revocation of the offer.</li> <li>• Response is clear, detailed and fully developed.</li> </ul>
<b>2</b>	<b>3-4</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to when an offer comes into existence and how an offer can come to an end through lapse of time, and by revocation of the offer.</li> <li>• Response is generally clear, detailed and developed.</li> </ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to when an offer comes into existence and how an offer can come to an end through lapse of time, and by revocation of the offer.</li> <li>• Response includes minimal detail.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

**(b) Explain the meaning of ‘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 the meaning of 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 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 (b)**

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

**(c) Assess the differences between an offer and an invitation to treat. [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 contract and the law of contract. For example, a response may include reference to the rules of contract law and an analysis of consideration, including a discussion of offer, acceptance and intention.*

Candidates will offer an assessment of the legal rules, principles and concepts in order to assess the differences between an offer and an invitation to treat. The response might consider issues such as:

- the meaning of an invitation to treat: a step in the negotiation process but not made with an intention to be bound
- examples of invitations to treat: goods displayed on shelves: *Pharmaceutical Society of GB v Boots the Chemist*; goods on display in a shop window: *Fisher v Bell*; goods or services advertised in a newspaper/magazine: *Partridge v Crittenden*
- the meaning of an offer: a proposal made with the intention of being bound by its terms
- situations which may look like invitations to treat but are offers: advertisements involving a unilateral offer: *Carlill v Carbolic Smoke Ball*; statement of price where an offer is intended: *Bigg v Boyd Gibbons*.

### 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"> <li>• Excellent analysis of legal rules, principles and concepts relevant to the differences between an offer and an invitation to treat. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of consideration, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	6-7	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles and concepts relevant to the differences between an offer and an invitation to treat. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of consideration, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	3-5	<ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles and concepts relevant the differences between an offer and an invitation to treat. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of consideration, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</li> </ul>
1	1-2	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles and concepts relevant to the differences between an offer and an invitation to treat. Analysis includes minimal detail.</li> <li>• Basic evaluation of consideration.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
	0	Response not creditworthy or not attempted.



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

The Bear Hotel was preparing for a very large party on Saturday. On Monday, they sent an email to Bubbles & Fizz asking for a written quote for the price of a large quantity of champagne. Bubbles & Fizz emailed back that they would send a letter as the Bear Hotel had requested. Bubbles & Fizz's letter arrived on Tuesday. In the letter, Bubbles & Fizz offered to supply the champagne for a price of £5000 and asked the Bear Hotel to reply by letter to accept their offer. The Bear Hotel immediately replied by email, "We will pay £4,500". Bubbles & Fizz then telephoned to state that the price was not negotiable, but they could still supply the champagne for £5,000, and also to ask on what day delivery was required. The Bear Hotel replied "Friday" and Bubbles & Fizz asked the Bear Hotel to send a letter confirming acceptance. The Bear Hotel sent a letter, posted on Tuesday night, which arrived at Bubbles & Fizz on Thursday. On Wednesday, Bubbles & Fizz sent an email stating that they could not now supply the champagne on Friday. The Bear Hotel had to find another supplier for the champagne on Thursday. However, the price was then £7000 because the order was at such short notice.

**(d) Advise the Bear Hotel as to whether they are entitled to claim against Bubbles & Fizz. [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 the Bear Hotel candidates are expected to apply the full range of legal rules and principles relating to the Bear Hotel's claim against Bubbles & Fizz. In this case candidates will need to apply contract law, including breach of contract and 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:

- advising the Bear Hotel of the elements of a contract (e.g. offer, acceptance and consideration)
- Discussion of the stages in the negotiations - Monday email sent – request for information – no offer ; Monday email reply – reply to request for information – no offer; Tuesday letter arrives – offer made then ; Tuesday email rejecting offer and making counter offer of £4 500; Tuesday telephone call – rejecting counter offer and makes new offer of £5 000 –confirms method of acceptance to be post; Tuesday letter of acceptance valid when posted – contract made then – arrival date irrelevant except to indicate that the letter needed to be correctly addressed, stamped and posted; Wednesday email is anticipatory breach of contract; Conclusion – offer and acceptance complete on Tuesday evening when letter posted. Anticipatory breach when email read.
- a definition of consideration, with cases or examples ; an explanation of the key rules of consideration, e.g. distinction between good consideration and past consideration, with cases or examples
- identification/application of the consideration in the contract between Bubbles & Fizz and the Bear Hotel – £5,000 and champagne

### Assessment grid for Q1 (d)

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

## Question 2: Law of tort

2. (a) Explain what is meant by duty of care in the tort of negligence. [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 duty of care, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying a 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 principle, responses might consider issues such as:

- *History of test for duty of care – Donoghue v Stevenson*
  - *A person must take reasonable care to avoid acts or omissions which could be reasonably foreseen to likely injure a neighbour*
  - *Test of reasonable foreseeability*
  - *Who is ‘neighbour’? – persons who are so closely and directly affected by the defendant’s act that they ought to have them in their contemplation*
- *Possible illustrative examples such as the duty of care owed by drivers to pedestrians and other road users*
- *Test redefined in Caparo v Dickman. Three elements must be proved:*
  - *Reasonable foreseeability that a person in the claimant’s position would be injured*
  - *There was sufficient proximity between the parties*
  - *It is fair, just and reasonable to impose liability on the defendant*

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

**(b) Explain remoteness of damage in the tort of negligence.**

**[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 for remoteness of damage candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying remoteness of damage in the tort of 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:

- In relation to some types of torts (in particular negligence and nuisance) the test for remoteness of damage is whether the kind of damage suffered was reasonably foreseeable by the defendant at the time of the breach of duty -Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (The Wagon Mound No 1) [1961]
- The defendant will be liable for any type of damage which is reasonably foreseeable as liable to happen even in the most unusual case unless the risk is so small that a reasonable man would in the whole circumstances feel justified in neglecting it Heron II [1969]
- Provided that the kind of damage is reasonably foreseeable, it does not matter that the manner of infliction or its extent was unforeseeable ;Hugues v Lord Advocate [1963] and Vacwell Engineering Co Ltd v BDH Chemicals Ltd [1971]

**Assessment grid for Q2 (b)**

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

**(c) Assess the difference 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 from primary and secondary victims, liability in negligence and the law of tort.*

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 need to distinguish between primary and secondary victims and use appropriate case law. In assessing this situation, 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"> <li>• Excellent analysis of legal rules, principles and concepts relevant to primary and secondary victims. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of primary and secondary victims, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	6-7	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles and concepts relevant to primary and secondary victims. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of primary and secondary victims, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	3-5	<ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles and concepts relevant to primary and secondary victims. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of primary and secondary victims, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</li> </ul>
1	1-2	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles and concepts relevant to primary and secondary victims. Analysis includes minimal detail.</li> <li>• Basic evaluation of primary and secondary victims.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
	0	Response not creditworthy or not attempted.

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

The local council owned a park which also included a lake. Warning signs were displayed throughout the park, informing visitors to the park that swimming and diving in the lake is both dangerous and not permitted; but the council knew that the signs were generally ignored. David decides to go swimming in the lake, unfortunately, when David dived in, he hit his head on the bottom of the lake and broke his neck. David suffered paralysis as a result of the accident and has been told that he will never walk again

**(d) Advise David as to whether the council is liable for his injuries [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 will offer an assessment of the legal rules and principles relating to his situation. In this case, candidates will need to consider the requirements of occupiers' liability and then apply these to the accident. The response might consider issues such as:

- The Statutory Duty of Care -Under the Occupiers Liability Act 1984 s1 (3), an occupier of premises owes a statutory duty of care to an unlawful visitor if: he is aware of the danger or has reasonable grounds to believe that it exists; and he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger; and the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection
- Under the Occupiers Liability Act 1984 s1(4) the duty owed is to take such care as is reasonable in all the circumstances to see that the trespasser is not injured on the premises by the danger concerned.
- Lord Hoffman: "...Parliament has made it clear that in the case of a lawful visitor, one starts from the assumption that there is a duty whereas in the case of a trespasser one starts from the assumption that there is none." Tomlinson v Congleton Borough Council [2003]
- Under the Occupiers Liability Act 1984 a duty is owed only if certain conditions are met (e.g. the occupier is aware of the danger, etc.).
- See also cases of Higgs v Foster (2004); Rhind v Astbury Water Park (2004)

### Assessment grid for Q2 (d)

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



## Section B: Public Law

### Question 3: Criminal Law

3. (a) Explain the *actus reus* and *mens rea* of battery. [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 *actus reus* and *mens rea* of battery candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying battery. 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 Act. The response might consider issues such as:

- Battery is a summary criminal offence under s.39 of the Criminal Justice Act 1988.
- A battery is committed when a person intentionally and recklessly applies unlawful force to another. Battery is a summary offence the punishment for which is a fine and/or a prison sentence for up to six months.
- The *actus reus* of battery can be defined as the application of unlawful force by one person on another. The slightest touch will be sufficient and it includes any unlawful physical contact, proof of pain or harm does not have to be shown.
- The force can be direct, that is to say from one person to another for instance if one person punches another person or it can be indirect, as was the case in *Haystead v Chief Constable of Derbyshire* [2000].
- The force does not have to be directly applied to the victim it can be sufficient if their clothes are touched. A person who spits on another has committed a battery as has the person who has poked another in the chest or pushed him backwards even if there has been no harm done to the other person.
- The *mens rea* of battery is intention or recklessness as to the application of unlawful force.
- The term 'assault' or 'common assault' is often used to cover both assault and battery.

#### 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	<ul style="list-style-type: none"><li>• Excellent knowledge and understanding of the English legal system and legal rules and principles in relation to battery. Response is clear, detailed and fully developed.</li></ul>
2	3-4	<ul style="list-style-type: none"><li>• Good knowledge and understanding of the English legal system and legal rules and principles in relation to battery. Response is generally clear, detailed and developed.</li></ul>
1	1-2	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of the English legal system and legal rules and principles in relation to battery. Response includes minimal detail.</li></ul>
	0	Response not creditworthy or not attempted.

**(b) Explain the *actus reus* and *mens rea* of s.18 of the 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 *actus reus* and *mens rea* of s.18 of the 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 this section of the Act. 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 Act. The response might consider issues such as:

- Offences Against the Person Act 1861 S18: ‘..Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person, with intent to do some grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person...’.
- The *actus reus* has two elements. The same *actus reus* is required for both S20 and S18 offences.
- Unlawful -This usually means there must have been no consent to the act. The issue often centres around whether the consent is genuine.
- There must be either unlawful wounding or grievous bodily harm.
- Wound -Wounding requires there to have been a break in the surface of the skin, both layers and is therefore seen to be an open wound usually with blood loss. *JCC v Eisenhower* (1984)
- Grievous bodily harm -The phrase 'grievous bodily harm' should be given its ordinary and natural meaning, essentially 'really serious' harm. (*Smith* (1961);*Brown and Stratton* (1998); *Bollom* (2003); *Dica* (2004)
- The *mens rea* required is 'maliciously', as under S20 and there must be further specific intent. Essentially, reckless is sufficient under S20 but for a S18 offence there must be intention. It must be proved the defendant intended to either do some grievous bodily harm to the victim or to resist or prevent a lawful arrest or detention. So intention to cause some harm is not sufficient under S18. *Belfon* (1976)
- Oblique intention can also apply to S18 offences. It is sufficient for *mens rea* under S18 if a defendant foresaw that grievous bodily harm or wounding was a virtual certainty as a result of his conduct (*Nedrick* (1986)).

### Assessment grid for Q3 (b)

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

(c) **Assess the differences between s47 and s 20 of the Offences Against the Person Act 1981.** [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 differences between s 47 and s 20. For example, a response may include reference to the differences in the actus reus of each of the offences, with supporting case law to illustrate the differences.*

Candidates will offer an assessment of the legal rules, principles and concepts in order to evaluate the law relating to the differences between s 47 and s 20 of the Offences Against the Person Act 1861. The response might consider issues such as:

- according to Section 47, *actus reus* is an assault which causes actual bodily harm
- *actus reus* is any injury calculated to interfere with the health or comfort of the victim (the case of Miller)
- under the Crown Prosecution Services Charging Standards s.47 includes temporary loss of consciousness, minor cuts and grazes and scalds, broken bone without complications According to Section 47 *mens rea* is intention to commit assault/battery or recklessness; foresight of the degree of harm is not necessary: See the cases of to illustrate s.47 - Roberts; Savage, Parmenter.
  
- according to Section 20, *actus reus* is unlawful wounding or unlawful infliction of grievous bodily harm
- the meaning of grievous bodily harm - serious harm: Case of Smith. A wound must break the inner and outer skin: *C v Eisenhower*
- according to Section 20, *mens rea* – intention or recklessness – D must foresee a degree of harm, but not necessarily the degree of harm which occurred: see the following cases to show how s.20 works in practice - Mowatt, Savage and Parmenter

### 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"> <li>• Excellent analysis of legal rules, principles and concepts relevant to the differences between s47 and s 20. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the differences between s 47 and s 20, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	6-7	<ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles and concepts relevant to the differences between s 47 and s 20. Analysis is generally detailed with appropriate range of supporting evidence.</li> <li>• Good evaluation of the differences between s 47 and s 20, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	3-5	<ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles and concepts relevant to the differences between s 47 and s 20. Analysis includes some detail with some supporting evidence.</li> <li>• Adequate evaluation of the differences between s 47 and s 20, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities.</li> </ul>
1	1-2	<ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles and concepts relevant to the differences between s 47 and s 20. Analysis includes minimal detail.</li> <li>• Basic evaluation of the differences between s 47 and s 20.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
	0	Response not creditworthy or not attempted.

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

John decided to make a door-to-door collection to raise cash for a local children's charity. He thought it would be a good joke to turn up on people's doorsteps wearing a horrific gorilla mask. At the first house he came to, the door was opened by an elderly lady, Martha, who screamed and fainted at the sight of John. Her scream frightened John so much, he pushed her backwards. On falling backwards, she broke her hip.

**(d) Advise John as to whether he would be likely to be found guilty of any non-fatal offences against the person on these facts. [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 John candidates are expected to apply the full range of legal rules and principles relating to John's situation. In this case candidates may apply the definition of the *actus reus* and *mens rea* of various offences found in the *Offences Against the Person Act 1861* and apply relevant case law to the given scenario in order to present a legal argument. The response might consider issues such as:

- Assault and battery at common law: summary offences – Criminal Justice Act 1988, s.39.
- Offences Against the Person Act 1861: sections 47, 20 and 18.
- Elements of assault and battery: *actus reus* and *mens rea*.
- Assault can be committed without physical contact, as in *Smith v Chief Superintendent of Woking Police Station*: it can be committed by words, threatening letters as in *Constanza*, or even silent phone calls as in *Ireland; Burstow*. The requirement that the victim must apprehend immediate unlawful violence has been interpreted liberally.
- Elements of aggravated assaults under s.47, s. 20 and s. 18 of the OAPA 1861. Section 47: actual bodily harm - *actus reus* is an assault which causes actual bodily harm, any injury calculated to interfere with the health or comfort of the victim (*Miller*) – under the CPS Charging Standards it includes temporary loss of consciousness, minor cuts and grazes and scalds, broken bones without complications. *Mens rea* is intention to commit assault/battery or recklessness. Foresight of the degree of harm is not necessary: *Roberts; Savage, Parmenter*.

### Assessment Grid for Q3 (d)

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

#### Question 4: Human Rights Law

4. (a) Explain the powers of the police to impose conditions on a procession under s.12 of the Public Order Act 1986. [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 powers of the police to impose conditions under s 12 of the Public Order Act 1986 candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the Act. 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 the Public Order Act 1986. The response might consider issues such as:

- Section 12 of the Public Order Act 1986 give the police the power to impose conditions on marches and any demonstration that comes within the definition of a “public assembly”. A “public assembly” is an assembly of two or more people in a public place that is wholly or partly open to the air. This can extend to privately owned land that the public generally have access to.
- Once a march has started to assemble or a demonstration is under way conditions can be imposed by the most senior police officer present. These can be given orally.
- The senior officer present can only impose conditions if he/she considers that the march/ demonstration may result in serious public disorder, serious damage to property or serious disruption to others or the belief in the presence of intimidation or coercion. Reid ( 1987)
- The conditions that may be imposed are those that the officer considers necessary to prevent these eventualities. In relation to a march these can include conditions as to its route or a prohibition on entering certain areas.

#### 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"><li>• Excellent knowledge and understanding of the powers of the police English legal system and legal rules and principles relating to the power of the police under s 12. Response is clear, detailed and fully developed.</li></ul>
2	3-4	<ul style="list-style-type: none"><li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the power of the police under s 12. Response is generally clear, detailed and developed.</li></ul>
1	1-2	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the power of the police under s 12. Response includes minimal detail.</li></ul>
	0	Response not creditworthy or not attempted.



**(b) Explain the provisions and restrictions under Article 10 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 provisions and restrictions, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying Article 10. In demonstrating this knowledge and understanding, candidates are required to focus on the specific details of Article 10, and not simply give a general answer on human rights. The response might consider issues such as:

- European Convention on Human Rights: nature of the Convention; how rights are enforced.
- Article 10: everyone has the right to freedom of expression.
- Article 10(2) makes the right to freedom of expression a qualified right - recognises that freedom of expression carries with it duties and responsibilities.
- Nature of qualified right – restrictions imposed on it by public authorities are permissible if they are in accordance with law and necessary in a democratic society for certain legitimate purposes.
- Purposes for which freedom of expression may be restricted: national security; territorial integrity; public safety; prevention of disorder or crime; protection of health or morals; protection of the rights and reputation of others; prevention of disclosure of confidential information; to maintain the authority and impartiality of the judiciary.

**Assessment grid for Q4 (b)**

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles</b>
<b>3</b>	<b>5-6</b>	<ul style="list-style-type: none"><li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the provisions and restrictions under Article 10 of the European Convention on Human Rights. Response is clear, detailed and fully developed.</li></ul>
<b>2</b>	<b>3-4</b>	<ul style="list-style-type: none"><li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the provisions and restrictions under Article 10 of the European Convention on Human Rights. Response is generally clear, detailed and developed.</li></ul>
<b>1</b>	<b>1-2</b>	<ul style="list-style-type: none"><li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the provisions and restrictions under Article 10 of the European Convention on Human Rights. Response includes minimal detail.</li></ul>
	<b>0</b>	Response not creditworthy or not attempted.

- (c) **Assess whether the law provides adequate protection to a suspect who has been stopped and searched.** [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 police powers, restrictions on human rights and human rights law. For example, a response may include reference to an analysis of the rights of a suspect when stopped and searched, the safeguards given to a suspect, and the protection under Code A of the Police and Criminal Evidence Act 1984 and the Human Rights Act 1998.*

Candidates will offer an analysis and evaluation of the legal rules, principles and concepts in order to assess whether the law provides adequate protection to a suspect who has been stopped and searched. In order to assess this, candidates may consider the rights provided under the Police and Criminal Evidence Act 1984, the Codes of Practice and Guidance Notes. The response might consider issues such as:

- analysis of police powers to stop and search under s. 1 of PACE and a person's rights under Police and Criminal Evidence Act 1984 and Code A during a stop and search
- an assessment of the meaning of reasonable suspicion under Code A ; the safeguards in place when a suspect is stopped and searched , including which articles of clothing can be removed in a public place and the requirement for the search to be carried out with the minimum fuss and embarrassment to the suspect
- An assessment of the safeguards in s. 2 of PACE ; R v Bristol (2007))
- An analysis of other powers to stop and search , including the Misuse of Drugs Act 1971 and s.60 of the Criminal Justice and Public Order Act 1994 and whether there are dangers in granting wide powers to stop and search if there is a possibility that the powers will be abused

### Assessment Grid for Q4 (c)

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

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

Izzy organised a march to protest against plans to close the hospital's intensive care ward. Sergeant Jones who was escorting the march instructed Izzy and her fellow marchers to turn down a side street away from the hospital grounds and towards the town centre. PC Davies who was assisting Sergeant Jones also instructed Izzy not to display any placards. As the procession wound through the town centre, Izzy and some of the other marchers held up placards showing graphic images of serious injuries. Sergeant Jones found the placards distressing and told Izzy and the marchers to put them down. They refused. One woman was so frightened, she refused to enter the Post Office outside which the protesters had stopped.

**(d) Advise Izzy as to whether she has committed any public order offences. [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 Izzy candidates are expected to apply the full range of legal rules and principles that affect public order offences.

In this case candidates may apply the relevant sections of the Public Order Act 1986 to determine whether Izzy has committed any offences. The response might consider issues such as:

- Advising Izzy whether she has committed any offences under s.12 of the Public Order Act 1986 – failure to comply with conditions set by the police
- advising Izzy whether she has committed the offence of causing harassment, alarm or distress under s.5 of the Public Order Act 1986
- consideration of the display of an offensive placard; a police officer may claim to have been harassed or distressed for the purpose of the section: possible reference to *DPP v Orum*
- the case of Clarke is useful in assessing the situation: displaying pictures of aborted fetuses
- advising Izzy whether the placards are capable of causing harassment or distress in this context
- advising Izzy of the s. 6 mens rea requirement
- advising Izzy whether s.4A had more potential than s.5 in her case.

### Assessment Grid for Q4 (d)

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