



GCE A LEVEL MARKING SCHEME

SUMMER 2019

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

INTRODUCTION

This marking scheme was used by WJEC for the 2019 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

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

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

EDUQAS GCE A LEVEL LAW
COMPONENT 2: SUBSTANTIVE LAW IN PRACTICE
SUMMER 2019 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 1

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

The structure of the mark scheme

The mark scheme for each question has two parts:

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

Stage 1 - Deciding on the band

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

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content.

Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

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

Stage 2 - Deciding on the mark

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

Examiners should mark the examples and compare their marks with those of the Principal Examiner.

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

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

SECTION A
LAW OF CONTRACT

Question 1

Daniel, a talented amateur photographer who was sometimes paid to take photographs, took a very expensive camera to be repaired by Emma, who often repaired Daniel's cameras for him. As Daniel was leaving Emma's shop, Emma handed him a piece of paper which had a repair number on it to identify Daniel's camera and which also contained the following clause:

"Liability for any breach of contract is limited to £50 and, in any event, there is no liability for any breach not reported within 24 hours of the camera's collection."

As a result of Emma's negligent work when repairing the camera, the camera was ruined. Daniel did not discover this until a few days later when he went to use the camera. When he took it back to Emma, she refused to pay for the camera, claiming that she was protected by her contract with him.

Advise Daniel whether Emma can refuse to pay him for the camera, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

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

The response might consider issues such as:

- Explanation of obligations under a contract: difference between representations and terms. Express terms: incorporation of express terms, parole evidence rule. Implied terms: terms implied by fact, terms implied by statute, Consumer Rights Act 2015, Consumer Contracts Regulations 2013
- Exclusion clauses: incorporation of exclusion clauses, Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contracts Regulations 1999
- The issue of notice that common law may be relevant, especially in respect of the exemption clause. Candidates should refer to the contra proferentem rule and will be rewarded for relevant citation.

AO2

Candidates are expected to apply the full range of legal rules and principles to Daniel's situation, including the Unfair Contract Terms Act 1977 and relevant case law, in order to present a legal argument

The response might consider issues such as:

- Contractual dealings between business partners would be extremely difficult without exclusion and limitation clauses. In this respect, the position of Daniel as a talented amateur photographer invites discussion as to whether or not he is acting in the course of a business.
- In discussing Emma’s negligence the courts have dealt with the issue of whether an exemption clause covers liability based on negligence by developing a three stage test, as set out in the Canada Steamship (1952) case
- Discussion of Section 2 of the Unfair Contract Terms Act 1977, where an attempt is made to exclude or restrict liability based on negligence. In addition, when the exemption clause concerned with negligence is in a consumer contract, the 1999 Regulations on unfair terms are subject to the fairness test.

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

Question 2

Ben had wanted to buy a caravan. He went to see the stock of second-hand caravans at 'Colin's Caravans'. Ben liked the look of a blue 'Sunshine Traveller' caravan. However, Ben was very anxious not to purchase a caravan which had ever been involved in an accident. He made that clear to Colin, who told him that, in his opinion the caravan in which Ben was interested had never been in an accident. Ben purchased the caravan and had it redecorated inside with leopard print wallpaper, to suit his personal taste. He then discovered that the caravan had once been involved in a serious accident. Ben paid £15,000 for the caravan. As it had been involved in a serious accident, it was only worth £7,000.

Advise Ben whether he can take action for misrepresentation and the remedies available to him, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Ben candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of misrepresentation.

The response might consider issues such as:

- Distinction between fraudulent misrepresentation, negligent misrepresentation and innocent misrepresentation.
- Misrepresentation in respect of fact. Compare opinion honestly held.
- Relevant citation, for example, *Doyle v Olby*; *Royscot Trust v Rogerson*

AO2

Candidates are expected to apply the full range of legal rules and principles to Ben's situation, including the Misrepresentation Act 1967 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Discussion and application to Ben's situation of statutory misrepresentation under the Misrepresentation Act 1967
- Was there fraudulent misrepresentation here? If so, the remedies available
- Was Colin's statement innocent misrepresentation? If so, the remedies available
- Whether there was negligent misrepresentation by Colin and the remedies available
- Is this an expressed term of a contract?
- Application of the distinction here between fact and opinion.
- Relevant citation

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

SECTION B

LAW OF TORT

Question 3

Eric works for Sweets R Us Ltd, a small company which makes sweets. Eric works in the manufacturing area of the factory and has to wear protective clothing and headgear. One of Eric's jobs is to add boiling hot sugar to the sweet mix. As the boiling hot sugar is at an extremely high temperature, in order to protect his skin, Eric has to wear special insulated gloves, provided by the company. The gloves are made from a special non-slip material. In July 2017, Eric was carrying some boiling hot sugar across the factory floor. He had lost his special gloves and was wearing a pair of ordinary woollen gloves. These gloves did not have any non-slip material and when the container of boiling hot sugar began to slip from Eric's hands he nearly dropped it. As a result some boiling hot sugar spilled onto Eric's arm and burned it badly. Garry was a colleague working nearby. Some of the boiling hot sugar also splashed on to Garry's lips causing a burn. Unfortunately, due to an existing predisposition to cancer, the burn turned cancerous. Garry is currently undergoing treatment.

Advise Garry of any legal action he may be able to take under the law of tort, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Garry candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the tort of negligence.

The response 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 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
- Definition of causation –. Both factual and legal causation must be proved: Factual causation: 'But for' test – *Barnett v Chelsea and Kensington Hospital Management Committee*.
- Legal causation: Operating and substantial cause; Remoteness of damage ;Take your victim as you find them; Cases such as *Wagon Mound*
- Explanation of vicarious liability and whether Sweets R Us are liable for Eric's actions.

AO2

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

The response might consider issues such as:

- For Garry to succeed in an action in negligence against Eric, it must first be established that Eric owed Garry a duty of care. The basis of whether or not a duty of care is owed is determined on a three-part test as laid out in *Caparo Industries PLC v Dickman*.
- Eric does not owe a duty to the whole world but only to those persons that could be reasonably foreseen to be affected by his actions or omissions as determined in *Donoghue v Stevenson*. It could reasonably be foreseen that Eric's actions could lead to other persons being affected.
- If it is established that a degree of foreseeability exists, then the proximity of the parties involved must be considered. Proximity is determined on the basis of the relationship of the parties involved. How will the fact that Eric is employed by Sweets R Us affect the issue of proximity?
- The courts will also consider if it is reasonable to impose a duty of care on Eric on the basis of fairness or policy.
- Garry has suffered damage as a result of Eric's breach of his duty of care.
- Apply the tests used in negligence to decide the issue of causation; Apply those tests to Garry's claim against Eric. Eric's acts or omissions must have caused the loss complained of. Discussion of Garry's pre-existing condition – take your victim as you find them. There was no evidence of novus actus interveniens that could negate Eric's liability for the accident and responsibility for the injuries suffered by Garry.
- Discuss whether Sweets R Us will be held liable for any breach of a duty of care owed by Eric to Garry.

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

Question 4

After several weeks of persistent rain, Sara noticed a leak coming through her bedroom ceiling so she rang a roofing company and arranged for Jim, a roofing contractor, to come and have a look to see if any of the roof tiles were loose. Jim said that they were five tiles that were damaged and loose, and that he would have to come back and replace them. A week later, when Jim was replacing the tiles on the roof, he used the wrong nails, which did not secure the new tiles properly. As a result, some of the tiles came loose and fell on Julie a delivery driver, as she was delivering a parcel to Sara, causing her to suffer a broken leg. Julie had thought that the tiles were loose and might fall, but had decided to ignore the risk and go ahead and deliver the parcel anyway.

Advise Julie if Sara could be held liable in tort for her injuries, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Julie candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of occupier's liability and negligence.

The response might consider issues such as:

- the Occupier's Liability Act 1957 including duty, nature of the duty, breach of the duty, with particular reference to s2 (4) (b)
- remedies available under the Act
- common law negligence.

AO2

Candidates are expected to apply the full range of legal rules and principles to Julie's situation, including the Occupier's Liability Act 1957, negligence and the possible remedies available to Julie, in order to present a legal argument.

The response might consider issues such as:

- Sara's possible liability to Julie: consideration of the elements of the Occupiers' Liability Act 1957 (occupier, visitor, the common duty of care).
- Consideration of Julie implied licence.
- Explanation and application of the elements of s.2(4)(b) – was it reasonable for Sara to entrust the roof work to an independent contractor, did Sara take reasonable steps to see that Jim was competent? Would Sara have been under a duty to see that Jim's work was properly done? Possible defence of volenti, even if s.2(4)(b) inapplicable (did Julie voluntarily consent to the risk?). Possible defence of contributory negligence.
- Reference to damages- Credit a consideration of the different categories of damages e.g. loss of future earnings, pain and suffering etc.
- Potential alternative liability to Julie in common law negligence. Duty of care, breach of duty. Remoteness. Reference to damages. Consideration of whether Sara fulfilled her duty of care by engaging an apparently competent contractor (Jim) to carry out the roof work, and the defence of volenti and/or contributory negligence.

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

SECTION C

CRIMINAL LAW

Question 5

Tilly, Jim and Kelly were walking home from the pub late at night, rather drunk, when they came across an abandoned supermarket trolley. Tilly jumped in, and Jim and Kelly began to push the trolley around in circles, laughing and shouting loudly. A woman in a nearby house put her head out of an upstairs window and told them to be quiet. Tilly shouted back at the woman: "Shut your mouth, or I'll come up there and punch you in the face." Kelly and Jim then carried on walking along the street, still pushing the trolley with Tilly in it. Minutes later a police car came down the street towards them and braked to a halt. Two police officers, PC West and PC Cull, got out. Jim ran off, but PC West caught up with him and grabbed him by the shoulder. In his drunken state, Jim thought that PC West was attacking him, and punched the officer in the face, cutting his lip. Meanwhile, Kelly tried to stop PC Cull from arresting her by charging at him with the trolley. The trolley spun out of control, and struck the edge of the pavement. Tilly was thrown out of the trolley by the impact, and suffered serious injuries to her back.

Advise Tilly, Jim and Kelly whether they may have committed any offences, taking account of any defences which may be available to them, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Tilly, Jim and Kelly candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of non-fatal offences against the person.

The response might consider issues such as:

- Elements of assault and battery at common law: Criminal Justice Act 1988, s.39.
- Aggravated assaults: Offences Against the Person Act 1861, ss. 47, 20, 18.
- Intoxication: distinction between crimes of basic and specific intent.
- Self-defence, mistake.
- Reasonable force in prevention of crime: Criminal Law Act 1967, s.3.

AO2

Candidates are expected to apply the full range of legal rules and principles to Tilly's, Jim's and Kelly's situation, including the Offences Against the Person Act 1861 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- **Tilly** - May be guilty of assault – can be committed by words alone: Ireland; Bustow. D's conduct must cause V to fear immediate unlawful force.
- **Jim** - May be guilty of assault occasioning actual bodily harm (s.47) or malicious wounding (s.20). D cannot rely on a mistaken belief in the need for self-defence caused by intoxication – O'Grady, followed in O'Connor and confirmed in Hatton (2005)
- **Kelly** - May be guilty of offence under s.18 – causing GBH with intent to resist arrest. Specific intent crime, so may be able to rely on voluntary intoxication as a defence – Majewski – but may be convicted of inflicting GBH under s.20 as this is a crime of basic intent.
- Credit relevant citation

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

Question 6

Joe, is a member of his school's mixed hockey team. The team's captain, Kevin, constantly criticises Joe in front of the other members of the team for being overweight and slow. During a particularly difficult game against another school, Joe lost the ball to Kim, a girl from the opposing team, who promptly scored a goal. Kevin ran over to Joe, shouting furiously, "You idiot, even a girl can play better than you!" Joe felt upset and humiliated and when Kate next moved in to tackle him, he lost all control and struck her hard on the leg with his hockey stick. After the game was over, Kate noticed a swelling in her leg, and showed it to her sports teacher, Linda. Linda said that it was probably just a bad bruise, but advised Kate to rest her leg and see her doctor in the morning. Kate ignored this advice and went out to party where she danced all night. However, that night Kate collapsed and was taken to hospital, where she died. It was later discovered that her death was due to a blood clot caused by the blow to her leg, and that her life could have been saved if she had received early medical treatment.

Advise Joe whether he may be criminally liable for Kate's death, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Joe candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to the subject of homicide.

The response might consider issues such as:

- The actus reus of murder, that the defendant must cause the death of a human being.
- Causation, factual and legal- 'but for' test (White) and legal causation -operating and substantial cause.
- The mens rea of murder- the intention to kill or cause grievous bodily harm. Reference to both direct and oblique intention – discussion of virtual certainty test: Woolin; Nedrick

AO2

Candidates are expected to apply the full range of legal rules and principles to Joe's situation, including concepts such as actus reus and mens rea of murder and manslaughter, causation and possible defences available to Joe, in order to present a legal argument.

The response might consider issues such as:

- Joe may be guilty of murder or manslaughter, depending on (a) his action being the cause in law of Kate's death, and (b) his state of mind when he struck Kate.
- Causation - Joe's blow was clearly the factual cause of Kate's death, on the "but-for" test in *White*, so the issue is whether the conduct of either Linda or Katie amounts to a novus actus interveniens. Kate's conduct in ignoring Linda's advice would seem to fall within the principle of taking one's victim as you find her: *Blaue*. If victim failed to seek medical treatment (*Holland*) or acts in a way which exacerbates the risk of death (*Wall*) this will not normally break the chain of causation (*Dear*) - although it may be relevant to sentence if D is convicted of manslaughter.
- Linda is slightly more problematic: she clearly has a duty of care towards Kate, and it could be argued that she failed to discharge this by merely giving advice and not taking Kate to hospital.
- Candidates may argue that Linda should have administered first aid, and draw analogies with cases involving negligent medical treatment such as *Smith*, *Jordan*, *Cheshire* or *Adamako*; (some may be aware of *Misa and Srivastava* (2005), where doctors held guilty of gross negligence manslaughter for failure to diagnose and treat MRSA). However, it seems very unlikely that Linda's conduct would be held to have broken the chain of causation.
- Mens rea - for murder, malice aforethought - intention to kill or cause grievous bodily harm: *Moloney*; knowledge that one's action is virtually certain to cause death or grievous bodily harm: *Woolin*.
- Defences - Joe may have the defence of loss of control
- Involuntary manslaughter - unlawful act manslaughter - act must be unlawful and dangerous: *Franklin*, *Lamb*, *Church*, *Newbury*. Tackles that go beyond the rules of a game and deliberate assaults in the course of organised sports have been held unlawful: *Bradshaw*, confirmed in *Brown*.
- Gross negligence manslaughter requires a duty of care by D towards V - D must either be recklessly indifferent to an obvious risk to V's health, or foresee the risk and decide to run it: *Stone and Dobinson*, approved by HL in *Adamako*. Unlikely to be relevant to Joe, but some candidates may argue a case for its application to Linda.

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

SECTION D

HUMAN RIGHTS LAW

Question 7

Sergio came to Britain on a visit to improve his English. During a sight-seeing tour around London, Sergio put down his backpack to take some photographs. Another tourist, Paula, picked up Sergio's backpack in mistake for her own. Minutes later Sergio was stopped in the street by PC Smith, who was accompanied by a very upset Paula. Sergio and Paula swapped backpacks, and PC Smith advised them to check the contents to make sure nothing had been lost. Paula announced that five hundred pounds were missing from her backpack. PC Smith searched Sergio and found over a thousand pounds in his wallet, so he told Sergio that he would have to go with him to the police station. Sergio went willingly, unaware that he was under arrest. Sergio was taken directly to an interview room, where the police took his fingerprints. He was refused the right to phone someone to tell them where he was. He was then questioned for eleven hours before being placed in a cell. After sitting in the cell for 20 hours Sergio grew worried about the time it was taking to sort out the mix-up. Finally after 39 hours Sergio was released without charge.

Advise Sergio as to the legality of the actions of the police, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Sergio candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to police powers.

The response might consider issues such as:

- provisions of Article 5 & 6 European Convention on Human Rights, right to liberty and a fair trial
- the police powers to stop and search: reference may be made to ss 1-3 of the *Police and Criminal Evidence Act 1984 (PACE)* and Code A of the Codes of Practice
- the police powers to arrest: section 24 of PACE as amended by section 110 of the Serious Organised Crime and Police Act 2005, section 28 of PACE and Code G of the Codes of Practice
- the rights of a suspect during detention: sections 56, 57, 58 and 61 of PACE and Code C of the Codes of Practice
- the time limits and reviews of detention: sections 40-44 of PACE.

AO2

Candidates are expected to apply the full range of legal rules and principles to Sergio's situation, including powers of the police to stop and search, arrest and powers during detention, including suspect rights, in order to present a legal argument.

The response might consider issues such as:

In the case of the stop and search

- reasonable suspicion to stop and search Sergio under Code A of the Codes of Practice – should not be based on personal factors alone
- requirements of a valid search: information given to Sergio under section 2 of PACE; the failure renders search invalid: the Osman case could be cited to support this
- requirements under section 3 of PACE to supply Sergio with a record of the stop and Search

In the case of the arrest

- Sergio should be advised that the police can arrest him; under s.24 of PACE as amended by section 110 of SOCPA 2005 provided that they reasonably suspect that an offence is about to be committed, is being committed, or has been committed. The power to arrest Sergio can only be exercised if the police have reasonable grounds to believe it is necessary under section 24(5) of PACE. Reasons include: where the suspect's name cannot be readily ascertained or no satisfactory address has been given; where it is necessary to prevent the suspect causing injury to himself or another or suffering physical injury or causing loss or damage to property; to allow the prompt and effective investigation of the offence or the conduct of the suspect, or to prevent the investigation being hindered by his disappearance. At least the last two grounds would seem to apply in Sergio's case. But query whether Sergio was validly arrested in view of the procedural requirement of S.28; DPP v Hawkins. and Code of Practices, Code G - the procedural requirements of a valid arrest including the fact Sergio is under arrest; also the grounds for arrest (s.28) and that he should be cautioned

In the case of the detention

- how Sergio should be treated in police custody: Code C. His rights should be explained - Information to be given immediately by custody officer (Code C para 3) – provision of written notice of right to have someone informed, right to legal advice and right to consult the Codes of Practice, and written notice of entitlement to visits, meals and conduct of interviews.
- the right to have someone informed of arrest: s.56 of PACE. and his right to legal advice: s.58 of PACE, and the circumstances when these rights can be withheld by the police and whether these apply to Sergio. Query whether Sergio would need an appropriate adult under s 57 PACE
- procedural requirements needed for the taking of Sergio's fingerprints (section 61 of PACE)
- time limits: on detention: section 41 allows police to authorise detention up to 36 hours but further detention up to 96 hours requires authorisation by magistrates. Sergio's detention should be reviewed after 6 hours and then every 9 hours thereafter by a review officer not involved in the case: section 40 of PACE.

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

Question 8

David works as an electrician for a firm which has a contract to carry out work on the offices of civil servants in a government building in London. One afternoon when David was checking the wiring in the office occupied by Ian, he found that Ian had gone down to the canteen to get some food, leaving his computer switched on. The computer screen showed an email from the Ministry of Defence, stating that the government had decided to close a factory in Manchester which makes military equipment for British troops. David read the email and realised that the closure would mean the loss of several thousand jobs in the area. When David got home, he told his brother Rick, who is a trades union official. Rick passed the information on to Matthew, a journalist with a monthly business magazine, who wants to publish the information in next month's edition.

Advise David, Rick and Matthew whether they have committed any criminal offences, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Ian, David, Rick and Matthew candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to police powers.

The response might consider issues such as:

- The governing statute is the Official Secrets Act 1989. Prosecutions require consent of the Attorney-General.
- The information falls under s.2: Defence. Disclosure of the information may be "damaging" under s.2(2), as arguably it is likely to have the effect of damaging the capability of part of the Armed Forces to carry out their tasks, e.g. if the workforce takes industrial action against the closure.

AO2

Candidates are expected to apply the full range of legal rules and principles to Ian, David, Rick and Matthew's situation, including the Official Secrets Act 1989 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- David is a Crown Servant (s.12), so he will be guilty of the offence under s.2 if he makes an unauthorised disclosure of information which he has access to by virtue of being a Crown Servant. A disclosure by a Crown servant is only made with lawful authority if it is made in accordance with his official duty (s.7) - which clearly is not the case here. Query whether he "discloses" the information to David. Maybe guilty of the offence under s.8 of failing to take such care to prevent the unauthorised disclosure of the information as a person in his position may reasonably be expected to take.

- David will not be a Crown servant, but he is probably a government contractor since he is employed to provide services to people who are Crown servants (s.12). Under s.7(2), a disclosure by him would only be made with lawful authority if it was made in accordance with official authorisation, or if it was made for the purpose of his functions as a government contractor and without contravening an official restriction. David may have a defence - under s.2, it is a defence to prove that he did not know, and had no reasonable cause to believe, that the information related to defence, or that its disclosure would be damaging. Since the e-mail was from the Ministry of Defence, he may have trouble proving that he had no reasonable cause to believe it related to defence, but he may argue that he had no reason to think that telling his brother would be damaging to the Armed Forces.
- Rick is neither a Crown servant nor a government contractor, so would be charged under s.5 - making a damaging disclosure of information resulting from an unauthorised disclosure. Whether he commits an offence depends on how the information was acquired. The relevant subsection would be s.5(1) (a) (i) - where the information was acquired as a result of an unauthorised disclosure at some stage by a Crown servant or government contractor. It is an offence to disclose such information without lawful authority if it is "damaging". Rick does not have lawful authority, as under s.7 this would only be the case if he disclosed the information to a Crown servant for the purpose of his functions as such, or if he has an official authorisation to disclose it. To be guilty, he must have the required mens rea, i.e., he must know or have reasonable cause to believe that the information is protected under the OSA 1989 and that the disclosure would be damaging.
- Matthew commits no offence simply by receiving the information, but will be guilty of the offence under s.5 (as for Rick) if he discloses it to anyone else. No public interest defence: R v Shayler.

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