



GCE A LEVEL MARKING SCHEME

SUMMER 2019

**A LEVEL
LAW - COMPONENT 3
PERSPECTIVES OF SUBSTANTIVE LAW
A150U30-1**

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 3: PERSPECTIVES OF SUBSTANTIVE LAW
SUMMER 2019 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 3

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

The structure of the mark scheme

The mark scheme 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 AO3.

Stage 1 - Deciding on the band

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

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

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

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

Stage 2 - Deciding on the mark

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

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

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

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

SECTION A
LAW OF CONTRACT

Question 1

Analyse and evaluate whether the law on discharge of contracts should be reformed. [25]

Indicative content

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

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

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to discharge of contracts

The response might consider issues such as:

- Explanation of the four ways in which a contract may be discharged.
- Agreement - The parties themselves can agree to end the contract, form a new contract or vary the original one.
- Performance - The contract comes to an end when both parties perform their contractual obligations. Performance must substantially correspond with what the parties agreed allowing for minor or trivial defaults.
- Frustration - A contract automatically comes to an end if it is discharged by frustration. Explanation of the conditions that must be satisfied for frustration to discharge a contract.
- Breach- Where one of the parties fails to perform their side of the contract the innocent party may be able to terminate the contract and commence proceedings for damages or other appropriate remedy.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the law on discharge of contracts needs to be reformed, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law does need to be reformed.

The response might consider issues such as:

- Discharge by performance - General Rule: *Cutter v Powell* (1795) - if a contract requires entire performance, and a party fails to perform the contract in its entirety, they are entitled to nothing under the contract from the other party. There are ways in which the harshness of this rule can be mitigated: Substantial performance; Severable contracts; Acceptance of part performance; Prevention of performance.
- Discharge by frustration - General Rule: *Taylor v Caldwell* (1863) – action failed because performance of the contract had become impossible due to a building where a concert was due to take place, burning down. The doctrine will operate in three main types of circumstance: Impossibility; Illegality; Commercial sterilisation
- Discharge by agreement - Bilateral discharge: here the assumption is that both parties are to gain a fresh but different benefit from the new agreement. Unilateral discharge: the benefit is only to be gained by one party, who is therefore trying to convince the other party to let them off the obligations arising under the original agreement
- Discharge by breach – actual breach - This is where a party to a contract does not perform their obligations under the contract at all. Key Cases: *Platform Funding Ltd v Bank of Scotland plc* (2008); *Pilbrow v Pearless de Rougemont & Co* (1999); *Modahl v British Athletic Federation Ltd* (1999); *Abramova v Oxford Institute of Legal Practice* (2011); Anticipatory breach - This is where a party indicates in advance that they will not be performing their obligations as agreed. Key Cases: *Frost v Knight* (1872); *Avery v Bowden* (1855); *Fercometal Sarl v Mediterranean Shipping Co* (1989) [The *Simona*]; *White and Carter Ltd v McGregor* (1962)

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p>[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 discharge of contracts. Response is clear, detailed and fully developed 	<p>[12-15 marks]</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to discharge of contracts. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding discharge of contracts, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities..
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 discharge of contracts. Response is generally clear, detailed and developed 	<p>[8-11 marks]</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to discharge of contracts. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding discharge of contracts, including a valid judgement. • Good citation of supporting case law and legal authorities..
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 discharge of contracts. Response includes some detail which is developed in places. 	<p>[4-7 marks]</p> <ul style="list-style-type: none"> • Adequate analysis of legal rules, principles, concepts and issues relevant to discharge of contracts. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding discharge of contracts, including reference to a judgement. • Adequate citation of supporting case law and legal authorities
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 discharge of contracts. Response includes minimal detail. 	<p>[1-3 marks]</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to discharge of contracts. Analysis includes minimal detail. • Basic evaluation of the principles regarding discharge of contracts. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Question 2

The rules for communication of offer and acceptance have developed with changes in society; however some areas of the law are still unclear. Discuss. [25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including offer and acceptance, the English legal system and law of contract. For example, a response may include reference to how the rules of communication of offer and acceptance have developed and whether the law is still unclear in this area.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to communication of offer and acceptance.

The response might consider issues such as:

- Explain the difference between a bilateral offer and a unilateral offer *Carlill v Carbolic Smoke Ball Company*
- Explain the general rules for acceptance of a bilateral offer, that it must be unconditional and communicated, *Hyde v Wrench*
- Explain the postal rule of acceptance, acceptance being effective on posting, *Adams v Lindsell*
- Explain the exceptions to the postal rule, offer made by instant means, mistake made in posting, postal rule excluded, *Holwell Securities v Hughes*
- Explain the rules of acceptance by instant means, that the acceptance takes effect on arrival subject to sound business practise.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of communication of offer and acceptance, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law is still unclear in this area.

The response might consider issues such as:

- Issues concerning offer: well-established nature of the rules; established in response to specific cases; pragmatic in application; problems with distinction between offer, invitation to treat, statements of price; problems with adaptation to modern methods of communication.
- Issues concerning acceptance: strengths as above; problems with distinction between acceptance, requests for further information, counter offer; problems with particular modes of acceptance – postal rule, and modern forms of electronic communication.
- Suggestions for reform: proposals may concentrate on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications.
- Relevant citation

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p>[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 rules for communication of offer and acceptance. Response is clear, detailed and fully developed 	<p>[12-15 marks]</p> <ul style="list-style-type: none"> Excellent analysis of legal rules, principles, concepts and issues relevant to the rules for communication of offer and acceptance. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. Excellent evaluation of the principles regarding the rules for communication of offer and acceptance, including a valid and substantiated judgement. Excellent citation of supporting case law and legal authorities.
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 rules for communication of offer and acceptance. Response is generally clear, detailed and developed 	<p>[8-11 marks]</p> <ul style="list-style-type: none"> Good analysis of legal rules, principles, concepts and issues relevant to the rules for communication of offer and acceptance. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. Good evaluation of the principles regarding the rules for communication of offer and acceptance, including a valid judgement. Good citation of supporting case law and legal authorities.
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 rules for communication of offer and acceptance. Response includes some detail which is developed in places. 	<p>[4-7 marks]</p> <ul style="list-style-type: none"> Adequate analysis of legal rules, principles, concepts and issues relevant to discharge of contracts. Analysis includes some detail with supporting evidence. Adequate evaluation of the principles regarding the rules for communication of offer and acceptance, including reference to a judgement. Adequate citation of supporting case law and legal authorities
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 rules for communication of offer and acceptance. Response includes minimal detail. 	<p>[1-3 marks]</p> <ul style="list-style-type: none"> Basic analysis of legal rules, principles, concepts and issues relevant to the rules for communication of offer and acceptance. Analysis includes minimal detail. Basic evaluation of the principles regarding the rules for communication of offer and acceptance. Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

SECTION B

LAW OF TORT

Question 3

The Occupier's Liability Acts of 1957 and 1984 are a great improvement on existing laws, but attention is still needed to ensure that the law is fit for purpose. Discuss [25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including occupier's liability, the English legal system and law of tort. For example, a response may include reference to the improvements in the Occupier's Liability Acts and whether the law is fit for purpose.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to occupier's liability

The response might consider issues such as:

- Define and explain law before 1984: Section 1 (2) – concept of lawful visitor; occupier – person with control – *Wheat v Lacon*; premises – wide ranging, *Hartwell v Grayson*, *Haseldine v Daw*, *Fosbroke – Hobbes v Airwork Ltd*
- Section 2 (2) – duty that visitors reasonably safe for purpose for which invited or permitted to be there and need to pay particular attention to children – *Tomlinson v Congleton BC*; Section 2 (4) – position relating to independent contractors – *Haseldine v Daw*; Section 2 (4)(a) – lawful visitor can become trespasser; Section 2 (3)(b) – limitations on those entering in exercise of calling.
- Explain the development made by the OLA 1984 to cover trespassers: Section 1 (1) – covers people other than visitors, provides compensation for injury; Section 1 (3) – duty when aware of the danger or reasonable grounds to believe it exists, know or believe trespasser in vicinity of danger and risk one against which occupier may be expected to offer some protection – *Donoghue v Folkstone Properties*; Section 1 (4) – duty to take reasonable care to prevent injury to the non -visitor; Standard of care objective and influenced by circumstances but greater degree of risk more precautions must be taken; Factors taken into account – nature of premises, degree of danger, practicality of precautions, age of trespasser - *Tomlinson v Congleton BC*,

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the law on occupier's liability is fit for purpose, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law does need to be reformed.

The response might consider issues such as:

- Evolution of law from no real duty at common law to OLA 1957
- Restricted in application to lawful visitors
- Harshness, especially on children, led to duty of common humanity
- Acceptance of shortcomings led to OLA 1984 with aim of deterrence
- Problematic whether easy for occupiers to avoid liability and therefore law not fit for purpose
- Justice issues related to restrictions and policy issues which struggle to make law fit for purpose
- How far should people take responsibility for themselves? How much should occupiers need to second guess what people will do?
- Reality of levels of protection ; Effect of warnings
- Comment on the influence of policy – can the law protect everyone?

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p>[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. Response is clear, detailed and fully developed. 	<p>[12-15 marks]</p> <ul style="list-style-type: none"> Excellent analysis of legal rules, principles, concepts and issues relevant to occupier's liability. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. Excellent evaluation of the principles regarding occupier's liability, including a valid and substantiated judgement. Excellent citation of supporting case law and legal authorities.
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 occupier's liability. Response is generally clear, detailed and developed 	<p>[8-11 marks]</p> <ul style="list-style-type: none"> Good analysis of legal rules, principles, concepts and issues relevant to occupier's liability. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. Good evaluation of the principles regarding occupier's liability, including a valid judgement. Good citation of supporting case law and legal authorities.
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. Response includes some detail which is developed in places. 	<p>[4-7 marks]</p> <ul style="list-style-type: none"> Adequate analysis of legal rules, principles, concepts and issues relevant to occupier's liability. Analysis includes some detail with supporting evidence. Adequate evaluation of the principles regarding occupier's liability, including reference to a judgement. Adequate citation of supporting case law and legal authorities
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. Response includes minimal detail. 	<p>[1-3 marks]</p> <ul style="list-style-type: none"> Basic analysis of legal rules, principles, concepts and issues relevant to occupier's liability. Analysis includes minimal detail. Basic evaluation of the principles regarding occupier's liability. Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Question 4

Analyse and evaluate the extent to which the defences of consent and contributory negligence are fair and effective.

[25]

Indicative content

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

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

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the defences of consent and contributory negligence

The response might consider issues such as:

- Define and explain defence of consent or volenti non fit injuria: Complete defence – although defendant been negligent and caused damage to claimant, claimant voluntarily exposed self to risk of harm ;claimant exercised free choice when accepting risk – Smith v Baker; Claimant understood exact nature of risk – Stermer v Lawson; Claimant voluntarily accepted risk – ICI v Shatwell ;Sporting context – injury to occur within rules of game – Simms v Leigh RFC; Medical context – patient to consent to all treatment and must be aware of risk in broad terms but emergency treatment may be exception Re T, Chatterton v Gerson, Leigh v Gladstone.
- Define and explain defence of contributory negligence: Partial defence under Law Reform (Contributory Negligence) Act 1945 reducing damages by extent to which claimant responsible for harm

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the defences of consent and contributory negligence are fair and effective, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law is fair and effective.

The response might consider issues such as:

- Complete defence of consent can appear to favour defendant whereas contributory negligence encourages claimant to take personal responsibility
- Pre-1945 both defences were complete so contributory negligence had been unfair
- Strength of defences is aim of fairness
- Problem in that can lead to allegations of those causing harm avoiding obligations and so can be ineffective

- Potential confusion between defences which can make them ineffective
- Difficulty of succeeding under consent
- Perhaps apportionment policy as in contributory negligence fairer approach, however difficulties associated with apportioning blame lead to questions whether contributory negligence does produce fairness and so is ineffective
- Influence of policy
- Use of each defence
- Relevant citation.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p>[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 defences of consent and contributory negligence. Response is clear, detailed and fully developed 	<p>[12-15 marks]</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the defences of consent and contributory negligence. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the defences of consent and contributory negligence, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 defences of consent and contributory negligence. Response is generally clear, detailed and developed 	<p>[8-11 marks]</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the defences of consent and contributory negligence. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the defences of consent and contributory negligence, including a valid judgement. • Good citation of supporting case law and legal authorities.

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 defences of consent and contributory negligence. Response includes some detail which is developed in places. 	<p>[4-7 marks]</p> <ul style="list-style-type: none"> • Adequate analysis of legal rules, principles, concepts and issues relevant to the defences of consent and contributory negligence. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the defences of consent and contributory negligence, including reference to a judgement. • Adequate citation of supporting case law and legal authorities
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 defences of consent and contributory negligence. Response includes minimal detail. 	<p>[1-3 marks]</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the defences of consent and contributory negligence. Analysis includes minimal detail. • Basic evaluation of the principles regarding the defences of consent and contributory negligence. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

SECTION C

CRIMINAL LAW

Question 5

To what extent does the law relating to bail place too much emphasis upon protecting the public and not enough emphasis on the presumption of innocence. [25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including bail, the English legal system and criminal law. For example, a response may include reference to the ways in which the law on bail does not place enough emphasis on the presumption of innocent until proven guilty.

AO1

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

The response might consider issues such as:

- Court bail - Bail Act 1976, s.4 – presumption of entitlement to bail.
- Police and Criminal Evidence Act 1984, s.38 – power of custody officer to grant bail from the police station following charge. S.37 before charge ; Time limits on police bail – Policing and Crime Act 2017
- Circumstances in which bail need not be granted: Bail Act 1976 Schedule 1 (e.g., defendant is likely to fail to surrender, commit further offences or interfere with witnesses or the administration of justice).
- Circumstances in which police bail may be refused: s.38 – e.g., where the custody officer has reasonable grounds to believe that the name or address given by the suspect may not be genuine; where the custody officer has reasonable grounds to believe that the suspect will commit further offences, interfere with witnesses or the administration of justice; where detention is necessary for the suspect's own protection or for the protection of others; where the charge is murder (Coroners and Justice Act 2009).

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the law on bail places too little emphasis on the presumption of innocent until proven guilty, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law on bail does indeed place too much emphasis on the protection of the public and not enough emphasis on the rights of a suspect.

The response might consider issues such as:

- Factors to be taken into account when considering whether bail should be granted.
- Modification of the general presumption in favour of bail – e.g., bail can only be granted in exceptional circumstances where the defendant is charged with murder, manslaughter or rape, or where previously charged with a specified serious offence or where the offence was committed while already on bail (Criminal Justice and Public Order Act 1994 s.25 as amended by Crime and Disorder Act 1998).
- Right of the prosecution to appeal against grant of bail: Bail Amendment Act 1993.
- Powers of police and courts to impose bail conditions.
- Powers of arrest for breach of bail conditions.
- Evaluation of when it is appropriate to refuse bail; bail bandits, cases of Hogans and Weddell

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p>[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 bail. Response is clear, detailed and fully developed 	<p>[12-15 marks]</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the law on bail. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding the law on bail, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities..
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 bail. Response is generally clear, detailed and developed 	<p>[8-11 marks]</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the law on bail. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding the law on bail, including a valid judgement. • Good citation of supporting case law and legal authorities.
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 bail. Response includes some detail which is developed in places. 	<p>[4-7 marks]</p> <ul style="list-style-type: none"> • Adequate analysis of legal rules, principles, concepts and issues relevant to the law on bail. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding the law on bail, including reference to a judgement. • Adequate citation of supporting case law and legal authorities
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 bail. Response includes minimal detail. 	<p>[1-3 marks]</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the law on bail. Analysis includes minimal detail. • Basic evaluation of the principles regarding the law on bail. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Question 6

How far have the courts been willing to go in recognising the defences of duress and necessity?

[25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the defences of duress and necessity, the English legal system and criminal law. For example, a response may include reference to the ways in which the courts have recognised the defences of duress and necessity.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the defences of duress and necessity.

The response might consider issues such as:

- Nature of defence of duress – a concession to human frailty – D is admitting that he committed the actus reus with the required mens rea, but that his will was overborne by a wrongful threat from another person: Lynch.
- Duress of circumstances – Willer, Conway – duress of circumstances a species of necessity – but like duress by threats, must be the case that from an objective standpoint D has acted to avoid threat of death or serious injury – Quayle (growing cannabis for pain relief).
- Nature of the defence of necessity
- Relevant citation

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the courts have been willing to recognise the defences of duress and necessity, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the extent to how far the courts have been willing to go in recognising the defences of duress and necessity.

The response might consider issues such as:

- The test for duress was stated in Graham and approved by the HL in Howe – was the defendant, or may he have been, impelled to act as he did because, as a result of what he reasonably believed that the person issuing the threat had said or done, that person would kill him or cause him serious personal injury? The test is framed so as to cast the burden of proof on the prosecution – if the jury think D may have acted as he did in response to the threat, they must go on to consider whether a person of reasonable firmness, sharing the characteristics of D, would have responded by doing as D did

- It is not for D to prove duress, but for the prosecution to disprove it.
- Nature of the threat must be threat of death or serious physical injury to himself, his immediate family, someone close to him, or very possibly someone for whose safety D would reasonably regard himself as responsible: R v Hasan (2005), Valderrama-Vega), Ortiz, Hurley and Murray, Conway.
- Threat must be perceived as imminent and unavoidable: Hudson and Taylor, Abdul Hussein.
- Belief in reality of threat – according to Graham, belief must be reasonable – in Martin,
- characteristics of D which could make him more susceptible can be attributed to the
- reasonable person. Reasonable firmness test – ordinary person of reasonable firmness with characteristics of the accused – Bowen, Emery.
- Duress not available if the threat arises out of D's voluntary association with criminals –Shepherd, Heath.
- Duress not a defence to murder (Lynch, Howe) or attempted murder (Gotts).
- Candidates may be aware of R v Hasan (also reported as R v Z) 2005, which emphasizes that it is sufficient to deny D the defence if he foresaw or ought to have foreseen that he might be subjected to compulsion or threats by criminals with whom he was associating. It also disapproves Hudson and Taylor, and makes it clear that D must have no opportunity to avoid complying with a threat that cannot be executed immediately.
- Duress of circumstances recognised as a defence to offences in general, apart from murder, attempted murder and treason – Pommell, Hasan.
- Not clear if law recognises a defence of "pure" necessity apart from duress of circumstances; some indication that it does in Re A (Conjoined twins) – 3 requirements: the act must be necessary to avoid inevitable and irreparable evil; no more must be done than is reasonably necessary for the purpose to be achieved; the evil inflicted must not be disproportionate to the evil avoided.
- Whether necessity can be a defence to homicide – Dudley and Stephens, Re A.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p>[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 defences of duress and necessity. Response is clear, detailed and fully developed. 	<p>[12-15 marks]</p> <ul style="list-style-type: none"> Excellent analysis of legal rules, principles, concepts and issues relevant to the defences of duress and necessity. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. Excellent evaluation of the principles regarding the defences of duress and necessity, including a valid and substantiated judgement. Excellent citation of supporting case law and legal authorities.
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 defences of duress and necessity. Response is generally clear, detailed and developed 	<p>[8-11 marks]</p> <ul style="list-style-type: none"> Good analysis of legal rules, principles, concepts and issues relevant to the defences of duress and necessity. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. Good evaluation of the principles regarding the defences of duress and necessity, including a valid judgement. Good citation of supporting case law and legal authorities.
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 defences of duress and necessity. Response includes some detail which is developed in places. 	<p>[4-7 marks]</p> <ul style="list-style-type: none"> Adequate analysis of legal rules, principles, concepts and issues relevant to the defences of duress and necessity. Analysis includes some detail with supporting evidence. Adequate evaluation of the principles regarding the defences of duress and necessity, including reference to a judgement. Adequate citation of supporting case law and legal authorities
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 defences of duress and necessity. Response includes minimal detail. 	<p>[1-3 marks]</p> <ul style="list-style-type: none"> Basic analysis of legal rules, principles, concepts and issues relevant to the defences of duress and necessity. Analysis includes minimal detail. Basic evaluation of the principles regarding the defences of duress and necessity. Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

SECTION D

HUMAN RIGHTS LAW

Question 7

To what extent, if at all, does the law relating to obscenity amount to an unjustifiable restriction upon the right to freedom of expression? [25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the law relating to obscenity, the English legal system and human rights law. For example, a response may include reference to the extent to which the law on obscenity restricts freedom of expression.

AO1

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

The response might consider issues such as:

- Right to freedom of expression under Art. 10 of the ECHR – qualified right, may be restricted, inter alia, for the protection of moral (Art. 10(2)). Margin of appreciation allowed under the Convention – *Handyside v UK*.
- Outline of main statutory provisions dealing with obscenity Obscene Publications Acts 1959 and 1964; Indecent Displays (Control) Act 1981.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the law on obscenity does restrict freedom of expression, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law does restrict the right to freedom of expression.

The response might consider issues such as:

- Right to freedom of expression under Art. 10 of the ECHR – Has been held by Court of Appeal in *Perrin* (obscene website) that the offences under the Obscene Publications Act 1959 s.2 are not incompatible with Art. 10 because the interference is justified under Art. 10(2) notwithstanding the uncertainty in the addition of obscenity
- Definition of obscenity: OPA 1959 s.1 Deprave and corrupt test; cases such as *Hicklin*, *R v Penguin Books*, *DPP v Whyte*, *Calder and Boyuer*.
- Defence of public under the Obscene Publications Act 1959: s.4 allows for evidence to be admitted as to artistic etc. merits.
- Control of indecent displays at common law, *Gibson*.
- Common law offences: conspiracy to corrupt public morals, *Shaw v DPP*; offence of outraging public decency: *Knulier v DPP*.

- Censorship of films and video recordings – British Board of Film Classification: classification system. Cinemas Act 1985 – 2-tier controls through power of local authorities to refuse licence. Video Recordings Act 1984, as amended by the Criminal Justice and Public Order Act 1994 – make it an offence to supply an unclassified video (with limited exceptions).

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	<p>[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 obscenity. Response is clear, detailed and fully developed 	<p>[12-15 marks]</p> <ul style="list-style-type: none"> • Excellent analysis of legal rules, principles, concepts and issues relevant to the law on obscenity. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding to the law on obscenity, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
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 obscenity. Response is generally clear, detailed and developed 	<p>[8-11 marks]</p> <ul style="list-style-type: none"> • Good analysis of legal rules, principles, concepts and issues relevant to the law on obscenity. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Good evaluation of the principles regarding to the law on obscenity, including a valid judgement. • Good citation of supporting case law and legal authorities..
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 obscenity. Response includes some detail which is developed in places. 	<p>[4-7 marks]</p> <ul style="list-style-type: none"> • Adequate analysis of legal rules, principles, concepts and issues relevant to the law on obscenity. Analysis includes some detail with supporting evidence. • Adequate evaluation of the principles regarding to the law on obscenity, including reference to a judgement. • Adequate citation of supporting case law and legal authorities
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 obscenity. Response includes minimal detail. 	<p>[1-3 marks]</p> <ul style="list-style-type: none"> • Basic analysis of legal rules, principles, concepts and issues relevant to the law on obscenity. Analysis includes minimal detail. • Basic evaluation of the principles regarding to the law on obscenity. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

Question 8

"The Human Rights Act 1998 is proving to be an effective substitute for a Bill of Rights."
Discuss.

[25]

Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including a Bill of Rights, the English legal system and human rights law. For example, a response may include reference to the ways in which the Human Rights Act 1998 effectively protects human rights.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the Human Rights Act and a Bill of Rights.

The response might consider issues such as:

- Outline of the main provisions of the Human Rights Act, 1998 – explanation of how the Act gives effect to rights under the European Convention on Human Rights.
- Obligation upon public authorities not to act in ways which are incompatible with Convention rights (s.6).
- The interpretative obligation placed upon the Courts by s.3(1) – "So far as is possible, primary and subordinate legislation must be read and given effect in a way which is compatible with Convention rights."
- Explain section 4 declaration of incompatibility
- Explanation of a Bill of Rights

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the Human Rights Act is an effective substitute for a Bill of Rights, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the Human rights Act does effectively protect human rights.

The response may include:

- Obligation to take account of Strasbourg jurisprudence: s.2 – weak obligation, Courts not bound by it.
- Declaration of incompatibility – s.4 – applies to incompatible primary legislation or secondary legislation where primary legislation prevents removal of incompatibility. Only High Court and above can issue declaration of incompatibility; can be overturned on appeal to a higher Court – Alconbury.
- Fast-track procedure for amending incompatible legislation (s.10).

- Obligation upon the relevant Minister to make a statement of compatibility when introducing new legislation, or to state that the Government wishes to proceed with the Bill despite incompatibility with Convention rights (s.19).
- Courts as public authorities under s.6 are obliged not to act in ways which are incompatible with Convention rights – gives scope for Courts to give horizontal effect to Convention rights, e.g., *Venables & Thompson v MGN*.
- Preservation of the right to take a case to the European Court of Human Rights in Strasbourg.
- Discussion of the ways in which human and civil rights remain subject to the will of Parliament e.g. by virtue of s.3(2) the Courts cannot strike down or refuse to apply a provision contained in primary legislation, or in subordinate legislation where primary legislation prevents the removal of the incompatibility - significant in view of increasing resort to enabling legislation where details left to be filled in by executive order.
- Discussion of approach so far adopted by Courts – how far Courts are prepared to go in interpreting statutes to avoid incompatibility – cases such as *R v A*, *Poplar Housing Assoc. v Donoghue*, *R v Lambert*, *Re S (Children: Care Plan)*, *R v Shayler* - whether Courts crossing the boundary between interpretation and legislation.
- Declaration of incompatibility treated as a last resort – cases such as *Alconbury*, *Wilson v First County Trust*, *R v London North & East Region Mental Health Review Tribunal*, *Hooper v Sec. of State for Work & Pensions*, *International Transport Roth GMBH v Sec. of State*, *R v Sec. of State ex p Anderson*, *A, X & Y v Sec. of State for the Home Department*. Government may proceed with legislation despite incompatibility with Convention rights (s.19).
- Government may make derogations or reservations from Convention rights. (ss.14-19).
- Margin of appreciation permitted under the Convention, qualified nature of most Convention rights.
- The Human Rights Commission.
- Entrenchment.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO3: Analyse and evaluate legal rules, principles, concepts and issues
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0	Response not creditworthy or not attempted.	