



GCE AS MARKING SCHEME

SUMMER 2019

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

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 AS LAW

COMPONENT 2: UNDERSTANDING SUBSTANTIVE LAW

SUMMER 2019 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component 2

All the questions in this component assess assessment objectives AO1, AO2 and AO3. AO1 focuses on the ability to demonstrate knowledge and understanding of legal rules and principles. AO2 focuses on the ability to apply legal rules and principles to given scenarios, in order to present a legal argument using appropriate terminology, and AO3 focuses on the ability to analyse and evaluate legal rules, principles and concepts.

The structure of the mark scheme

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

- indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1, AO2 and AO3.

Stage 1 - Deciding on the band

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

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

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

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

Stage 2 – Deciding on the mark

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

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

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

COMPONENT 2 – SUBSTANTIVE LAW IN PRACTICE

SECTION A

Question 1: Law of Contract

1. (a) Explain what is meant by consideration in contract law. [6]

Indicative content

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

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

The response might consider issues such as:

- Consideration is concerned with the bargain of the contract. A contract is based on an exchange of promises. Each party to a contract must be both a promisor and a promisee. They must each receive a benefit and each suffer a detriment. This benefit or detriment is referred to as consideration.
- Consideration must be something of value in the eyes of the law - *Thomas v Thomas* (1842). This excludes promises of love and affection, gaming and betting etc. A one sided promise which is not supported by consideration is a gift. The law does not enforce gifts unless they are made by deed.
- Rules of consideration: the consideration must not be past; the consideration must be sufficient but need not be adequate; the consideration must move from the promisee; an existing public duty will not amount to valid consideration; an existing contractual duty will not amount to valid consideration; part payment of a debt is not valid consideration for a promise to forego the balance.

Assessment grid for Q1 (a)

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

1. (b) Explain the elements of a valid contract.

[6]

Indicative content

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

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

The response might consider issues such as:

- A Contract is an official agreement.
- It can be written or oral.
- Contracts can be written by using formal or informal terms, or entirely verbal or spoken.
- It is a promise made between two or more parties that which allow the courts to make judgement.
- A contract has six important elements so that it will be valid which is offer, acceptance, consideration, intention to create legal relation, certainty and capacity.
- If the main elements are not in contract, it would be an invalid contract.

Assessment grid for Q1 (b)

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

1. (c) Assess the significance of the postal rule of acceptance to the formation of valid contracts. [9]

Indicative content

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

In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from areas including the essential requirements of formation of a contract. For example, a response may include reference to the rules of contract law and an analysis of acceptance.

Candidates will offer an assessment of the legal rules, principles and concepts in order to assess the significance of the postal rule of acceptance to the formation of valid contracts.

The response might consider issues such as:

- Communication of acceptance by post raises issues of contractual timing and when the acceptance is complete. Clearly this occurs because there is a lapse of time between the posting of a letter and it arriving to the recipient. Therefore the 'postal rule' has been developed.
- The postal rule - Where it is agreed that the parties will use the post as a means of communication the postal rule will apply. The postal rule states that where a letter is properly addressed and stamped the acceptance takes place when the letter is placed in the post box: The postal rule creates an exemption to the principle that acceptance is not completed until it is communicated to the offeror. The postal rule states that acceptance is complete on posting -Adams v Lindsell (1818).
- The postal rule provides certainty for the acceptor knows that there is a binding contract as soon as he/ she posts his letter of acceptance.
- The offeror can create certainty by stipulating that he/ she must receive acceptance before it is binding or setting other such limits. The offeror is in a position to effectively oust the postal rule and if he/ she chooses not to then he is subject to the limitations of postal communication; Household Fire & Carriage Accident Insurance Co. v Grant (1879)
- Limitations -The postal rule only applies to acceptance and not to other communication between contracting parties; the postal rule does not apply where it was not reasonable for the acceptance to be sent by post ; Quenerduaine v Cole (1883) ;the postal rule does not apply if the letter was not properly stamped, addressed and posted; Re London & Northern Bank, ex p. Jones [1900]
- The postal rule can be displaced by the offeror; Holwell Securities Ltd v Hughes [1974]

Assessment grid for Q1 (c)

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

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

Ann, Rebecca, her daughter, and Ann's paying lodger, Tim, regularly take part in playing and entering magazine competitions. Ann, Rebecca and Tim all contribute to the cost of entering the competitions, such as paying for postage; however the entries were always made in Ann's name. One day Ann receives a letter stating that her competition entry has been successful; Ann tells Rebecca and Tim the good news but refuses to share the prize with Tim. Tim wishes to sue Ann for his share.

1. (d) Advise Tim as to whether there is an intention to create legal relations on these facts. [9]

Indicative Content

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

In advising Tim candidates are expected to apply the full range of legal rules and principles relating to his claim against Ann. In this case candidates will need to apply contract law, including intention to create legal relations and use relevant case law in relation to the given scenario in order to present a legal argument.

The response might consider issues such as:

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

Assessment grid for Q1 (d)

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

Question 2: Law of tort

2. (a) Explain what is factual causation in the tort of negligence

[6]

Indicative content

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

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

- Definition of causation – defendant’s acts or omissions must have caused the loss complained of
- Both factual and legal causation must be proved
- Factual causation:
 - ‘But for’ test – *Barnett v Chelsea and Kensington Hospital Management Committee*
 - Intervening events may break the chain of causation – *novus actus interveniens*
 - Victim’s own act
 - Medical intervention

Assessment grid for Q2 (a)

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

2. (b) Explain what is meant by occupier's liability.

[6]

Indicative content

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

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

The response might consider issues such as:

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

Assessment grid for Q2 (b)

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

2. (c) Assess the different types of damages in the law of negligence. [9]

Indicative content

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

In order to achieve the highest marks, candidates must demonstrate their ability to draw together details of the different types of damages in the law of negligence

Candidates will offer an assessment of the legal rules, principles and concepts in order to assess the award of damages in tort. In order to assess this issue, candidates will offer an assessment of the purpose of both general and special damages.

The response might consider issues such as:

- Damages in a negligence case are compensatory
- Purpose is to put the claimant in the position he/she would have been in had the negligent event not occurred
- Actual losses and future losses can be compensated
- Mitigation of loss must be considered
- Two types of damages:
 - Special damages
 - Compensation for the financial losses incurred up to the date of the trial
 - Things that can be given an exact figure: medical expenses, prescriptions, loss of earnings
 - Deductions made so claimant does not profit
 - Calculation for special damages
 - Evaluation of the extent to which this compensates adequately
 - General damages
 - Pain, suffering and loss of amenity
 - Non-pecuniary damages
 - Judicial guidelines
 - Awards where victim is a child – *Giambrone v JMC Holidays 2002*
 - Loss of future earnings
 - Evaluation of the extent to which this compensates adequately

Assessment grid for Q2 (c)

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

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

Joel is a lorry driver who is transporting a load of heavy duty wooden fence posts. As Joel drives around a sharp corner two of the wooden fence posts fall off due to Joel not tying them on properly. The post hits Chris and Mary, two cyclists, who are chatting away to each other whilst cycling along the cycle lane, and knocks them off their bikes. Chris suffers a broken leg and Mary suffers internal bruising.

2. (d) Advise Chris and Mary as to whether they will be able to succeed in a claim for negligence against Joel. [9]

Indicative content

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

In advising Chris and Mary, candidates will offer an assessment of the legal rules and principles relating to his situation. In this case, candidates will need to consider the requirements of duty of care in negligence and then apply these to the accident.

The response might consider issues such as:

- Duty of care needs to be established
- Joel will have a duty to Chris and Mary as other road users
- that a breach of duty occurs when conduct falls below that of a reasonable person
- failing to secure his load properly Gary's conduct falls below that of a reasonable lorry driver
- Joel must be a factual cause of the claimant's loss
- Chris's broken leg would not have occurred but for Joel's failure to secure the load properly
- Chris and Mary's loss must be a reasonably foreseeable consequence of the breach
- Chris's broken leg is a reasonably foreseeable consequence of Gary's failure to secure the load properly
- Mary's minor internal injuries is a reasonably foreseeable consequence of Gary's failure to secure the load properly

Assessment grid for Q2 (d)

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

SECTION B: PUBLIC LAW

Question 3: Criminal Law

3. (a) Explain the 'but for' test in causation. [6]

Indicative Content

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

In explaining the 'but for' test in causation candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying causation. In demonstrating this knowledge and understanding, candidates are required to focus on the specific nature of the question set and not simply give a general answer on actus reus.

The response might consider issues such as:

- Causation must be established in all result crimes. Causation in criminal liability is divided into factual causation and legal causation. Factual causation is the starting point and consists of applying the 'but for' test. In most instances, where there exist no complicating factors, factual causation on its own will be enough to establish causation. However, in some circumstances it will also be necessary to consider legal causation. Under legal causation the result must be caused by a culpable act, there is no requirement that the act of the defendant was the only cause, there must be no novus actus interveniens and the defendant must take his victim as he finds him (thin skull rule).
- Factual causation -Factual causation is established by applying the 'but for' test. This asks, 'but for the actions of the defendant, would the result have occurred?' If yes, the result would have occurred in any event, the defendant is not liable. If the answer is no, the defendant is liable as it can be said that their action was a factual cause of the result.
- Reference to relevant cases e.g. R v White [1910] and Pagett (1983)

Assessment grid for Q3 (a)

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

3. (b) Explain when an intervening act might break the chain of causation. [6]

Indicative Content

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

In explaining when an intervening act might break the chain of causation candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying causation. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question set and not simply give a general answer on causation.

The response might consider issues such as:

- Explanation of the chain of causation – there must be a direct link from the defendant’s conduct to the consequence; in order to break the chain of causation so that the defendant is not responsible for the consequence, the intervening act must be sufficiently independent of the defendant’s conduct and sufficiently serious.
- Explanation of when medical treatment may be an intervening act with relevant cases e.g. Smith (1959); Cheshire (1991); Jordan (1956); Malcherek (1981); Dear (1996); Blaue (1975)
- Explanation of the victim’s own act and intervening acts with relevant cases e.g. Roberts (1971); Marjoram (2000.)

Assessment grid for Q3 (b)

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

3. (c) Assess whether the current law on intention is uncertain and unjust. [9]

Indicative Content

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

In order to achieve the highest marks, candidates must demonstrate their ability to draw together the different decisions from cases concerning the definition of intention. For example, a response may include reference to the need to reform the law on intention, with supporting case law to illustrate.

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

The response might consider issues such as:

- Definition of mens rea - the highest level of mens rea is intention , also referred to as specific intention .
- Assessment of the definition of intention in Mohan (1975).
- Assessment of the meaning of direct and oblique intent with reference to cases such as, Moloney (1985); Hancock and Shankland (1986); Nedrick (1986); Woollin (1998) and Matthews and Alleyne (2003)
- Discussion of the reform of the law on intention - Law Commission has in the past suggested definitions for 'intention' - Law Commission Report 2004 Murder, Manslaughter an Infanticide

Assessment Grid for Q3(c)

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

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

Sam is on holiday and is sitting by the side of the pool at his hotel. The pool is empty apart from one swimmer, Ethan. Ethan jumps out of the pool and goes to the diving board and attempts to dive in, unfortunately he miss-judges his dive and he hits his head on the side of the swimming pool, knocking him unconscious he sinks to the bottom of the pool. Sam sees all of this happen but he does nothing. Ethan drowns.

3. (d) Advise Sam as to whether he would be liable for failure to act on these facts.[9]

Indicative Content

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

In advising Sam candidates are expected to apply the full range of legal rules and principles relating to Sam's situation. In this case candidates may discuss the *actus reus* and omissions and apply relevant case law to the given scenario in order to present a legal argument.

The response might consider issues such as:

- Definition of actus reus – physical element of a crime; it can be an act, a failure to act, or a state of affairs
- Discussion of the normal rule that an omission cannot make a person guilty of an offence .
- In advising Sam a discussion of the exceptions to the rule. In some cases it is possible for a failure to act (an omission) to be the actus reus.
- Advise Sam that an omission is only sufficient for the actus reus when there is a duty to act ; discussion of cases including Gibbons and Proctor (1918); Stone and Dobinson (1977); Evans (2009); Dytham (1979); Miller (1983); and whether a duty to act exists on the facts of this scenario

Assessment Grid for Q3 (d)

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

Question 4: Human Rights Law

4. (a) Explain the powers of the police to stop and search under the Police and Criminal Evidence Act 1984. [6]

Indicative Content

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

In explaining the powers of the police to stop and search under the Police and Criminal Evidence Act 1984, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the Act. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question set and not simply give a general answer relating to the Police and Criminal Evidence Act 1984.

The response might consider issues such as:

- Explanation of the power to stop and search - s 1 of PACE - a constable may search a person or vehicle in public for stolen or prohibited articles
- Explanation of the safeguards in s. 2 of PACE ; R v Bristol (2007))
- Explanation of the meaning of reasonable suspicion under Code A
- Code A -the safeguards in place when a suspect is stopped and searched , including which articles of clothing can be removed in a public place and the requirement for the search to be carried out with the minimum fuss and embarrassment to the suspect

Assessment grid for Part 4 (a)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none">• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the power of the police to stop and search under the Police and Criminal Evidence Act 1984. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none">• Good knowledge and understanding of the English legal system and legal rules and principles relating to the power of the police to stop and search under the Police and Criminal Evidence Act 1984. Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none">• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the power of the police to stop and search under the Police and Criminal Evidence Act 1984. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

4. (b) Explain the powers of the police to search premises under the Police and Criminal Evidence Act 1984 [6]

Indicative Content

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

In explaining the powers of the police to search premises under the Police and Criminal Evidence Act 1984 candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the powers of the police to search premises. In demonstrating this knowledge and understanding, candidates are required to focus on the specific details of search of premises, and not simply give a general answer on stop and search.

The response might consider issues such as:

- Search with a warrant – s.8 PACE.
- Search without a warrant – s.17 – power to enter and search to execute a warrant of arrest; to make an arrest without a warrant; to capture a person unlawfully at large ; or to protect people from serious injury or prevent serious damage to property.
- Search without a warrant s. 18 – after arrest for an indictable offence
- Search of premises governed by Code B
- Under s.19 PACE once lawfully on the premises police can seize and retain any item that is evidence of a crime.

Assessment grid for Q4 (b)

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	5-6	<ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the search of premises under the Police and Criminal Evidence Act 1984. Response is clear, detailed and fully developed.
2	3-4	<ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system and legal rules and principles relating to the search of premises under the Police and Criminal Evidence Act 1984. Response is generally clear, detailed and developed.
1	1-2	<ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system and legal rules and principles relating to the search of premises under the Police and Criminal Evidence Act 1984. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

4. (c) Assess whether the law provides adequate protection to a suspect who has been arrested. [9]

Indicative Content

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

In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from areas including police powers. For example, a response may include reference to an analysis of the rights of a suspect when arrested, the safeguards given to a suspect, and the protection under Code G of the Police and Criminal Evidence Act 1984.

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

The response might consider issues such as:

- analysis of police powers to arrest under s.24 of PACE, as amended by s.110 of the Serious Organised Crime and Police Act 2005 (SOCPA) and a person's rights under Code G of the Codes of Practice.
- Analysis of the necessity tests under SOCPA ; relevant case law egg Richardson v Chief Constable of West Midlands Police (2011); Lord Hanningfield Chief Constable of Essex Police (2013)
- an assessment of the meaning of reasonable suspicion to arrest ; O'Hara v Chief Constable of the Royal Ulster Constabulary (1996)
- the safeguards in place when a suspect is arrested s. 28 ; Christie v Leachinsky (1947)

Assessment Grid for Q4 (c)

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

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

Sarah had just finished college for the day, she was walking through town to catch her bus home when she was stopped and searched by PC Carr who thought that she looked suspicious. PC Carr found in Sarah's bag an expensive camera, and despite Sarah saying that she used it for her college course PC Carr arrested her as he believed she had stolen it. Sarah was taken to the police station; she was immediately placed in a cell. Sarah was detained in police custody for 48 hours. During that time she asked if she could telephone her mother or speak to a solicitor, but both requests were refused. Sarah was interviewed for 16 hours, and her fingerprints were taken by force. Eventually, she was told that she was to be charged with theft, and would be brought before the magistrates' court in the morning.

4. (d) Advise Sarah as to whether her rights as a detainee were respected while she was in police custody. [9]

Indicative Content

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

In advising Sarah candidates are expected to apply the full range of legal rules and principles that affect the rights of a detainee in police custody.

In this case candidates may advise Sarah as to the relevant sections of the Police and Criminal Evidence Act 1984 and the Codes of Practice to determine whether Sarah's rights were respected while she was in police custody.

The response might consider issues such as:

- Advising Sarah as to the role of the custody officer under s36 PACE – detainee to be booked in , told her rights
- Advising Sarah as to the time limits of her detention and whether the police have authorisation to detain her for 48 hours – reference to ss 41 – 44 PACE
- Advising Sarah that her detention should have been reviewed under s. 40 PACE after the first 6 hours in custody and every 9 hours thereafter
- Advising Sarah of her right to inform someone of her detention (s.56) and the right to legal advice (s.58); discussion of when these can be withheld, not likely on these facts.
- Advising Sarah of her rights during interview, ; Code D ; s.60 PACE, breaks, tape recording; if Sarah is a juvenile she is entitled to an appropriate adult – s57 PACE
- Advising Sarah – fingerprints can be taken with reasonable force – s.61 PACE – was force necessary here, was it reasonable?

Assessment Grid for Q4(d)

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