



# **GCE A LEVEL MARKING SCHEME**

**SUMMER 2022**

**A LEVEL  
LAW – COMPONENT 3  
A150U30-1**

## **INTRODUCTION**

This marking scheme was used by WJEC for the 2022 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

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

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

**GCE A LEVEL LAW**  
**COMPONENT 3 - PERSPECTIVES OF SUBSTANTIVE LAW**  
**SUMMER 2022 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 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

1	1
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 Analyse and evaluate the regulation of exclusion clauses. [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 on exclusion clauses, the English legal system and the law of contract. For example, a response may include reference to the approach adopted in regulating exclusion clauses in contract law.

#### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the approach adopted by the common, the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015 in regulating exclusion clauses in contract law.

The response might consider issues such

- An exclusion clause is a contractual term by which one party attempts to cut down either the scope of their contractual duties or regulate the other parties right to damages or other possible remedies for breach of contract.
- It means that the exemption clause is a phrase in an agreement that gives a limitation towards contracting parties.
- The exemption clause generally is called as exclusion clauses as well.
- The law has tried to control or regulate these clauses by both common law and statute as they can be unfair to the consumer.
- Under common law – such clauses usually disapproved of, especially if one party is in a stronger bargaining position.
- Under common law – 2 questions are asked, (i) has the clause been incorporated into the contract? and (ii) does the clause cover the alleged breach?
- The clause can be incorporated into the contract by signature, reasonable notice or by previous course of dealing.
- By a signature – if a document is signed at the time of making the contract, its contents become terms of that contract, regardless of whether they have been read and understood. *L'Estrange v Graucob* (1934).
- By reasonable notice – if separate written terms are presented, those terms only become part of the contract if it can be said that the recipient had reasonable notice of them. *Parker v South Eastern Railway* (1877).

- By a previous course of dealing – if two parties have previously made a series of contracts between them, and those contracts contained an exclusion clause, that clause may also apply to a subsequent transaction, even if the usual steps to incorporate the clause had not been taken. *Spurling v Bradshaw* (1956).
- The courts will also check to see if the clause covers the breach that has occurred, using the *contra proferentem* rule – which states where there is ambiguity about the clause it will be interpreted in a way least favourable to the person relying on it.
- Regulation by statute – Unfair Contract Terms Act 1977 (UCTA) - for non-consumer contracts. Consumer Rights Act 2015 – for a trader and a consumer contract.
- UCTA s.2 liability for negligence – death or personal injury resulting from negligence cannot be excluded – any clause which attempts to do this, will be rendered ineffective.
- S.3 liability for non-performance – applies where there exists a standard form contract. The provisions are subject to the reasonableness test in s11 and provide restrictions on the ability to (i) exclude or restrict liability for breach of contract (ii) provide substantially different performance to that reasonably expected or (iii) provide no performance at all
- S.6 – exclusion of liability in contracts for the sale of goods – clauses that are implied by statute, such as those in the Consumer Rights Act 2015 cannot be excluded.
- S.11 – test of reasonableness – the court should ask itself whether the term in question is *“fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made”*.
- State and explain schedule 2 factors. For example the strength of the bargaining position of the parties, whether the customer received an inducement to accept the terms and whether the customer knew or ought to have known of the term.
- Further statutory provision can be found in the Consumer Rights Act 2015 for contracts between consumers and traders.
- S. 65 renders all clauses attempting to exclude liability for personal injury void.
- Other loss or damage arising from negligence has to pass the fairness test.
- Any attempt to exclude liability for the implied terms s.9-14 are void.
- Consider the fairness test to exclude liability for loss or damage other than personal injury.

### **AO3**

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the regulation of exclusion clauses, 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 regulation of exclusion clauses.

The response might consider issues such as:

- The law clearly takes regulating exclusion clauses seriously and has used both common law and statutes to do so.
- Regulation of exclusion clauses by common law incorporation by signature adheres to the overarching principle of *laissez faire* in contract law.
- Courts control the creation of these clauses by the rule of incorporation. This protects the unwary but not those who do not read the documents as they can be inserted via document or notice.
- Consider the fairness, or otherwise, of the *contra proferentem* rule.

- The regulations, for both consumer contracts and business contracts can be seen to be fair with the inability to exclude negligence for personal injury. This should promote a safer environment whether parties to a contract are aware that they will be held to account for any negligent action.
- Other attempts at excluding liability for negligence are not automatically void but have to pass either the reasonable test or the fairness test, depending on which act applies.
- The Schedule 2 UCTA factors try to balance the bargaining power between the parties and bring about a fair result
- The Consumer Rights Act 2015 is a recent and up to date piece of legislation replacing the Unfair Terms in Consumer Contracts Regulations and the Unfair Contract Terms Act 1977 in consumer contracts and notices.
- Arguably the CRA tries to balance the bargaining position of the parties by enhancing that of the consumer. Consumers do not have to wait for common law precedent to filter down from the senior courts. It has statutory provision.
- Any attempt to exclude liability for the implied terms in s.9-14 CRA are void. This is fair and consistent as it would be a strange position if the law insisted on certain implied terms to them allow them to be excluded.
- The above terms in s9-14 include aspects such as satisfactory quality and fit for purpose. These protect the consumer.

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 style="text-align: center;"><b>[8-10 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to exclusion clauses. Response is clear, detailed and fully developed</li> </ul>	<p style="text-align: center;"><b>[12-15 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding exclusion clauses, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	<p style="text-align: center;"><b>[5-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to exclusion clauses. Response is generally clear, detailed and developed</li> </ul>	<p style="text-align: center;"><b>[8-11 marks]</b></p> <ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Good evaluation of the principles regarding exclusion clauses, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	<p style="text-align: center;"><b>[3-4 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to exclusion clauses. Response includes some detail which is developed in places.</li> </ul>	<p style="text-align: center;"><b>[4-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. Analysis includes some detail with supporting evidence.</li> <li>• Adequate evaluation of the principles regarding exclusion clauses, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities</li> </ul>
1	<p style="text-align: center;"><b>[1-2 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to exclusion clauses. Response includes minimal detail.</li> </ul>	<p style="text-align: center;"><b>[1-3 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to exclusion clauses. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding exclusion clauses.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	



1 2

The law surrounding offer and acceptance of a contract is out of date and in urgent need of reform. 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 the law surrounding offer and acceptance and whether it is out of date and in urgent need of reform.

### AO1

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

The response might consider issues such as:

- Explain what is meant by an offer – an expression of willingness by an offeree to enter into a legally binding agreement on the terms of the offer set out by the offeror.
- Explain an invitation to treat. *Fisher v Bell*. An indication of a willingness to deal
- Explain the difference between a bilateral offer and a unilateral offer *Carlill v Carbolic Smoke Ball Company*.
- The need for offers to be certain – *Guthing v Lynn* 1831.
- Termination of an offer – anytime before acceptance. *Routledge v Grant* 1828.
- Counter offers. *Hyde v Wrench* 1840.
- Explain the general rules for acceptance of a bilateral offer, that it must be unconditional and communicated, *Hyde v Wrench*.
- Issue of the 'battle of the forms' – *Butler Machine Tool v Ex – Cell-o-corp* 1979.
- Explain the postal rule of acceptance, acceptance being effective on posting, *Adams v Lindsell*.
- Explain the exceptions to the postal rule, offer made by instantaneous means, mistake made in posting, postal rule excluded, *Holwell Securities v Hughes*.
- Explain the rules of acceptance by instantaneous means, that the acceptance takes effect on arrival subject to sound business practices. *Entores Ltd v Miles Far East Corp* 1955.

### **AO3**

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the significance 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 the law surrounding offer and acceptance and whether it is out of date and in urgent need of reform.

The response might consider issues such as:

- Issues concerning offer: well-established nature of the rules; established in response to specific cases.
- Confusion between offer and invitation to treat – Pharmaceutical Society of GB v Boots Cash Chemists.
- Does the above interfere with the ability to negotiate? For instance, does it mean that people would make contracts before they mean to? Picking up a product and putting it down before payment would be breach of contract. Fisher v Bell.
- 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.
- In Yates Building v Pulleyn, a letter of acceptance sent by normal post rather than by the prescribed recorded or registered delivery was held to be valid acceptance. Does this
- introduce too much uncertainty into the law?
- Acceptance cannot be effectively communicated by silence. This rule protects innocent parties from being forced into contracts without their knowledge or will.
- The “battle of the forms” (under which the terms adopted are those of the last party to send documentation prior to performance) was criticised by Lord Denning in Butler Machine Tool Company, where he argued that the court should examine the whole series of negotiations between the parties. However, this seems impractical, and the rule” at least has the advantage of some degree of certainty.
- Suggestions for reform: proposals may concentrate on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications.
- Does the law provide guidance in a modern business environment?
- Consider use of the postal system – is this still a main method of communication?
- There is guidance on communication by telex - Brinkibon v Stahag Stahl 1982, but what about more modern methods. Is there a lack of case law in this area.
- Has the law moved and adapted to modern technology or is it out of date and in need of reform.

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 style="text-align: center;"><b>[8-10 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to offer and acceptance. Response is clear, detailed and fully developed</li> </ul>	<p style="text-align: center;"><b>[12-15 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles, concepts and issues relevant to offer and acceptance. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding the significance of offer and acceptance including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	<p style="text-align: center;"><b>[5-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to offer and acceptance. Response is generally clear, detailed and developed</li> </ul>	<p style="text-align: center;"><b>[8-11 marks]</b></p> <ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to offer and acceptance. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Good evaluation of the principles regarding the significance of offer and acceptance, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	<p style="text-align: center;"><b>[3-4 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to offer and acceptance. Response includes some detail which is developed in places.</li> </ul>	<p style="text-align: center;"><b>[4-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles, concepts and issues relevant to offer and acceptance. Analysis includes some detail with supporting evidence.</li> <li>• Adequate evaluation of the principles regarding offer and acceptance, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities</li> </ul>
1	<p style="text-align: center;"><b>[1-2 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to offer and acceptance. Response includes minimal detail.</li> </ul>	<p style="text-align: center;"><b>[1-3 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the significance of offer and acceptance. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding offer and acceptance.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

## Section B

### Law of Tort

1	3
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 Discuss whether or not vicarious liability is fair on employers. [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 vicarious liability, the English legal system and law of tort. For example, a response may include reference to whether or not the law on vicarious liability is fair on employers.

#### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to vicarious liability.

The response might consider issues such as:

- Define vicarious liability – term used to explain the liability of one person for the torts committed by another.
- Requirement of a legal relationship between the two and the tort must be connected to that relationship.
- Often arises in employment situations with the employer being liable for the torts of employees.
- Must establish (i) is the person who committed the tort an employee and (ii) was the tort committed in the course of that person's employment.
- Tests to establish who is an employee.
- The control test – *Yewen v Noakes* 1880.
- Organisation test – *Stevenson, Jordan and Harrison Ltd, v MacDonald and Evans* 1952.
- Economic reality test – *Ready Mixed Concrete (South East) Ltd. v Minister of Pensions and National Security* 1967.
- Also considerations such as, method of payment, working hours, level of independence etc.
- Must be in the course of employment, otherwise the employer will not be liable. *Century Insurance v Northern Ireland Road Transport* 1942.
- A frolic of his own – something unauthorised and separate from duties will mean no liability. *Storey v Ashton* 1869.
- Authorised work in a forbidden manner. *Limpus v London General Omnibus* 1863.

- Travelling between places of employment will incur vicarious liability. Conway v Wimpey 1951.
- An employer is not usually liable for the acts of a contractor. Subject to exceptions.
- Vicarious liability will take place where an employee commits an unlawful act if there is a closeness of connection between the employment and the unlawful act. For example a store detective who uses unreasonable force in the course of his employment. Lister and Others v Helsey Hall 2002.

### **AO3**

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the development of a duty of care in negligence, 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 or not vicarious liability is fair on employers.

The response might consider issues such as:

- Can be justified by the idea that if someone whom an employer has a degree of control makes a mistake, then the employer shares some responsibility for this.
- Must be in the course of employer otherwise the employer will not be liable – seems fair and appropriate.
- The test to establish if a person is an employee takes into account a commonsense approach by considering aspects such as, does the employer exercise a degree of control, level of independence and responsibility for providing equipment.
- Despite tests and case law there can still be confusion over whether a person is an employee or an independent contractor.
- It is fair if there is no liability on an employer when an employee is on a frolic of his own.
- Could Limpus v London General Omnibus 1863.be seen as unfair on an employer> - authorised work in a forbidden manner.
- Is it fair that there are times when an employer could be liable for the acts of a contractor.
- Perhaps vicarious liability is a fair policy as employers are potentially in a financial position to pay compensation as opposed to the employee.
- Employers are in charge of the conduct of employees and therefore it is fair that they are responsible. However, consider the position of more modern approaches to work e.g flexible working.
- As employers take profit from the work of their employees then they should be liable.
- Employers hire and fire their employees and so should not employ those who are a 'risk.'
- It is positive that an employer may be encouraged to ensure safe working practices.
- Is it fair that employers can be liable for the unlawful acts of employees even when they are unaware that the employees are committing crimes? Catholic Church Welfare Society v Institute of the Brothers of the Christian Schools 2012.

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 style="text-align: center;"><b>[8-10 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. Response is clear, detailed and fully developed</li> </ul>	<p style="text-align: center;"><b>[12-15 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles, concepts and issues relevant to vicarious liability. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding the development of vicarious liability, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	<p style="text-align: center;"><b>[5-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. Response is generally clear, detailed and developed</li> </ul>	<p style="text-align: center;"><b>[8-11 marks]</b></p> <ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to vicarious liability. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Good evaluation of the principles regarding vicarious liability, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	<p style="text-align: center;"><b>[3-4 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. Response includes some detail which is developed in places.</li> </ul>	<p style="text-align: center;"><b>[4-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles, concepts and issues relevant to vicarious liability. Analysis includes some detail with supporting evidence.</li> <li>• Adequate evaluation of the principles regarding vicarious liability, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities</li> </ul>
1	<p style="text-align: center;"><b>[1-2 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. Response includes minimal detail.</li> </ul>	<p style="text-align: center;"><b>[1-3 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to vicarious liability. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding vicarious liability.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

**Indicative content**

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

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 of negligence, the English legal system and law of tort. For example, a response may include reference to duty of care, breach of the duty and foreseeable damage.

**AO1**

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

The response might consider issues such as:

- Definition of negligence – breach of a duty of care causing foreseeable loss or injury.
- The neighbour principle from *Donoghue v Stevenson* 1932. Lord Atkin’s speech about owing a duty of care to your neighbour.
- Development from *Caparo Industries P;c v Dickman* 1990 into a 3 part test.
- (i) was the damage foreseeable – *Kent v Griffiths* 2000.
- (ii) was there a proximate relationship between claimant and defendant – *Bourhill v Young* 1943.
- (iii) is it fair, just and reasonable to impose a duty of care – *Mulcahy v Ministry of Defence* 1996.
- Consideration may be given to the cases of *Robinson v Chief Constable of West Yorkshire* (2018) and *Steel v NRAM* (2018) and the impact on a duty of care.
- Breach of a duty of care involves the standard expected of the reasonable man. *Blyth v Birmingham Waterworks* 1865.
- Tests to help establish if a breach has occurred (i) degree of probability that harm will be done – *Bolton v Stone* 1951.
- (ii) the magnitude of likely harm – *Paris v Stepney Borough Council* 1951.
- (iii) the cost and practicality of preventing the risk – *Latimer v ACE Ltd.* 1953.
- Potential benefits of the risk – *Daborn v Bath Tramways* 1946.
- Professional persons - the skill expected is that of a competent person in the profession concerned – *Bolam v Friern Hospital Management Committee* 1957.
- The third element of negligence is resulting foreseeable damage.
- Foreseeability ensures that the damage occurred as a result of the defendant’s breach.
- Causation – but for test. *Barnett v Chelsea and Kensington Hospital management Committee* 1968.
- Remoteness of damage – *Wagon Mound No.1* 1961

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the law of negligence including analysis and evaluation of relevant supporting case law. In order to reach a judgement about, candidates will offer a debate and come to a substantiated judgement regarding whether the law of negligence has developed into a set of consistent and fair rules for both claimants and defendants.

The response might consider issues such as:

- Although the case of *Donoghue v Stevenson* became the leading case on negligence for many years it had to be adapted to deal with life in a more modern age.
- For example in *Hedley Byrne and Co, v Heller and Partners Ltd.* 1963 concerned a negligent statement rather than an act or omission. Therefore the law needing further development to be fair to both claimant and defendant in these types of situations. This was achieved by the special relationship that had to be established between the parties.
- The rules had to be further developed by Caparo into a wider test based on foreseeability, proximity and considerations of fairness and justice.
- The third part of the Caparo tests is a policy test which tries to limit the extent of the tort of negligence. For example in *Mulcahy v Ministry of Defence* the court would not impose a duty of care in a battlefield situation. The courts have been reluctant to impose a duty of care on public bodies. This is arguably fair on public body defendants otherwise they may be reluctant to carry out their duties for fear of being sued.
- Consider if the case of *Robinson v Chief Constable of West Yorkshire* (2018) has meant the Caparo tests are no longer needed.
- The objective test to establish if a duty has been breached is fair to a defendant as it involves an average standard, not a perfect one.
- The rule in *Nettleship v Weston* 1971 is fair on the claimant as the standard of care required is not the learner driver but a higher standard of a fully qualified and competent driver.
- There are a range of tests to help establish a breach of a duty of care. This guidance provides a set of rules which are fair to both the claimant and defendant.
- The Bolam principle allows the average person carrying out the profession in question. This adaptation of the reasonable man can be seen to be fair to both parties. As for the claimants it allows an average standard only. However, it allows for the professional skill of the task concerned for the defendant.
- The same applies when children are involved. This is fair on the defendant as a different standard would be expected from an adult. *Mullins v Richards* 1998.
- The fact that the damage must be caused by the breach is fair to the defendant as it requires the damage to be caused through the defendant's breach.
- The remoteness test is fair to the defendant as they will only be responsible for foreseeable harm.
- Since *Donoghue v Stevenson* the law of negligence has required development to produce a set of rules that deal with modern day claims.
- The developments have tackled many of the problems that have arisen and have tried to develop a set of consistent and fair rules for both claimants and defendants.
- The impact of *Robinson v Chief Constable of West Yorkshire* (2018) and *Steel v NRAM* (2018) on the establishment of. The consequence on Caparo and new duty of situations. Caparo test doesn't have to be strictly applied in every case, instead the courts should apply existing statutes and precedents and identify duties through analogy.



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><b>[8-10 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the law of negligence. Response is clear, detailed and fully developed.</li> </ul>	<p><b>[12-15 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles, concepts and issues relevant to the law of negligence. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding the law of negligence, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	<p><b>[5-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the law of negligence. Response is generally clear, detailed and developed.</li> </ul>	<p><b>[8-11 marks]</b></p> <ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the law of negligence. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Good evaluation of the principles regarding the law of negligence, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	<p><b>[3-4 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the law of negligence. Response includes some detail which is developed in places.</li> </ul>	<p><b>[4-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles, concepts and issues relevant to the law of negligence. Analysis includes some detail with supporting evidence.</li> <li>• Adequate evaluation of the principles regarding the law of negligence, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities</li> </ul>
1	<p><b>[1-2 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the law of negligence. Response includes minimal detail.</li> </ul>	<p><b>[1-3 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the law of negligence. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding the development of the law of negligence.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

## Section C

### Criminal Law

1	5
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 The present law on murder in England and Wales is 'a mess'. 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 the law on murder, the English legal system and criminal law. For example, a response may include reference to the age of the law, the mandatory life sentence and the proposals from the Law Commission.

#### AO1

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

The response might consider issues such as:

- Lord Coke's definition of murder is very old and out of date. Perhaps the suggestion of it being a "mess" is understandable. It is a common law crime with many case decisions
- Human being - –AG's Reference (No 3 of 1994) (1994)
- Death - –R v Malcherek and Steel (1981). – Considered to be when a person is brain dead but this was stated obiter. – Courts will decide on a case by case basis.
- Queen's Peace.
- Year and a day – Law Reform (Year and a Day Rule) Act 1996.
- Can be an act or omission – Gibbins v Proctor (1918).
- Defendant must have caused the death. Prosecution must prove the defendant's act caused the death.
- Cause in fact or factual causation – but for test R v White 1910. But for the actions of the defendant the victim would not have died as and when they did.
- Cause in law or legal causation – is the defendant's act operating and substantial cause of death? Kimsey 1996. (De minimis rule).
- Thin skull test – defendant must take the victim as they find them. Blaue (1975).
- Chain of causation. – Must be a clear link between the actions of the defendant and the victim's death.
- Intervening acts may break the chain of causation. – Pagett (1983).
- Negligent medical treatment is rarely sufficient to break the chain of causation. Smith (1959), Cheshire (1991) and Jordan (1956).
- The mens rea of murder – malice aforethought.

- Now known as an intention to kill or intention to cause grievous bodily harm. Can be either express or implied. Vickers (1957).
- Foresight of consequences – Moloney (1985).
- Direct intent – Defendant desires a result and sets out to achieve it.
- Indirect/oblique intent – defendant intends one thing but another result actually occurs as a result of his/her actions.
- Indirect intent – Woollin 1998 – the jury should be directed that they are not entitled to find necessary intention unless they feel sure that death or serious bodily harm was a virtual certainty.
- *Actus reus* and *mens rea* need to be present at the same time for the defendant to be successfully convicted. – Thabo Meli v R (1954)

### 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 present law on murder is a mess.

The response might consider issues such as:

- Lord Coke's definition of murder can from 1628 and is therefore almost 400 years old. Perhaps the suggestion of it being 'a mess' is understandable. It is a common law crime with 400 years of case decisions.
- The Law Commission, in 2006, produced a report, Murder, Manslaughter and Infanticide, the report identified many problems with the existing law on murder: it stated the present law of murder in England & Wales is a mess.' It suggests that the law has developed piecemeal and is not a coherent whole.'
- There is no defence available if excessive force is used in self-defence.
- The defence of duress is not available as a defence for murder.
- The mandatory life sentence does not allow sufficient differentiation in sentencing to cover the different levels of blameworthiness in the current law on murder.
- It has been suggested that different kinds of murders could be graded to recognise the seriousness of the offence.
- At present one sentence must be given in all types of murder from mercy killings to serial or contract killings. The current law fails to make provisions for a benign motive. There has been support for lesser degrees of murder (as in the American legal system).
- The words malice aforethought are misleading, for instance as regards aforethought there is no need for premeditation.
- A defendant can be convicted of murder even though there was only intention to cause serious harm.
- The meaning of intention has been the subject of several major cases over recent years (Hyam, Maloney, Hancock & Shankland and Woollin) with the definition of intention ranging from probable to highly probable to certain to Woollin confirming virtual certainty but still leaving the matter to the jury. (Jury entitled to find intention – Matthews & Alleyne).

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 style="text-align: center;"><b>[8-10 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the law on murder. Response is clear, detailed and fully developed</li> </ul>	<p style="text-align: center;"><b>[12-15 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles, concepts and issues relevant to the law on murder. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding the law on murder, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	<p style="text-align: center;"><b>[5-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to the law on murder. Response is generally clear, detailed and developed</li> </ul>	<p style="text-align: center;"><b>[8-11 marks]</b></p> <ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to the law on murder. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Good evaluation of the principles regarding the law on murder, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	<p style="text-align: center;"><b>[3-4 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the law on murder. Response includes some detail which is developed in places.</li> </ul>	<p style="text-align: center;"><b>[4-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles, concepts and issues relevant to the law on murder. Analysis includes some detail with supporting evidence.</li> <li>• Adequate evaluation of the principles regarding the law on murder, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities</li> </ul>
1	<p style="text-align: center;"><b>[1-2 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the law on murder. Response includes minimal detail.</li> </ul>	<p style="text-align: center;"><b>[1-3 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to the law on murder. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding the law on murder.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

1 6

Analyse and evaluate the rules used by the courts in deciding whether Parliament intends an offence to be one of strict liability.

[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 strict liability, the English legal system and criminal law. For example, a response may include references to the Gammon principles used by the courts in deciding whether Parliament intends an offence to be one of strict liability.

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles used by the courts in deciding whether Parliament intends an offence to be one of strict liability.

The response might consider issues such as:

- Mens rea is usually required for criminal liability.
- The nature of strict liability.
- The distinction between strict and absolute liability.
- Support may come from Larsonneur, Winzar.
- How the courts determine whether an offence is intended by Parliament to be one of strict liability.
- the seriousness of the penalty – the more serious penalty, the less likely it is that Parliament intended the offence to be strict.
- The Gammon principles, with examples of case law such as Callow v Tillstone, Sweet v Parsley, DPP v B (A minor), Smedleys v Breed, LBC of Handsworth v Shah, Storkwain, Alphacell v Woodward.

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the rules used by the courts in deciding whether Parliament intends an offence to be one of strict liability. 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 rules used by the courts in deciding whether Parliament intends an offence to be one of strict liability.

The response might consider issues such as:

- Determining Parliament's intention – the subject matter of the statute; whether it relates to activities posing a risk of danger to the public; whether it places particular responsibilities on certain classes of person (*Cundy v Le Cocq*, *Pharmaceutical Society of Great Britain v Storkwain*, *Harrow LBC v Shah*)
- Whether the offence relates to matters of general social concern e.g. the environment (*Alphacell v Woodward*). The seriousness of the offence; whether the offence carries a social stigma (*Sweet v Parsley*, *B v DPP*); whether the offence is "truly criminal" or merely regulatory.
- *Sweet v Parsley* represented a turning point in judicial attitudes in favour of the presumption of mens rea where an offence is "truly criminal" or carries a social stigma.
- The re-affirmation by the courts in recent years of the presumption that mens rea is required unless there is a necessary implication that Parliament intended the offence to be one of strict liability.
- Candidates are likely to evaluate the opinion given by Lord Scarman in *Gammon v A-G of Hong Kong*, setting out 5 principles: There is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence. The presumption is particularly strong where the offence is "truly criminal" in character. The presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute.
- The only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern; public safety is such an issue. Even where a statute is concerned with such an issue, the presumption of mens rea stands, unless it can be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.
- *B v DPP*, where the requirement that the implication was necessary was reaffirmed by the House of Lords. Lord Nichols stated that "necessary" means "compellingly clear" *K (2001)*, where Lord Steyn affirmed that it was not necessary for the wording to be ambiguous for the presumption to apply: the presumption supplements the text.
- The justifications for strict liability e.g., that it protects the public by imposing greater vigilance on those who undertake certain activities; that it assists and promotes the enforcement of the law. Countervailing arguments e.g., that it is futile and unjust.

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 style="text-align: center;"><b>[8-10 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to strict liability. Response is clear, detailed and fully developed</li> </ul>	<p style="text-align: center;"><b>[12-15 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles, concepts and issues relevant to strict liability. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding strict liability, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	<p style="text-align: center;"><b>[5-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to strict liability. Response is generally clear, detailed and developed</li> </ul>	<p style="text-align: center;"><b>[8-11 marks]</b></p> <ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to strict liability. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Good evaluation of the principles regarding to strict liability, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	<p style="text-align: center;"><b>[3-4 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to strict liability. Response includes some detail which is developed in places.</li> </ul>	<p style="text-align: center;"><b>[4-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles, concepts and issues relevant to strict liability. Analysis includes some detail with supporting evidence.</li> <li>• Adequate evaluation of the principles regarding to strict liability, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities</li> </ul>
1	<p style="text-align: center;"><b>[1-2 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to strict liability. Response includes minimal detail.</li> </ul>	<p style="text-align: center;"><b>[1-3 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to strict liability. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding strict liability.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

## Section D

### Human Rights Law

- |   |   |
|---|---|
| 1 | 7 |
|---|---|

 Analyse and evaluate whether the powers of the police adequately protect the rights of suspects. [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 police powers, the English legal system and human rights law. For example, a response may include reference to the powers within the Police and Criminal Evidence Act 1984 and safeguards to protect an individual's rights.

#### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to police powers.

The response might consider issues such as:

- The main provision for police powers is the Police and Criminal Evidence Act 1984 (PACE).
- S.1 PACE – stop and search of people and vehicles. Consideration of reasonable grounds to suspect they will find stolen goods or prohibited articles.
- Code A – reasonable grounds explained in relation to objective evidence. Not personal factors such as physical appearance.
- Reasonable suspicion is not always needed e.g. under s. 44 of the Terrorism Act 2000.
- Neither is it needed under s.60 Criminal Justice and Public Order Act 1994 (CJPOA). – belief that serious violence will take place stop and search can be authorised for up to 24 hours for instruments or offensive weapons.
- S.2 PACE – reasonable steps to follow correct procedure. Impact of failure to do so seen in R V Bristol 2007
- S.2 PACE – written record of search.
- S.4 – road checks can be authorised.
- S.8 PACE – search of premises with a warrant.
- S.17 & 18 – search of premises without a warrant.
- S. 24 PACE (amended by s.10 SOCPA) power to arrest. – including necessary requirement.
- PACE allows for detention and interrogation. S.30 requires a suspect to be taken to the police station as soon as possible after arrest.
- Role and powers of the custody officer.
- Search powers after arrest. Power to take samples s.62 - 65.



- Rights of a suspect under arrest s.56 – record of interview and tape recording s.58 – right to private free independent legal advice. s.57 – rights of vulnerable suspects.
- Admissibility of evidence – rules can exclude evidence if procedures are not followed. S. 76 & 78 PACE.

### **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 powers of the police allow for an adequate balance between protecting the rights of those accused and enabling alleged breaches of the law to be properly investigated.

The response might consider issues such as:

- PACE and other legislation allow police to exercise powers over individuals but also provide for safeguards and remedies if the powers are exercised inappropriately,
- The law does provide for action against police e.g. civil action for compensation, disciplinary action or an apology.
- The Royal Commission on Criminal Procedure (RCCP) or the Philips Commission 1981 acknowledged there needs to be a balance between the need to detect and prevent crime and the rights and liberties of individuals.
- Code A develops the need for reasonable grounds and insists on an objective test. This promotes protection of unnecessary intervention. As there must be suspicion based on facts, information and or intelligence of some specific behaviour.
- Personal factors alone cannot be reasonable suspicion and so prevents action being taken merely because of the way people look. This prevents stereotyping.
- However to prevent terrorism the regulations are often different because of the threat it presents s. 44 of the Terrorism Act 2000. Successful challenge in Gillan and Quinton v the UK 2010.
- However s.60 CJPOA powers seem to be weighted in favour of state intervention.
- Arguably the failure to follow correct procedure balances this area as could mean the actions are illegal and evidence found could be excluded.
- Code B provides guidelines for the search of premises e.g. reasonable time, reasonable force. Allows protection to individual's rights.
- Under s.24 PACE the police must have reasonable grounds to believe it is necessary to arrest.
- Code G tries to protect an individual's liberty from an illegal arrest – O'Hara v UK 2000.
- Without the power to use reasonable force in s.117PACE the police would be unable to carry out their role. This allows for state intervention.
- The requirement for the custody officer to oversee detention allows for some element of independence. However it is a police officer and therefore may not be independent.
- The rights of a suspect whilst at the police station are to safeguard individuals. For example the right to independent legal advice.
- Miscarriage of justice could occur if vulnerable suspects did not have the protections under PACE.
- If procedures are not adhered to this can impact on the admissibility of evidence. Something which tries to balance police powers and an individual's rights.

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 style="text-align: center;"><b>[8-10 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to police powers. Response is clear, detailed and fully developed</li> </ul>	<p style="text-align: center;"><b>[12-15 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles, concepts and issues relevant to police powers. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding police powers, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	<p style="text-align: center;"><b>[5-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to police powers. Response is generally clear, detailed and developed</li> </ul>	<p style="text-align: center;"><b>[8-11 marks]</b></p> <ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to police powers. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Good evaluation of the principles regarding police powers, including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	<p style="text-align: center;"><b>[3-4 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to police powers. Response includes some detail which is developed in places.</li> </ul>	<p style="text-align: center;"><b>[4-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles, concepts and issues relevant to police powers. Analysis includes some detail with supporting evidence.</li> <li>• Adequate evaluation of the principles regarding police powers, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities</li> </ul>
1	<p style="text-align: center;"><b>[1-2 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to police powers. Response includes minimal detail.</li> </ul>	<p style="text-align: center;"><b>[1-3 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to police powers. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding police powers.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	

1 8

Analyse and evaluate the arguments for and against a Bill of Rights in the United Kingdom.

[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 a Bill of Rights would protect the rights and freedoms of citizens in the United Kingdom.

### AO1

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

The response might consider issues such as:

- A Bill of Rights contains the most important rights for citizens and tries to safeguard and protect them from the state.
- Most western democracies have a Bill of Rights.
- The idea of a Bill of Rights is not new but has received more attention over the last few years.
- There is a Bill of Rights Act 1689 which tried to limit the power of the monarch and put certain freedoms into statute law. However, it had limited use and was not the wide reaching piece of legislation that is discussed today.
- Several political parties have expressed an interest in developing a Bill of Rights.
- In 2014 the Conservative government proposed plans to replace the Human Rights Act 1998 with a Bill of Rights.
- A Bill of Rights has also been mentioned in the Queen's speech in 2015 and 2016.
- At present rights are protected through the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA). This could mean we do not need a Bill of Rights.
- Arguments that the ECHR and the HRA do not fully protect rights and freedoms and the UK needs further protection.

### **AO3**

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the arguments for and against 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 the arguments for and against a Bill of Rights in the United Kingdom.

The response may include:

- Evaluative consideration of the current legislation protecting rights – including the ECHR and the HRA
- The Human Rights Act 1998 is just a piece of ordinary legislation which can be repealed at any time.
- The HRA 1998 is based on the ECHR, which is nearly 70 years old and arguably out of date.
- The ECHR does not include social, economic and political rights.
- Many ECHR rights are qualified in ways that allow them to be effectively circumvented by the UK government.
- The HRA 1998 does not prevent the government from passing laws which are incompatible with Convention rights.
- The HRA 1998 depends upon the willingness of the judges to uphold human rights.
- A Bill of Rights could be tailored to the needs of the UK.
- A Bill of Rights could bring in new rights. The HRA did not do so.
- A Bill of Rights would be entrenched and could not be repealed.
- A Bill of Rights would place permanent limits upon the actions of the executive and agencies such as the police.
- A Bill of Rights would make the government more accountable for its actions.
- Courts would be unable to interpret laws that were incompatible with a Bill of Rights.
- A Bill of Rights would inevitably increase the power of the judiciary as they would have to interpret the provisions of the Bill.
- A Bill of Rights would necessarily be drafted in broad principles which would lead to uncertainty and increased litigation.
- A Bill of Rights would be inflexible and difficult to change.
- A Bill of Rights would do nothing to combat social inequality and disadvantage.
- A Bill of Rights would not, by itself, give worthwhile rights to people who cannot make use of the legal system because of social disadvantage.
- A Bill of Rights would only be as effective as the government that underpins it.

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 style="text-align: center;"><b>[8-10 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to a Bill of Rights. Response is clear, detailed and fully developed</li> </ul>	<p style="text-align: center;"><b>[12-15 marks]</b></p> <ul style="list-style-type: none"> <li>• Excellent analysis of legal rules, principles, concepts and issues relevant to a Bill of Rights. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Excellent evaluation of the principles regarding a Bill of Rights, including a valid and substantiated judgement.</li> <li>• Excellent citation of supporting case law and legal authorities.</li> </ul>
3	<p style="text-align: center;"><b>[5-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Good knowledge and understanding of the English legal system and legal rules and principles relating to a Bill of Rights. Response is generally clear, detailed and developed</li> </ul>	<p style="text-align: center;"><b>[8-11 marks]</b></p> <ul style="list-style-type: none"> <li>• Good analysis of legal rules, principles, concepts and issues relevant to a Bill of Rights. Analysis is generally detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>• Good evaluation of the principles regarding a Bill of Rights. including a valid judgement.</li> <li>• Good citation of supporting case law and legal authorities.</li> </ul>
2	<p style="text-align: center;"><b>[3-4 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to a Bill of Rights. Response includes some detail which is developed in places.</li> </ul>	<p style="text-align: center;"><b>[4-7 marks]</b></p> <ul style="list-style-type: none"> <li>• Adequate analysis of legal rules, principles, concepts and issues relevant to a Bill of Rights. Analysis includes some detail with supporting evidence.</li> <li>• Adequate evaluation of the principles regarding a Bill of Rights, including reference to a judgement.</li> <li>• Adequate citation of supporting case law and legal authorities</li> </ul>
1	<p style="text-align: center;"><b>[1-2 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic knowledge and understanding of the English legal system and legal rules and principles relating to a Bill of Rights. Response includes minimal detail.</li> </ul>	<p style="text-align: center;"><b>[1-3 marks]</b></p> <ul style="list-style-type: none"> <li>• Basic analysis of legal rules, principles, concepts and issues relevant to a Bill of Rights. Analysis includes minimal detail.</li> <li>• Basic evaluation of the principles regarding a Bill of Rights.</li> <li>• Basic citation of supporting case law and legal authorities.</li> </ul>
0	Response not creditworthy or not attempted.	