



GCE A LEVEL MARKING SCHEME

AUTUMN 2021

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

INTRODUCTION

This marking scheme was used by WJEC for the 2021 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

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

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

EDUQAS GCE A LEVEL LAW
COMPONENT 2: SUBSTANTIVE LAW IN PRACTICE
AUTUMN 2021 MARK SCHEME

Marking guidance for examiners

Summary of assessment objectives for Component two

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

The structure of the mark scheme

The mark scheme for each question has two parts:

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

Stage 1 - Deciding on the band

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

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

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

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

Stage 2 - Deciding on the mark

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

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

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

Section A

Law of Contract

0 1

John owns a local newspaper shop in Manchester. While delivering his newspapers one frosty winter morning he fell and broke his leg. His best friend Amobi (a postman) told him that he would help and offered to take the newspapers with him while delivering the letters. After three months, John recovered and then told Amobi that in consideration of his efforts he would pay for a holiday as long as Amobi would book it. On the strength of this promise, Amobi booked a holiday for £3,000. Shortly afterwards, John and Amobi argued and John threatened not to pay the full cost of the holiday. Fearing that he would not get paid at all, Amobi accepted a cheque for £1,000 in full and final settlement of the debt.

Advise Amobi as to the legal position, applying your knowledge and understanding of legal rules and principles [25]

Indicative content

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

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

AO1

In advising Amobi, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to past consideration and promissory estoppel.

The response might consider issues such as:

- Explanation of the doctrine of past consideration and promissory estoppel. Since consideration must be given in response to the promise, it cannot logically include something given or done before the promise. In such a case there is no enforceable bargain, merely a gift by the promisee which provokes a gift from the promisor. Consideration is past in this case because its performance pre-dates the promise given, for example, *Eastwood v Kenyon* (1840).

Credit should be given for a critique of the doctrine of consideration, not least because the courts can imply not only the request for a performance but also the promise to pay for it at the time of the request. Parliament has also intervened to mitigate the hardships caused by the past consideration rule by providing, for example, that a pre-existing debt or liability is good consideration for a bill of exchange.

AO2

Candidates are expected to apply the full range of legal rules and principles to Amobi's situation, including the rules of consideration and promissory estoppel and relevant case law, in order to present a legal argument

The response might consider issues such as:

- In advising Amobi, his acceptance of the cheque may therefore be in respect of an agreement which is not enforceable because of lack of consideration.
- In advising Amobi, a discussion on promissory estoppel, notably that it acts as a shield but not as a sword. Promissory estoppel operates defensively, it cannot operate offensively. Even without consideration, a relieving promise may be enforceable via promissory estoppel. In such a case, promissory estoppel does operate as a shield, defending the promisee from the promisor's action to enforce his original rights; to the extent that promissory estoppel gives effect to the relieving promise, it cuts back the promisor's original rights. Hughes and Hightrees are examples of the defensive function of promissory estoppel. Note also Foakes v Beer (1884).
- Even if the contract is unenforceable on the basis of past consideration, credit should be given to those students who refer to the possibility of an action for unjust enrichment.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] 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.	[12-15 marks] - Excellent application of legal rules and principles to Amobi's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to consideration and promissory estoppel. The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] Good knowledge and understanding of the English legal system and legal rules and principles relating to consideration and promissory estoppel. Response is generally clear, detailed and developed	[8-11 marks] - Good application of legal rules and principles to Amobi's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to consideration and promissory estoppel. The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] Adequate knowledge and understanding of the English legal system and legal rules and principles relating to consideration and promissory estoppel. Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Amobi's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to consideration and promissory estoppel. The legal argument includes some detail which is developed in places
1	[1-2 marks] Basic knowledge and understanding of the English legal system and legal rules and principles relating to consideration and promissory estoppel. Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Amobi's situation. - Basic presentation of a legal argument using minimal legal terminology relating to consideration and promissory estoppel. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

0 2

On the 11th of September 2020, City Car Sales Ltd sold Richard a second-hand Mini car for £7,000. During the negotiations for the sale, Richard was informed by William, who was an employee of City Car Sales Ltd, that the engine was as "good as new" and had done only 4,000 miles. Six months later, Richard took the car to another garage for repair and was then informed that the engine had done 80,000 miles, that it was worn out and that it would cost over £6,000 to replace. He was advised that it was unsafe to drive. Richard needed a car to go to work so he hired a replacement car at £150 per week rental cost.

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

Indicative content

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

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

AO1

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

The response might consider issues such as:

- Distinction between fraudulent misrepresentation, negligent misrepresentation and innocent misrepresentation.
- Misrepresentation in respect of fact. Compare opinion honestly held.
- Relevant citation, for example, *Doyle v Olby*; *Royscot Trust v Rogerson*
- Consumer Rights Act 2015

AO2

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

The response might consider issues such as:

- Discussion and application to Richard's situation of statutory misrepresentation under the Misrepresentation Act 1967
- Was there fraudulent misrepresentation here? If so, the remedies available
- Was William's statement innocent misrepresentation? If so, the remedies available
- Whether there was negligent misrepresentation by William and the remedies available
- One issue relates to the lapse of time. Candidates should be able to discuss the possibility of Richard rejecting the car. Candidates should refer to section 2(1) of the Misrepresentation Act 1967 in respect of the issue of damages. This should include also a discussion on the recovery of the rental cost for the replacement car and the issue of remoteness of damage.
- Is this an express term of a contract?
- Application of the distinction here between fact and opinion.
- Consumer Rights Act 2015
- Relevant citation

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] Excellent knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation. Response is clear, detailed and fully developed.	[12-15 marks] - Excellent application of legal rules and principles to Richard's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to misrepresentation. The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] Good knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation. Response is generally clear, detailed and developed	[8-11 marks] - Good application of legal rules and principles to Richard's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to misrepresentation. The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] Adequate knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation. Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Richard's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to misrepresentation. The legal argument includes some detail which is developed in places
1	[1-2 marks] Basic knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation. Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Richard's situation. - Basic presentation of a legal argument using minimal legal terminology relating to misrepresentation. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

Section B

Law of Tort

0 3

Keith, a chemistry teacher, liked making his own fireworks. He took a firework he had just made to show his neighbour, Ben. Ben invited Keith into his kitchen and Keith put the firework on Ben's gas cooker hob so that they could admire it. Unfortunately, the hob was still hot enough to cause the firework to explode, wreck the kitchen and severely injure Ben. Ben, aged 28, can no longer work and requires constant care. His life expectancy is greatly reduced. Gases given off in the explosion damaged a valuable oil painting in the next room. This type of damage by gases to an oil painting was completely unexpected.

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

Indicative content

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

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

AO1

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

The response might consider issues such as:

- History of test for duty of care – *Donoghue v Stevenson*; A person must take reasonable care to avoid acts or omissions which could be reasonably foreseen to likely injure a neighbour
- Test redefined in *Caparo v Dickman*. Three elements must be proved: Reasonable foreseeability that a person in the claimant's position would be injured; There was sufficient proximity between the parties; It is fair, just and reasonable to impose liability on the defendant
- Definition of causation – Both factual and legal causation must be proved: Factual causation: 'But for' test – *Barnett v Chelsea and Kensington Hospital Management Committee*.
- Legal causation: Operating and substantial cause; Remoteness of damage; Take your victim as you find them; Cases such as *Wagon Mound*

AO2

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

The response might consider issues such as:

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

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the elements of the tort of negligence. Response is clear, detailed and fully developed.	[12-15 marks] - Excellent application of legal rules and principles to Ben's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence. The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] Good knowledge and understanding of the English legal system and legal rules and principles relating to the elements of the tort of negligence. Response is generally clear, detailed and developed	[8-11 marks] - Good application of legal rules and principles to Ben's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence. The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the elements of the tort of negligence. Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Ben's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the elements of the tort of negligence. The legal argument includes some detail which is developed in places
1	[1-2 marks] Basic knowledge and understanding of the English legal system and legal rules and principles relating to the elements of the tort of negligence. Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Ben's situation. - Basic presentation of a legal argument using minimal legal terminology relating to the elements of the tort of negligence. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

0 4

Billy's house had a very long garden at the bottom of which was a rundown garage. Children often played in the field behind Billy's house and having seen children trying to get over his garden fence near the garage, Billy placed a large notice on the fence which stated, "Danger. Keep Out". Later, for a bit of fun, Alex and another young boy, Joe, climbed over the fence and onto the garage roof. The roof suddenly collapsed due to its rotten condition, causing Alex to fall and rip his legs open on the broken roof tiles.

Advise Alex if Billy could be held liable in connection with his injuries under the tort of occupiers' liability, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

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

The response might consider issues such as:

- This case concerns the issue of occupiers' liability and specifically the Occupiers' Liability Act 1984.
- An occupier is anyone who is in control of the land, as held in *Wheat v Lacon* and is usually the owner or tenant but can sometimes be more than one person.
- A premises is defined in s1(2) as any fixed or moveable structure including a vessel, vehicle or aircraft.
- In the case of *Herrington v British Railways Board*, the House of Lords held that there is a duty of common humanity to trespassers where the occupier knows of the danger and the likelihood of trespass. This was later confirmed in s1(1) Occupiers' Liability Act 1984.

AO2

Candidates are expected to apply the full range of legal rules and principles to Adam's situation, including the Occupier's Liability Act 1984 and the possible remedies available to Julie, in order to present a legal argument.

The response might consider issues such as:

- Billy's possible liability to Alex: consideration of the elements of the Occupiers' Liability Act 1984. In this case, Billy is clearly the occupier as he owns the garden and presumably the garage. Alex as the injured party is the trespasser; the question that arises is whether Billy is liable for the injuries suffered by Alex.
- The first thing that has to be established is whether the injury caused was due to the state of the premises as s1(1)(a) Occupiers' Liability Act 1984 says that a duty will only apply in respect of trespassers if the injury was caused by the state of the premises as opposed to the claimant's own stupidity for taking an obvious risk. This was illustrated in *Ratcliff v McConnell* (1999), where the claimant took an obvious risk in diving into a pool with unknown depth and so the occupier was not liable.
- In this case, it can be said that Alex's injuries were caused by the state of the premises as the roof was rotten. Therefore under s1(1)(a) Occupiers' Liability Act 1984 he is owed a duty of care by Billy
- The next thing that needs to be considered is whether the occupier has satisfied their duty of care. To assess this, there are three criteria contained in s1(3) Occupiers Liability Act 1984. The first is under s1(3)(a) which asks whether the occupier was aware of the danger. An occupier cannot be expected to offer protection against unknown dangers as was the case in *Rhind v Astbury Water Park* (2004) where the occupier was unaware of the existence of a fibreglass box at the bottom of his lake.
- In this case, there is an argument that Billy was aware of the danger as he put a sign up warning that there was a danger. Further, there was a fence that was guarding the garage so presumably Billy would have known that the garage posed a danger.
- The second thing that needs to be considered under s1(3)(b) is whether the occupier had reason to suspect trespassers. In order for a duty to exist, the occupier has to have reason to suspect that trespassers will use the premises. Clearly, an occupier cannot be expected to be liable for injuries to trespassers they know nothing about. This was seen in the case of *Higgs v Foster* (2004) where the occupier had no reason to suspect a police officer would trespass on his property for the purposes of criminal investigation.
- In this case, we are told that Billy had previously seen young boys trying to get over his garden fence, so presumably he satisfies this criteria of knowing or having reason to suspect the existence of trespassers on his premises.
- The final thing that will need to be considered is under s1(3)(c) where the court will ask whether it was practical to take precautions. The leading case for this is *Tomlinson v Congleton Borough Council* (2008) which very much supported the occupier by reaffirming the statutory position and also indicating that the occupier would not be expected to spend a lot of money in making their premises safe; they should only do what is practical under the circumstances.
- In this case, it was practical and reasonable for Billy to offer some protection. Indeed, he did just this by putting a sign up to warn of the danger and a fence to keep people out. Therefore, it can be said that Billy has satisfied this criteria.
- Therefore, Billy has satisfied all the criteria for owing a duty of care. However, this does not mean that Billy is automatically liable.
- Under s1(4) Occupiers' Liability Act 1984, it is stipulated that the occupier only has to take such care as is reasonable to satisfy his duty of care.

- Again, in this case, Billy has been more than reasonable by placing both a warning sign and a fence. In fact, under s1(5) Occupiers' Liability Act 1984, and confirmed in *Westwood v Posts Office* (1973) a warning sign will act as a complete defence if it is enough to make the trespasser safe. Therefore, Billy's sign would be enough to absolve Billy of all liability to Alex.
- The final issue that we need to look at is the issue that Alex is a 'young trespasser'. The same statutory rules apply to child trespassers as to adult trespassers, as held in the cases of *Keown v Coventry NHS Trust* (2006) and later in *Baldaccino v West Wittering* (2008).
- Therefore, there is no lower standard of care for Alex as a child, therefore taking everything into account, Billy has not breached his duty of care and is therefore not liable for the injuries caused to Alex.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] 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.	[12-15 marks] - Excellent application of legal rules and principles to Alex's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to occupier's liability. The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] 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	[8-11 marks] - Good application of legal rules and principles to Alex's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to occupier's liability. The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] Adequate knowledge and understanding of the English legal system and legal rules and principles relating to occupier's liability. Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Alex's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to occupier's liability. The legal argument includes some detail which is developed in places
1	[1-2 marks] Basic knowledge and understanding of the English legal system and legal rules and principles relating to occupier's liability. Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Alex's situation. - Basic presentation of a legal argument using minimal legal terminology relating to occupier's liability. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

Section C

Criminal Law

0 5

Kwame works at an all-night petrol station. One evening while Kwame was helping a heavily pregnant customer put oil in her car, a battered truck pulled up on the forecourt. Kwame recognised the driver as Mike, a local farmer who has recently gone bankrupt and lost his farm, he was known to be mentally unstable. As Mike got out of the truck, Kwame saw that he was carrying a gun. Mike pointed the gun at Kwame's customer and said to Kwame: "I want everything you've got in the till, otherwise this woman and her baby are going to die." Believing that Mike was insane enough to carry out that threat, Kwame unlocked the till and gave Mike the money. Instead of leaving with the cash, Mike said: "Now I'm going to shoot the woman and then I'm going to shoot you." At this, Kwame lunged at Mike, grabbed the gun from Mike's hands, and shot him dead.

Advise Kwame as to whether he would have any defence if he were to be charged with murder, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

In advising Kwame, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of self defence and loss of control.

The response might consider issues such as:

- Self defence and defence of another at common law; prevention of crime: Criminal Law Act 1967, s.3.
- Self defence is a complete defence. The force used must be reasonable in the circumstances – an objective test to be decided by the jury. In assessing whether the force was reasonable, the jury "should not use jewellers' scales" (Read v Wastie).
- Loss of control: sections 54 and 55 of the Coroners and Justice Act 2009 – reduces murder to manslaughter. Qualifying trigger – fear of serious violence from V towards D or another (s.55(3)); things said or done which constituted circumstances of an extremely grave character and caused D to have a justifiable sense of being seriously wronged. A person of D's sex and age and in the circumstances of D: s.54(1)©.

AO2

Candidates are expected to apply the full range of legal rules and principles to Kwame's situation, including the self defence and loss of control and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Kwame may have to rely on the common law defence, since Mike is insane and not criminally liable for his actions – according to Cousins, there is no difference in the requirements of the defences
- It could be argued that once Kwame had seized the gun it was not necessary to use fatal force against Mike. In the case of Palmer, it was said that if D had only done what he honestly and instinctively thought was necessary this would be the most potent evidence that the force was reasonable. Force cannot be reasonable if it is not necessary: Palmer, Clegg
- Loss of control – did Kwame fear serious violence from Mike? (s.55(3)); things said or done which constituted circumstances of an extremely grave character and caused Kwame to have a justifiable sense of being seriously wronged. Would a person of Kwame's sex and age and in the same circumstances acted the same? S.54(1)©
- Credit relevant citation

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] Excellent knowledge and understanding of the English legal system and legal rules and principles relating to self defence and loss of control. Response is clear, detailed and fully developed.	[12-15 marks] - Excellent application of legal rules and principles to Kwame's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to self defence and loss of control. The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] Good knowledge and understanding of the English legal system and legal rules and principles relating to self defence and loss of control. Response is generally clear, detailed and developed.	[8-11 marks] - Good application of legal rules and principles to Kwame's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to self defence and loss of control. The legal argument is generally detailed, developed and persuasive.
2	[3-4 marks] Adequate knowledge and understanding of the English legal system and legal rules and principles relating. Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Kwame's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to self defence and loss of control. The legal argument includes some detail which is developed in places.
1	[1-2 marks] Basic knowledge and understanding of the English legal system and legal rules and principles relating to self defence and loss of control. Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Kwame's situation. - Basic presentation of a legal argument using minimal legal terminology relating to self defence and loss of control. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

0 6

Jane and Lutsi work as care assistants in a nursing home. One of the elderly patients, Mary, is very un-cooperative. One morning Mary refused to get into her wheelchair. Jane lost her temper and for a moment she did not care whether she hurt Mary or not. Although it was strictly against the nursing home's rules, she grasped Mary under the arms and physically pushed her into the wheelchair. The wheelchair toppled over crushing Lutsi against the wall. Mary began to complain that her arm was hurting. Lutsi was also in pain but she decided not to tell anyone what had happened in case her friend, Jane, lost her job. Later that day, the manager of the nursing home noticed that Mary's arm looked swollen, so she drove Mary to the hospital to have it X-rayed. It turned out that Mary's arm was broken and the hospital decided to keep her in for a few days. Meanwhile, Lutsi was in extreme pain but did not dare to complain for fear of her manager finding out how Mary had come by her injury. That night, Lutsi collapsed and died from internal bleeding. Mary's broken arm healed well but while she was in hospital she contracted an infection and subsequently died.

Advise Jane as to whether she may be criminally liable for the deaths of Lutsi and Mary, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

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

AO1

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

The response might consider issues such as:

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

AO2

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

The response might consider issues such as:

- Jane may be guilty of the murder or manslaughter of Mary, depending on: (a) her actions being the cause in law of Mary's death, and (b) her state of mind when she caused Mary's broken arm. Causation issue – candidates may draw analogies with cases involving negligent medical treatment such as *Smith*, *Jordan*, *Cheshire* or *Alexako* (some may be aware of *Misa and Srivastava* (2005), where doctors held guilty of gross negligence manslaughter for failure to diagnose and treat MRSA). However, it could be argued that the risk of picking up an infection while in hospital is a predictable consequence of injuring someone and would not break the chain of causation.
- Jane's state of mind – mens rea of murder = malice aforethought – an intention to kill or cause grievous bodily harm: *Maloney*. This requires knowledge that one's action is virtually certain to cause death or grievous bodily harm: *Woolin*. Recklessness will not suffice. Jane's state of mind looks like recklessness rather than intention to cause GBH, so would not amount to mens rea of murder.
- Involuntary manslaughter – Unlawful act manslaughter – act must be unlawful and dangerous: *Franklin*, *Lamb*, *Church*, *Newbury*. Gross negligence manslaughter requires a duty of care by D towards V – D must either be recklessly indifferent to an obvious risk to V's health, or foresee the risk and decide to run it: *Stone and Dobinson*, approved by HL in *Alexako*. As a carer, employed to look after Mary, Jane clearly owes her a duty of care.
- Jane may be guilty of the manslaughter of Lutsi. Could be argued as unlawful act manslaughter or gross negligence manslaughter.
- Causation – the fact that Lutsi voluntarily decides not to seek help is probably not going to break the chain – seems to fall within the principle of taking one's victim as you find her: *Blaue*. If V fails to seek medical treatment (*Holland*) or acts in a way which exacerbates the risk of death (*Wall*), this will not normally break the chain of causation (*Dear*) – although it may be relevant to sentence if D is convicted of manslaughter.

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the law of murder and manslaughter. Response is clear, detailed and fully developed.	[12-15 marks] - Excellent application of legal rules and principles to Jane's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to criminal liability. The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] Good knowledge and understanding of the English legal system and legal rules and principles relating to the law of murder and manslaughter. Response is generally clear, detailed and developed	[8-11 marks] - Good application of legal rules and principles to Jane's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to criminal liability. The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the law of murder and manslaughter. Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Jane's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to criminal liability. The legal argument includes some detail which is developed in places
1	[1-2 marks] Basic knowledge and understanding of the English legal system and legal rules and principles relating to the law of murder and manslaughter. Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Jane's situation. - Basic presentation of a legal argument using minimal legal terminology relating to criminal liability. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

Section D

Human Rights Law

0 7

Ade had recently opened a student bank account, and he was issued with a silver-coloured debit card. On his way to use the cash machine for the first time, he took the card from his pocket and held it in his hand as he walked along the street. Police Constable Freeman saw something that looked metallic in Ade's hand, and thought that it might be a knife. He pushed Ade to the ground and then kneeled on Ade's back while he searched Ade's jacket for weapons. Finding only the debit card, he pulled Ade to his feet, and told him that he was taking him to the police station in order to establish his identity. On arrival at the station Ade's fingerprints were taken by force. Ade was refused permission to phone his family or speak to a solicitor. After thirty-eight hours in police custody, Ade was told that the police had established his identity and that he was free to leave.

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

Indicative content

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

AO1

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

The response might consider issues such as:

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

AO2

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

The response might consider issues such as

In the case of the stop and search

- reasonable suspicion to stop and search Ade under Code A of the Codes of Practice
- requirements of a valid search: information given to Ade under section 2 of PACE; the failure renders search invalid: the Osman case could be cited to support this
- requirements under section 3 of PACE to supply Ade with a record of the stop and Search

In the case of the arrest

- Ade should be advised that the police can arrest him; under s.24 of PACE as amended by section 110 of SOCPA 2005 provided that they reasonably suspect that an offence is about to be committed, is being committed, or has been committed. The power to arrest Ade can only be exercised if the police have reasonable grounds to believe it is necessary under section 24(5) of PACE. Reasons include: where the suspect's name cannot be readily ascertained or no satisfactory address has been given; where it is necessary to prevent the suspect causing injury to himself or another or suffering physical injury or causing loss or damage to property; to allow the prompt and effective investigation of the offence or the conduct of the suspect, or to prevent the investigation being hindered by his disappearance.

Query whether Ade was validly arrested in view of the procedural requirement of S.28; DPP v Hawkins. and Code of Practices, Code G - the procedural requirements of a valid arrest including the fact Ade is under arrest; also the grounds for arrest (s.28) and that he should be cautioned

In the case of the detention

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

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. Response is clear, detailed and fully developed.	[12-15 marks] - Excellent application of legal rules and principles to Ade's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] Good knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. Response is generally clear, detailed and developed	[8-11 marks] - Good application of legal rules and principles to Ade's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Ade's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the legality of the actions of the police. The legal argument includes some detail which is developed in places
1	[1-2 marks] Basic knowledge and understanding of the English legal system and legal rules and principles relating to the law on police powers. Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Ade's situation. - Basic presentation of a legal argument using minimal legal terminology relating to the legality of the actions of the police. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	

0 8

Ranvir is the head teacher at a primary school attended by children of several different religious faiths. Instead of the traditional Easter celebrations, Ranvir has decided that this year the school should hold a non-religious Spring Festival, so that all of the children can take part. However, when Ranvir revealed her plans at a meeting of the school's Parent-Teacher Association, she was fiercely opposed by one of the parents, Adam, who openly accused her of being obsessed with political correctness and having no real concern for the welfare of the children. Several days later, Adam encountered Ranvir outside the school and behaved so aggressively towards her that he was arrested and charged with assault and affray. The story was picked up by a popular tabloid newspaper, the Morning Times which ran it under the headline: "Mean Ranvir Cancels the Easter Bunny" and stated that it was absurd that Adam should be prosecuted for standing up for the views of right-thinking people.

Advise Adam as to whether the Morning Times may be guilty of contempt of court, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

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

AO1

In advising Adam, candidates are expected to demonstrate knowledge and understanding of the English legal system legal rules and principles relevant to contempt of court.

The response might consider issues such as:

- The governing statute is the Contempt of Court Act 1981. Prosecutions require consent of the Attorney-General.
- Contempt of Court Act 1981, s.1: strict liability offence.
- Common law contempt where prejudice is intentional: A-G v News Group Newspapers, A-G v Hislop.
- Proceedings active from time of arrest.

AO2

Candidates are expected to apply the full range of legal rules and principles to Adam's situation, including the Contempt of Court Act 1981 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Section 1 - does the article interfere with the administration of justice in a particular case? Application to the scenario; the article interferes with Adam's forthcoming trial
- Was the article written during the active period? - criminal cases become active from arrest, therefore the active period is established here
- Section 2 (2) Need for substantial risk of serious prejudice; A-G v NGN, A-G v MGN; Woodgate and Bowyer. Discuss factors such as words used, proximity of the article to the trial, pictures used, circulation and profile of the person named in the article
- Defences: s.3 (innocent publication where no knowledge or reason to suspect that proceedings active at time of publication); s.5 (discussion in good faith of matters of public interest where risk of prejudice merely incidental AG V English).

Band	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	[8-10 marks] Excellent knowledge and understanding of the English legal system and legal rules and principles relating to contempt of court., Response is clear, detailed and fully developed.	[12-15 marks] - Excellent application of legal rules and principles to Adam's situation. - Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to contempt of court. The legal argument is detailed, fully developed and persuasive.
3	[5-7 marks] Good knowledge and understanding of the English legal system and legal rules and principles relating to contempt of court. Response is generally clear, detailed and developed	[8-11 marks] - Good application of legal rules and principles to Adam's situation. - Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to contempt of court. The legal argument is generally detailed, developed and persuasive
2	[3-4 marks] Adequate knowledge and understanding of the English legal system and legal rules and principles relating to contempt of court. Response includes some detail which is developed in places.	[4-7 marks] - Adequate application of legal rules and principles to Adam's situation. - Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to contempt of court. The legal argument includes some detail which is developed in places
1	[1-2 marks] Basic knowledge and understanding of the English legal system and legal rules and principles relating to contempt of court. Response includes minimal detail.	[1-3 marks] - Basic application of legal rules and principles to Adam's situation. - Basic presentation of a legal argument using minimal legal terminology relating to contempt of court. The legal argument includes minimal detail.
0	Response not creditworthy or not attempted.	