



# **GCE A LEVEL MARKING SCHEME**

**AUTUMN 2021**

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

## **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.

**GCE A LEVEL LAW**  
**COMPONENT 3 - PERSPECTIVES OF SUBSTANTIVE LAW**  
**AUTUMN 2021 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 |
|---|---|

 The rules on misrepresentation are clear and understandable. 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 misrepresentation, the English legal system and the law of contract. For example, a response may include reference to the clarity and understandability of the different types of misrepresentation and what is required for them to apply.

#### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to misrepresentations made within the law of contracts

The response might consider issues such as:

- Definition of the term misrepresentation.
- Followed by a breakdown and review of the main parts of the definition.
- A statement of material fact - *Bisset v Wilkinson* (1927), Issues of fact or an opinion.
- Made by one party to a contract to the other party - *Peyman v Lanjani* (1985)
- During the negotiations leading up to the formation of the contract - *Roscorla v Thomas* (1842)
- Which was intended to operate and did operate as an inducement - *JEB Fasteners Ltd v Marks Bloom & Co Ltd* (1983) and *Attwood v Small* (1838)
- Not intending to be a binding obligation under the contract, and which was untrue or incorrectly stated - *Couchman v Hill*
- Types of misrepresentation should be considered.
- Fraudulent - *Derry v Peek* (1889) if a person makes a false statement which he or she does not believe to be true at the time. The claimant will then sue for damages under the tort of deceit
- Negligent misrepresentation - *Hedley Byrne v Heller & Partners* (1964) damages may be recovered for a negligent misrepresentation where a financial loss has been incurred and where there is a special relationship between the parties. Plus the necessary requirements.
- Innocent - any misrepresentation not made fraudulently was historically classed as an innocent misrepresentation regardless of how it was made. Since the emergence of the *Hedley Byrne* principle and the passing of the Misrepresentation Act 1967, the only misrepresentations that can be claimed to be made innocently are those where a party makes a statement with an honest belief in its truth

- How damages can be awarded and the appropriate mechanism.
- Fraudulent - damages will be awarded according to the tort of deceit and are also available under s2(1) Misrepresentation Act 1967. The equitable remedy of rescission is also available. The defendant is responsible for all losses including any consequential loss providing a causal link between the fraudulent misrepresentation and the claimant's loss.
- Negligent - damages will be applied according to the standard tort measure of negligence or under s2(1) Misrepresentation Act 1967. The equitable remedy of rescission is also available.
- Innocent - the main remedy for innocent misrepresentation is the equitable remedy of rescission; that is to void the contract as if it never happened. Damages are also available under s2(1) Misrepresentation Act 1967.
- Consideration of s2(1) Misrepresentation Act 1967.

### AO3

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

The response might consider issues such as:

- Issues over silence and the duty not to lie, rather than to tell the truth. Does this make the law clear and understandable?
- The law imposes a laissez faire attitude in contract means that the parties should be left alone to contract. There is a presumption of acting in good faith and fair dealing. Is this understandable or could there be an issue where one party remains silent?
- Should the law of misrepresentation be extended to cover silences? Would this be a more sensible approach?
- The difficulty in appreciating whether a statement is one of fact or opinion *Smith v Land and House Property Corporation* 1884.
- The distinction between factual claims and 'mere sales talk' may mean the law is not understandable. *Dimmock v Hallett* 1866.
- The distinctions between the different types of misrepresentation may be difficult to understand.
- The issue of adducing evidence to prove a fraudulent misrepresentation and an intentional lie on behalf of one of the parties. *Derry v Peek* 1889.
- It is still not totally clear what precisely is a 'special relationship'.
- The issues relating to different remedies and legal pathways available.
- For example common law requiring a special relationship and proximity. However this is not required under the Misrepresentation Act 1967.
- Shifting burden of proof to the representor who is liable unless 'unless he proves that he had reasonable grounds to believe, and did believe up to the time the contract was made, that the facts represented were true *Howard Marine and Dredging v A Ogden and Sons (Excavations) Ltd* 1978.
- Remedies for misrepresentation have a different purpose and may cause confusion.
- Rescission is to restore the parties to their original position before the contract, whereas remedies indicate the moral view of the court for each type of representation

- Is it a clear situation where a careless representor caught under the 1967 Act will be ordered to pay compensation on the same basis as someone who intentionally lied?
- Partial rescission is not possible.  
Links to the question and use of the terms clear and understandable are expected. clear and understandable are different words and should appear in different contexts, rather than grouped together.

| 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 misrepresentations. 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 misrepresentations. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>Excellent evaluation of the principles regarding misrepresentation, 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 misrepresentations. 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 misrepresentations. 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 misrepresentations, 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 misrepresentations. 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 misrepresentations. Analysis includes some detail with supporting evidence.</li> <li>Adequate evaluation of the principles regarding misrepresentations, 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 misrepresentations. 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 misrepresentations. Analysis includes minimal detail.</li> <li>Basic evaluation of the principles regarding misrepresentations.</li> <li>Basic citation of supporting case law and legal authorities.</li> </ul>                                                                                                                                                        |
| 0    | Response not creditworthy or not attempted.                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



- |   |   |
|---|---|
| 1 | 2 |
|---|---|
- Analyse and evaluate the significance of implied terms in the supply of goods and services involving consumers under the Consumer Rights Act 2015. [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 implied terms regarding supply of goods and services contracts to consumers, the English legal system and law of contract. For example, a response may include reference to how the relevant sections in the Consumer Credit Act 2015 have developed and the significance of the law in this area.

### **AO1**

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to implied terms in supply of goods and services contracts involving consumers under the Consumer Rights Act 2015.

The response might consider issues such as:

- Explain what is meant by an implied term. These are terms which the law says have to be included, irrespective of the wishes of the parties.
- The implied terms relate to contracts between a trader and a consumer.
- The Consumer Rights Act 2015 contains implied terms with regard to contracts concerning the supply of goods and services.
- Relating to supply of goods.
- S.9 – of satisfactory quality – not faulty or damaged – this is judged by what a reasonable person would consider satisfactory.
- S10 – fit for purpose – should be fit for the purpose they are supplied for as well as any specific purpose made known to the retailer.
- S11 – as described– must match any description, models or samples shown at the time of purchase.
- ‘Goods’ also includes digital content such as downloads, software and pre installed content.
- s20, s23: bringing a claim must be against the retailer, not the manufacturer.
- Date of purchase - s20 gives the consumer a legal right to reject goods that are of unsatisfactory quality, unfit for purpose or not as described to get a full refund, but this is limited to within 30 days of purchase.
- s23 provides that you have to give the retailer one opportunity to repair or replace any goods if you are outside the 30 days. If the attempt to repair is unsuccessful, you can then claim a refund or a price reduction.
- If a fault is discovered within six months of purchase, it is presumed to have been there since purchase, unless the retailer can prove otherwise.
- If the fault is discovered after six months, the burden is on the consumer to prove that the product was faulty at the time of delivery. You have six years to take a claim to the small claims court

- There are also implied terms in the Consumer Rights Act 2015 relating to the supply of services.
- This includes services for dry cleaning, entertainment, work done by professionals (solicitors, estate agents, accountants), building work, fitted kitchens, double glazing.
- s49 – the trader must perform the service with reasonable care and skill.
- s50 – information which is said or written is binding where the consumer relies on it.
- s51 – where the price is not agreed beforehand, the service must be provided for a reasonable price.
- s52 – unless a time scale has been agreed, the service must be carried out within a reasonable time.
- s55, s56 - the claim must be made against the trader.
- The Consumer Rights Act 2015 also imposes implied terms about unfair contract terms.
- s62 states that an unfair term under is not binding on the consumer. If a consumer thinks a term is unfair, they should complain to the trader.
- Key terms of a contract may be assessed for fairness, unless they are prominent and transparent.
- Examples of unfair terms under the Act include fees and charges hidden in the small print and something that tries to limit the consumer's legal rights.

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the significance of implied terms for consumers in supply of goods and services contracts, 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 significance of the law in this area.

The response might consider issues such as:

- Implied terms in respect of supply of goods and services includes some fundamental rights for consumers and therefore play a significant part in this area of law.
- It is a welcome replacement for the old law which was seen as unnecessary, complex and fragmented.
- Consolidates the provisions of UCTA and the Unfair Terms in Consumer Contracts Regulations 1999 ("UTCCR"), into one place, "removing anomalies and overlapping provisions in relation to consumer contracts".
- However there are two distinct areas of law, one which relates to "businesses" and the other which relates to "consumers". This may prove confusing.
- The implied terms try to provide bargaining power to consumers against large powerful organisations.
- They allow a consumer to reject the goods and/or claim damages.
- The right to reject defective goods empowers the consumer.
- For business the right to reject is restricted so the opportunity to repair and/or offer compensation is available to the seller.
- Should the seller be entitled to the right to replace the goods when selling to consumers?
- The law has developed to include digital goods and provides new consumer rights and remedies in this area.

- The Consumer Rights Act 2015 does not contain all the law in this area. For example, there is still the Consumer Protection Act 1987 still in force in respect of dangerous goods.
- There is an argument that the remedies under the Consumer Rights Act 2016 are weaker than under previous legislation.
- The public are often unaware of their rights, those who are aware are unwilling or cannot finance the pursuing of them.
- There is still very little law since the CRA 2015.

| 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 significance of implied terms in supply contracts involving consumers. 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 significance of implied terms in supply contracts involving consumers. 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 implied terms in supply contracts involving consumers. 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 significance of implied terms in supply contracts involving consumers. 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 significance of implied terms in supply contracts involving consumers. 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 implied terms in supply contracts involving consumers. 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 significance of implied terms in supply contracts involving consumers. 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 significance of implied terms in supply contracts involving consumers. Analysis includes some detail with supporting evidence.</li> <li>Adequate evaluation of the principles regarding v, 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 significance of implied terms in supply contracts involving consumers. 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 significance of implied terms in supply contracts involving consumers. Analysis includes minimal detail.</li> <li>Basic evaluation of the principles regarding the significance of implied terms in supply contracts involving consumers.</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 |
|---|---|
- Discuss the development of the rule in
- Rylands v Fletcher*
- . [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 rule in *Rylands v Fletcher*, the English legal system and law of tort. For example, a response may include reference to the development of the rule in *Rylands v Fletcher* and whether it has unduly restricted its use.

#### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant the rule in *Rylands v Fletcher*.

The response might consider issues such as:

- This is where something is destroyed or damaged by something escaping from a neighbour's property.
- Comments from the case of *Rylands v Fletcher* 1868, about damage caused by escaping cattle, flooded mines or damage caused by escaping fumes and poisonous vapours.
- The rule in *Rylands v Fletcher* 1858; (i) something must have been collected and kept on the land, (ii) the use of the land must be non-natural, (iii) the thing brought onto the land must be likely to do mischief if it escaped and (iv) the thing brought onto the land must have escaped and caused damage.
- Traditionally, liability was strict without the need to prove fault.
- Initially, unlike nuisance, there was no need for the harm to be foreseeable.
- Initially a claim could only be brought by the owner of the land or someone with a property interest in it.
- There has been development and consideration of the various aspects of the rule over the years.
- The thing collected and kept on the land - *Miles v Forest Gran Co (Leicestershire) Limited* 918.
- The thing must be brought onto the land. \If it is naturally present there will be no liability.
- Non-natural use of the land - this has been developed by *Rickards v Lothian* 1913 and *Transco PLC v Stockport Metropolitan Borough Council* 2004.
- The following were held to be natural use - a fire in a grate which spread to the claimant's premises, defective electrical wiring which caused a fire which spread to the claimant's premises and a domestic water supply.

- Non-natural use and foreseeability of harm - there must be an escape of something which causes harm as shown in *Read v K Lyons and Co.* 1947.
- More modern case law includes *LMS International Ltd. v Styrene Packaging and Insulation Ltd.* 2005 where storage of flammable items lead to a recognisable risk.
- *Stannard (t/a Wyvern Tyres) v Gore* 2012, where storage of tyres did not present an exceptionally high risk of danger and tyre fitting was a natural use of the premises in an industrial estate.
- Defences are available, namely *volenti non fit injuria* or consent, act of a stranger - *Perry v Kendrick's Transport Ltd.* 1956.
- Other defences include an Act of God *Nichols v Marsland* 1876, statutory authority and contributory negligence where the claimant is partly responsible.
- As regards a remedy the claimant has to prove damage and the amount will be limited to the cost of repair or replacement.

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the rule in *Rylands v Fletcher*, 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 development of the rule has unduly restricted its use.

The response might consider issues such as:

- Evolution of law and rules from 1868 may be entirely appropriate and allow for application of the law to a more modern age.
- Arguably what was a non-natural use of land 100 years ago may not be the same today.
- The decision in *Stannard (t/a Wyvern Tyres) v Gore* 2012 concluded that damage caused when a fire escaped can fall within *Rylands v Fletcher*. However it is likely to be very rare as it is the 'thing' that is brought onto the land that must escape and not the fire.
- The tort is described as strict liability but many defences are available.
- The tort is a no fault one, where the reason the thing escaped does not have to be proved and should therefore be easier to prove than the alternative of negligence.
- Despite the expectation that the rule in *Rylands v Fletcher* was to provide a broad possibility of providing for damage to property and for personal injury, case law has appeared to restrict its use.
- *Rickards v Lothian* took a restrictive approach and encouraged the use of negligence instead.
- It can be difficult to prove a non-natural use of the land.
- According to *Read v Lyons* 1947 there can only be liability if the thing brought onto the land escapes. This also makes the tort more difficult to prove.
- There is a return to the foreseeability of the type of damage in *Cambridge Water Company v Eastern Counties Leather PLC.* 1994.
- The Pearson Committee Report 1978 called for the rule in *Rylands v Fletcher* to be replaced with a statutory scheme for injuries suffered in hazardous activities and require those who engage in them to pay compensation on a strict liability basis.
- It may be that the restrictions applied to the rule in *Rylands v Fletcher* will see the area of law being used less and less and alternatives claims under the torts of nuisance and negligence being used instead.

| 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 rule in Rylands v Fletcher. 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 rule in Rylands v Fletcher. 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 rule in Rylands v Fletcher, 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 rule in Rylands v Fletcher. 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 rule in Rylands v Fletcher. 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 rule in Rylands v Fletcher, 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 rule in Rylands v Fletcher. 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 rule in Rylands v Fletcher. Analysis includes some detail with supporting evidence.</li> <li>Adequate evaluation of the principles regarding the rule in Rylands v Fletcher, 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 rule in Rylands v Fletcher. 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 rule in Rylands v Fletcher. Analysis includes minimal detail.</li> <li>Basic evaluation of the principles regarding the rule in Rylands v Fletcher.</li> <li>Basic citation of supporting case law and legal authorities.</li> </ul>                                                                                                                                                         |
| 0    | Response not creditworthy or not attempted.                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|   |   |
|---|---|
| 1 | 4 |
|---|---|

 Analyse and evaluate whether the law on occupiers' liability is fair and effective. [25]

### Indicative content

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

This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including the rules on occupiers' liability, the English legal system and law of tort. For example, a response may include reference to the extent to which the Occupiers Liability Act 1957 and the Occupiers Liability Act 1984 are fair and effective.

### AO1

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

The response might consider issues such as:

- Define and explain the law provided by the Occupiers Liability Act 1957.
- Explanation of the duty of care owed to lawful visitors.
- Section 1 (2) – concept of lawful visitor; occupier – person with control – *Wheat v Lacon*; premises – wide ranging, *Hartwell v Grayson*, *Haseldine v Daw*, *Fosbrooke v Hobbes v Airwork Ltd*
- Section 2 (2) – The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.
- Section 2 (3)(a) The need to pay particular attention to children, *Addie v Dumbreck* (1929) and *British Railways Board v Herrington* (1972),
- Section 2 (4) – position relating to independent contractors – *Haseldine v Daw*;
- Section 2 (4)(a) – lawful visitor can become trespasser;
- Section 2 (3)(b) – limitations on those entering in exercise of calling.
- A lack of law for trespassers meant the law was unfair and lacked effectiveness.
- Explain the development made by the OLA 1984 to cover trespassers.
- Includes the statutory duty of care, to take care as is reasonable to see that the trespasser is not injured on the premises by the danger concerned
- Section 1 (1) – covers people other than visitors, provides compensation for injury.
- Section 1 (3) – duty when aware of the danger or reasonable grounds to believe it exists, know or believe trespasser in vicinity of danger and risk one against which occupier may be expected to offer some protection – *Donoghue v Folkstone Properties*; Section 1 (4) – duty to take reasonable care to prevent injury to the non-visitor.
- Standard of care objective and influenced by circumstances but greater degree of risk more precautions must be taken;
- Factors taken into account – nature of premises, degree of danger, practicality of precautions, age of trespasser - *Tomlinson v Congleton BC*,



### **AO3**

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the law on occupiers 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 whether the law on occupiers liability is fair and effective.

The response might consider issues such as:

- The law evolved from no real duty at common law to OLA 1957. However are issues concerning the fairness and effectiveness of this statute.
- There is a lack of a definition of occupier and this can be more than one person, providing confusion and a lack of certainty.
- The 1957 Act is restricted in its application to lawful visitors only.
- Harshness, especially on children, led to duty of common humanity.
- Acceptance of shortcomings led to OLA 1984 with the aim of deterrence.
- Problematic whether easy for occupiers to avoid liability and therefore law not effective.
- Justice issues related to restrictions and policy issues which struggle to make law fair and effective.
- How far should people take responsibility for themselves? Consider judgement by Lord Hoffman in *Tomlinson v Congleton Borough Council* [2003].
- How much should occupiers need to second guess what people will do?
- Reality of levels of protection; Effect of warnings.
- Despite both types of visitors being covered there are still problems in this area of law.
- References to fair and effective expected throughout.

| 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 occupiers liability. 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 occupiers 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 law of occupiers liability, 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 occupiers liability. 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 occupiers 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 the law of occupiers liability, 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 occupiers liability. 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 occupiers liability. Analysis includes some detail with supporting evidence.</li> <li>Adequate evaluation of the principles regarding the law of occupiers liability, 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 occupiers liability. 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 occupiers liability. Analysis includes minimal detail.</li> <li>Basic evaluation of the principles regarding the law of occupiers liability.</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 |
|---|---|
- Analyse and evaluate the effectiveness of the Crown Prosecution Service in prosecuting offenders. [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 work of the Crown Prosecution Service, the English legal system and criminal law. For example, a response may include references to the work of the Crown Prosecution Service, the result of reports and reviews in this area and cases which have impacted upon the effectiveness of the Crown Prosecution Service.

#### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the Crown Prosecution Service.

The response might consider issues such as:

- The establishment of the Crown prosecution Service, by the Prosecution of Offences Act 1985 to provide an independent prosecuting agency to replace the police.
- Their role is to advise the police on cases for possible prosecution, review cases submitted by the police for prosecution, prepare cases for court and presents cases at court.
- The decision whether to prosecute is made using the Full Code test contained in the Code for Crown Prosecutors, issued by the Director of Public Prosecutions under s.10 of the Prosecution of Offences Act 1985.
- The Full Code Test comprises of two tests, namely the evidential and public interest tests.
- Both tests must be met, if the evidential test fails the case cannot proceed to court.
- The evidential test must show that there is a 'realistic prospect of conviction'.
- This means the court will be more likely than not to convict.
- Consideration should be given to the type of evidence that would encourage a decision to prosecute.
- The evidence must be admissible in court and it also must be reliable.
- Evidence that is likely to be excluded would not encourage a prosecution. For instance evidence obtained by improper means such as in breach of the Police and Criminal Evidence Act 1984.

- Unreliable evidence may include confessions obtained through oppression, hearsay, evidence that relates to the bad character of the defendant and doubts about the reliability of a witness.
- The public interest test must lead prosecutors to be satisfied that it is in the public interest to prosecute.
- There may be occasions when the prosecutor is satisfied that the public interest is better served by not bringing a prosecution or by offering an out-of-court disposal.
- There are a series of questions that must be considered for this test. These are *how serious is the offence committed?* With more serious offences likely to face a charge. *What is the level of culpability?* Where the greater the suspect's level of culpability, the more likely it is that a prosecution is required.
- A further question is *what are the circumstances of and harm caused to the victim?* Here the more vulnerable the victim's situation, the more likely it is a prosecution is required. Also *what was the suspect's age and maturity at the time of the offence?* Particularly for suspects under 18 years it would be considered whether the prosecution is likely to have an adverse impact on their future prospects disproportionate to the seriousness of the offending.
- The last 2 tests are *what the impact on the community is* and *do sources of information require protection?*
- The Threshold Test may also be considered where there is insufficient evidence available to apply the evidential test. There must be reasonable grounds for believing that further evidence will be available within a reasonable period. In addition the seriousness or the circumstances of the case justifies the making of an immediate charging decision.
- There must also be continuing substantial grounds to object to bail and in all the circumstances of the case it is proper to do so.
- The structure of the organisation and roles of the personnel involved.
- The role of the CPS Inspectorate established under the Crown Prosecution Service Inspectorate Act 2000.

### 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 the effectiveness of the Crown Prosecution Service, 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 effectiveness of the Crown Prosecution Service in prosecuting offences.

The response might consider issues such as:

- The background and reasons for the establishment of the CPS, including the Justice Report and Philips Commission.
- Concern over serious miscarriages of justice such as the Birmingham 6 and Guildford 4 cases.
- Issue of it not being in the interests of justice that the same body should be both investigators and prosecutors.
- Lack of uniformity, inefficient, preparation and presentation of cases, etc.
- Passing of the Prosecution of Offences Act 1985 and the expectation of an efficient prosecuting body independent from the police.
- Their role in advising the police; conducting prosecutions in the magistrates' courts and Crown Court.
- Early problems and proposals for reform: Glidewell Report, Narey review.
- Major reforms: the Narey fast-track system; establishment of Criminal Justice Units; closer collaboration with the police.

- Problems of being too centralised and over bureaucratic.
- Roles of the Attorney-General and Director of Prosecutions.
- Response to criticisms such as establishment of full advocacy rights; CPS Direct;
- Under the Criminal Justice Act 2003 the CPS has taken over charging in all but minor cases. Has this reduced judge ordered acquittals?
- Cases such as Damilola Taylor and Abu Hamza.
- Establishment of CPS Inspectorate.
- Consideration that there has been a gradual expansion of the role of the CPS and subsequent criticism that it has too much responsibility.
- Recent cases and examples that touch upon the efficiency and effectiveness of the CPS. Including the decision not to prosecute Lord Janner.
- Problems of the disclosure of evidence in rape cases which affect justice being achieved in 2018.
- The case of Paul Gambaccini, who won undisclosed damages from the CPS over historic sex offences allegations.

| 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 Crown Prosecution Service. 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 Crown Prosecution Service. 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 Crown Prosecution Service, 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 Crown Prosecution Service. 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 Crown Prosecution Service. 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 Crown Prosecution Service, 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 Crown Prosecution Service. 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 Crown Prosecution Service. Analysis includes some detail with supporting evidence.</li> <li>Adequate evaluation of the principles regarding the Crown Prosecution Service, 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 Crown Prosecution Service. 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 Crown Prosecution Service. Analysis includes minimal detail.</li> <li>Basic evaluation of the principles regarding the Crown Prosecution Service.</li> <li>Basic citation of supporting case law and legal authorities.</li> </ul>                                                                                                                                                         |
| 0    | Response not creditworthy or not attempted.                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|     |                                                                                                            |
|-----|------------------------------------------------------------------------------------------------------------|
| 1 6 | The law relating to the legal defence of insanity is outdated and in serious 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 the defence of insanity, the English legal system and criminal law. For example, a response may include reference to the establishment of the defence, development through case law and whether it is in need of reform.

### **AO1**

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

The response might consider issues such as:

- The defence of insanity stems from the case of M'Naghten 1843.
- The rules provide that everyone is sane unless the contrary is proven.
- The burden of proving insanity is on the defence, who must prove it on the balance of probabilities.
- Insanity is a defect of reason, caused by a disease of the mind so that a person did not know either the nature and quality of their act or, if they did know it, they didn't know what they were doing was wrong.
- A defect of reason needs to a complete absence of the power to reason. Absentmindedness or confusion are not sufficient. Clarke 1972.
- A disease of the mind can be either a mental or physical disease which affects the mind. The term is a legal term and not a medical one.
- In Kemp 1956 hardening of arteries caused a problem with supply of blood to the brain. It was held that physical illnesses are included if they affect mental faculties of reason, memory and understanding.
- The cause of the mental issue must be caused by an internal factor for the defence to be successful.
- If the mental issue is caused by an external factor the appropriate defence will be one of automatism which allows for a complete acquittal.
- The case of Quick 1973 involved a diabetic taking insulin, but not eating, and this was therefore an external factor. Hence automatism was available as a full defence.
- Contrast with the case of Hennessy 1989. Here as nothing was taken into the body and the defendant's mental issues were caused by the internal factor of diabetes, which would have meant application of insanity.
- Common illnesses may result in the defence of insanity for instance epilepsy, Sullivan 1984 and sleepwalking or somnambulism in Burgess 1991.

- The defendant must not know the nature and quality of their physical act because they are in a state of unconsciousness or impaired consciousness. Alternatively they may be conscious but are unaware of the nature of the act due to their mental state.
- In Oye 2013 the defendant's mental condition prevented him from understanding the use and amount of reasonable force in the circumstances of his arrest by the police.
- The defendants must prove they did not know what they were doing was legally wrong (not morally wrong).
- If the defendant knows the nature and quality of the act and that it is legally wrong they cannot use the defence of insanity - Windle 1952.
- If successful insanity produces the 'special verdict of not guilty by reason of insanity'.
- Before 1965, those guilty of murder could be put to death so they sought an insanity verdict.

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the legal defence of insanity is outdated and in serious need of reform, 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 legal defence of insanity is outdated and in serious need of reform.

The response might consider issues such as:

- It is based on an 1843 case and could be seen as outdated and in need of reform.
- We understand mental illness much more in the 21st century.
- Definition of insanity is legal not medical.
- Arguably some defendants who should be regarded as insane are not e.g. Byrne 1960.
- Defendants suffering with physical diseases like diabetes, or even those who sleep walk are considered insane e.g. Hennessy 1989 and Burgess 1991.
- The consequences of diabetes can be different depending on whether or not someone has taken insulin. This illogical distinction could be seen as in need of reform.
- The defendant has to prove insanity which may breach the European Convention on Human Rights Art 6, as the defendant should be seen as innocent until proven guilty.
- There is a stigma to being labelled insane yet it is the only defence available to many defendants.
- It is the jury's role to decide whether the defendant is insane and they are not really qualified for this.
- Royal Commission on Capital Punishment 1953 suggested those with irresistible impulses would have been covered but it never became law.
- Instead the Government introduced the defence of diminished responsibility but this is only available for murder charges.
- Butler Committee 1975 suggested it should be replaced by verdict of 'not guilty on evidence of mental disorder' again this never became law.
- The Draft Criminal Code 1989 suggested a defendant should be not guilty on evidence of severe mental disorder or handicap again this never became law.
- The Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 gave judges more discretion on disposals where the defendant uses the defence of insanity.



- Prior to 1991 the only punishment was a hospital order which was not appropriate for those suffering with diabetes, epilepsy, etc. So many sought not to plead insanity
- Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 introduced new orders available to the judge.
- These include a hospital order without time limit (mandatory for murder), guardianship order, supervision and treatment order or an absolute discharge.
- The Law Commission's paper in 2012 on insanity and automatism offers alternatives but does not make any definite proposals.

| 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 defence of insanity. 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 defence of insanity. 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 defence of insanity, 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 defence of insanity. 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 defence of insanity. 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 defence of insanity, 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 defence of insanity. 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 defence of insanity. Analysis includes some detail with supporting evidence.</li> <li>Adequate evaluation of the principles regarding the defence of insanity, 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 defence of insanity. 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 defence of insanity. Analysis includes minimal detail.</li> <li>Basic evaluation of the principles regarding the defence of insanity.</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 the extent to which the law protects against intrusive state surveillance and unnecessary interception of communications. [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 state surveillance, interception of communications and human rights law. For example, a response may include reference to the powers under the Regulation of Investigatory Powers Act 2000 and the extent to which the law protects against intrusive state surveillance and unnecessary interception of communications.

#### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the law on state surveillance and interception of communications.

The response might consider issues such as:

- The state may invade privacy to protect internal security or to prevent and detect crime.
- Pre1985 there were no legal rules to be followed for tapping of telephones or intercepting mail. There was a warrant system with little legal force.
- *Malone v UK* 1985 led to legislation being introduced.
- Introduction of Interception of Communications Act 1985, replaced by the Regulation of Investigatory Powers Act 2000 (RIPA), amended the Investigatory Powers Act 2016.
- Police Act 199 places current practice in a statutory form and provides a wide basis for the use of bugging.
- Circumstances in which surveillance can be authorised. S.93 provides for the action expected to be of substantial value in the prevention and detection of serious crime and the objective cannot be reasonably achieved by other means.
- Role of the authorising officer and authorisation in an emergency.
- Length of an authorisation - written 3 months and oral 72 hours.
- Renewal of authorisation for a further 3 months.
- Regulation of Investigatory Powers Act 2000 (RIPA) - warrants approved by the Home Secretary.
- Authorisation under RIPA for the specific purpose of national security, preventing or detecting serious crime, safeguarding the economic wellbeing of the UK, giving effect to international assistance agreements.
- Role of Surveillance Commissioner.

- When authorisation must be given or confirmed by the Surveillance Commissioner. For example is the property is a dwelling, a bedroom in a hostel or office premises.
- Role of RIPA tribunal. Under s67 it operates under the principles of judicial review.
- Covert surveillance, under s.26 - 48 RIPA, involves monitoring, observing or listening to persons.
- Intrusive surveillance, generally, involves an individual or device is present on residential premises or in a vehicle.
- Cover surveillance is undertaken for the purposes of a specific investigation and in order to obtain private information about a person.
- Covert human intelligence source can involve the establishment of a relationship with a person to obtain information.
- Authorisations are granted by the Secretary of State or senior authorising officer such as chief Constables.
- Authorisation must be necessary and proportionate and include those in relation to national security, the economic wellbeing of the UK but the crime to be prevented or detected does not have to be serious.

### **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 state surveillance, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding whether the law on state surveillance is intrusive and interception of communications unnecessary.

The response might consider issues such as:

- Whilst it is legitimate to carry out state surveillance it is important to ensure the safeguards prevent unreasonable or arbitrary actions of an intrusive nature.
- Initially interception of communications had a lack of legal control, but this area of law has been subject to updates and amendments.
- This has led to continued review of safeguards. Khan (Sultan) (1996).
- Police Act 1997 - police not liable for actions authorised under the Act; s.93 - authorisation requirements.
- There are no exceptions to the interceptors under the Police Act 1997.
- Once made an authorisation, under the Police Act 1997, is immediately valid unless it is subsequently quashed by the Commissioner. However information may be obtained prior to the latter occurring.
- Under the Police Act 1997 there is no provision for a review of authorisation by the courts.
- RIPA improves the previous situation as it provides a statutory framework for the invasion of privacy.
- The Commissioner's powers under RIPA are supervisory and do not extend to taking action in relation to particular warrants.
- The involvement of Commissioners, even to a limited extent, does give some level of supervision and independence.
- The RIPA tribunal can authorise the quashing of a warrant, the destruction of information and award compensation.
- There is no appeal from the RIPA tribunal.
- In 2010 the tribunal received 164 complaints and upheld 6 of them.
- The Investigatory Powers Act 2016 updates existing powers.

- It ensures a 'double-lock' where warrants issued by the Secretary of State must also be approved by a senior judge.
- It also establishes a new Investigatory Powers Commission to oversee how the powers are used and criminal offences for those misusing the powers.
- Proper authorisation to carry out state surveillance is essential to prevent intrusive surveillance.
- There must also be clear remedies and strict control as part of these rules.

| <b>Band</b> | <b>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles.</b>                                                                                                                                                                                            | <b>AO3: Analyse and evaluate legal rules, principles, concepts and issues.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>4</b>    | <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 state surveillance and interception of communications. 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 state surveillance and interception of communications. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding.</li> <li>Excellent evaluation of the principles regarding state surveillance and interception of communications. including a valid and substantiated judgement.</li> <li>Excellent citation of supporting case law and legal authorities.</li> </ul> |
| <b>3</b>    | <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 state surveillance and interception of communications. 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 state surveillance and interception of communications. 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 state surveillance and interception of communications, including a valid judgement.</li> <li>Good citation of supporting case law and legal authorities.</li> </ul>                         |
| <b>2</b>    | <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 state surveillance and interception of communications. 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 state surveillance and interception of communications. Analysis includes some detail with supporting evidence.</li> <li>Adequate evaluation of the principles regarding state surveillance and interception of communications, including reference to a judgement.</li> <li>Adequate citation of supporting case law and legal authorities</li> </ul>                                                                                       |
| <b>1</b>    | <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 state surveillance and interception of communications. 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 state surveillance. Analysis includes minimal detail.</li> <li>Basic evaluation of the principles regarding state surveillance and interception of communications.</li> <li>Basic citation of supporting case law and legal authorities.</li> </ul>                                                                                                                                                                                            |
| <b>0</b>    | Response not creditworthy or not attempted.                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|       |                                                                                                                     |
|-------|---------------------------------------------------------------------------------------------------------------------|
| 1   8 | Public order laws strike a fair balance between freedom of assembly and the need to prevent disorder. 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 laws on public order and freedom of assembly, the English legal system and human rights law. For example, a response may include reference to statutory provision including the Public Order Act 1986 and the Criminal Justice and Public Order Act 1994.

### AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to public order legislation.

The response might consider issues such as:

- Article 11 European Convention on Human Rights provides for a right to peaceful assembly and the right to freedom of association.
- There are many laws that try to either restrict or prevent what would otherwise be lawful activities.
- S.11 Public Order Act 1986, POA governs sets out duties of organisers of marches or processions. Police must be given 6 days, written, notice if support or opposition is to be shown.
- Notice must specify certain details such as the time, date, proposed route and organiser's name.
- Notice not required if not practical.
- There should not be any deviation from the stated route.
- S.12 - police can impose conditions relating to time and place of a procession if they think that it might result in (i) serious public disorder, (ii) serious damage to property, (iii) serious disruption to the life of a community or (iv) a belief in the presence of intimidation or coercion. Known as 'triggers'.
- Reed 1987 - showed that the triggers must be interpreted strictly and not diluted.
- Abuse and shouting does not amount to a threat of violence - Newsgroups Newspapers v Sogat 1982.
- S.13 - allows banning orders for any march if it is thought it would end in serious public disorder. This can last for up to 3 months.
- S.14 - allows the police to impose conditions on meetings if the 'triggers' apply. This can be conditions imposed in advance and at the time of the meeting and to arrest anyone who fails to comply.
- S.16 definition of meeting/assembly and refers to 2 or more persons in a public place which is wholly or partly in the open air.
- Criminal Justice and Public Order Act 1994 (CJPOA) s.144 gives the local authority power to prohibit the holding of trespassory assemblies. DPP v Jones.

- S.63 gives the police the right to break up or prevent open air gatherings of 100 or more people if loud music is likely to cause serious distress to neighbours.
- There are a number of public order offences under POA including riot, violent disorder, affray and fear or provocation of violence. Credit discussion and case citation.
- Serious Organised Crime and Police Act 2005 (SOCPA) contains a number of measures that severely restrict the freedom to protest near parliament and other 'sensitive' sites.
- Designated area around parliament is 1km, 6 days notice required and conditions may be imposed.
- Conditions can be changed on the day of the protest without notice. One of the considerations is 'disruption to the life of the community'.
- Cases include Brian Haw and Maya Evans.
- Peace of the Peace law - power to stop actual or imminent breach of the peace. Moss 1985 and Austin 2007.

### AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of whether the public order laws strike a fair balance between freedom of assembly and the need to prevent disorder, 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 laws on public order strike a fair balance between freedom of assembly and the need to prevent disorder.

The response may include:

- A defence is available to an organiser of a march or procession if it is not practical to give notice. This may cause confusion over what is practical and what is not.
- If there is a deviation from the stated route there is a defence where (i) they did not suspect it had occurred or (ii) it was beyond their control. This suggests the law is trying to strike a balance between the conflicting areas of law.
- The fact that the police can impose conditions on a procession shows that they are trying to allow the right of assembly but also trying to prevent disorder.
- Some case law allows procession with shouts, abuse, waving of arms and fingers as this is discomfort but not intimidation. It could be argued that otherwise be seen to be difficult to protest. Reed 1987 and *Newsgroups Newspapers v Sogat* 1982.
- A s.13 banning order covers all marches, even a peaceful march which suggests an infringement of the right to assembly.
- The number of persons required for a meeting/assembly is 2 or more. This was significantly reduced by the Anti-Social Behaviour Act 2003 from the previous required number of 20. This is arguably a restriction on the right to assembly/
- Police failed in their attempt to execute powers under s.14 POA in *DPP v Baillie* 1995, which shows the courts are prepared to uphold the right to assembly.
- Similarly in *DPP v Jones* 1998 a peaceful non-obstructive gathering on the perimeter of Stonehenge was held to be lawful despite a s.144 order. Hence upholding the right of assembly.
- One of the considerations under SOCPA is the catch-all 'disruption to the life of the community' can stop almost any protest. Arguably not a fair balance.
- The law has the difficult position of attempting to facilitate legitimate political protest; whilst planning to protect the public from harm arising from risk of violent protest. Further comments making a judgement would be expected.



| 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 public order laws. 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 public order laws. 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 public order laws, 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 public order laws. 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 public order laws. 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 public order laws, 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 public order laws. 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 public order laws. Analysis includes some detail with supporting evidence.</li> <li>Adequate evaluation of the principles regarding public order laws, 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 public order laws. 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 development of public order laws. Analysis includes minimal detail.</li> <li>Basic evaluation of the principles regarding public order laws.</li> <li>Basic citation of supporting case law and legal authorities.</li> </ul>                                                                                                                                                         |
| 0    | Response not creditworthy or not attempted.                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |