GCE A LEVEL

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WJEC Eduqas GCE A Level in

LAW

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SAMPLE ASSESSMENT MATERIALS

Teaching from 2017



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For teaching from 2017
For awards from 2019

GCE A LEVEL LAW

SAMPLE ASSESSMENT MATERIALS

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A LEVEL

LAW

COMPONENT 1

The Nature of Law and the English Legal System

SAMPLE ASSESSMENT MATERIALS

1 hour 30 minutes

ADDITIONAL MATERIALS

In addition to this examination paper, you will need a 12 page answer book.

INSTRUCTIONS TO CANDIDATES

Section A: Answer **three** questions - questions 1 **and** 2 plus **either** question 3 **or** question 4.

Section B: Answer **one** question - **either** question 5 **or** question 6.

Write your answers in the separate answer book provided.

Use black ink or black ball-point pen.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets at the end of each question or part-question.

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Section A

*In Section A, you must answer **three** questions. Answer **both** questions 1 and 2 plus **either** question 3 **or** question 4.*

Questions 1 and 2 require you to demonstrate knowledge and understanding of the English legal system and legal rules and principles.

Credit will be given for the use of relevant supporting case law and authority.

*Answer **both** questions 1 and 2.*

1. Explain what is meant by the *ratio decidendi* and *obiter dicta* of a judgement. [5]

2. Explain the purpose of the Law Commission. [5]

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Questions 3 and 4 require you to apply legal rules and principles and the nature of law to given scenarios in order to present a legal argument using appropriate legal terminology.

Credit will be given for the use of relevant supporting case law and authority.

*Answer **either** question 3 or question 4.*

EITHER

3. *Read the scenario below and answer the question that follows.*

Sarah Jones is a passionate protester against war and she is regularly involved in protests around Parliament Square in London, even staying overnight on occasions in a tent. The Government has recently been concerned by the growing number of protesters, and to stop the protestors the Government has sought to use enabling powers under the Crime and Order (Fictitious) Act 2016 to ban existing, future and continuing demonstrations in and around Parliament Square. Sarah wishes to challenge this delegated legislation and is seeking your advice on how she can go about it.

Advise Sarah as to the ways in which she can challenge delegated legislation. In your answer you should include consideration of law and society. [15]

OR

4. *Read the fictitious statute and the scenario below, and answer the question that follows.*

Environmental Protection (Fictitious) Act 2016

Section 1:
"Any person who throws down, drops or otherwise deposits in, into or from any place to which a member of the public has access and leaves anything which litters the environment shall be guilty of an offence."

Karen, a teacher, has a car which has a convertible roof. Whilst driving her car with the roof down, a number of her student's mock exam papers were blown out of the car. She stopped the car and recovered as many papers as she could from the road but could not find some papers which had blown into a thick thorny hedge. Karen is being prosecuted under Section 1 of the Act.

Advise Karen as to whether an offence has been committed under the Environmental Protection (Fictitious) Act 2016 in this situation. In your answer you should include consideration of law and society. [15]

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Section B

*In Section B, you must answer **either** question 5 **or** question 6.*

You will need to answer both part (a) and part (b) of your chosen question.

Part (a) requires you to demonstrate knowledge and understanding of the English legal system and legal rules and principles.

Part (b) requires you to analyse and evaluate legal rules, principles, concepts and issues, and the nature of law.

Credit will be given for the use of relevant supporting case law and authority.

EITHER

5. (a) Explain the role of tribunals in the English legal system. [10]

   (b) Analyse and evaluate the importance of magistrates in the criminal justice system. In your answer you should include consideration of law and justice. [15]

OR

6. (a) Explain the structure, powers and appellate functions of the civil courts. [10]

   (b) Analyse and evaluate the importance of 'no win, no fee' arrangements. In your answer you should include consideration of law and justice. [15]

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COMPONENT 1: The Nature of Law and the English Legal System

Mark Scheme

Marking Guidance for Examiners

Summary of assessment objectives for Component 1

Component 1 assesses all three assessment objectives: AO1, AO2 and AO3. The assessment objectives focus on the ability to demonstrate knowledge and understanding of, the English legal system and legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology; and the ability to analyse and evaluate legal rules, principles, concepts and issues respectively.

The structure of the mark scheme

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

- Indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all 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 required by AO1, AO2 and AO3.

Stage 1 - Deciding on the band

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

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

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

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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.

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Section A

1. Explain what is meant by the *ratio decidendi* and *obiter dicta* of a judgement. [5]

Indicative content

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

In explaining what is meant by the *ratio decidendi* and *obiter dicta* of a judgement, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying judicial precedent. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question and not simply give a general answer on precedent.

The response might consider issues such as**:**

- an explanation of both *ratio decidendi* and *obiter dicta* and how they can be seen as binding and persuasive precedent respectively
- relationship of the court hierarchy in relation to precedent
- relevant case examples to illustrate the operation of *ratio decidendi* and *obiter dicta* within a judgement

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	**4 - 5**	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to *ratio decidendi* and *obiter dicta.* Response is clear, detailed and fully developed.
2	**2 - 3**	• Good knowledge and understanding of the English legal system and legal rules and principles relating to *ratio decidendi* and *obiter dicta.* Response is generally clear, detailed and developed.
1	**1**	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to *ratio decidendi* and *obiter dicta.* Response includes minimal detail.
	0	Response not creditworthy or not attempted.

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2. Explain the purpose of the Law Commission. [5]

Indicative content

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

In explaining the purpose of the Law Commission, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the role, composition and work of the Law Commission. In demonstrating this knowledge and understanding candidates are required to focus on the specific nature of the question and not simply give a general answer on the composition of the Law Commission.

The response might consider issues such as**:**

- the reasons for establishing the Law Commission, for example the need to set up a full time law reform body
- reference to the Law Commission Act 1965 which created the statutory independent body charged with keeping the law under review and recommending reform where it is needed. The main purpose of the Commission is to ensure that the law is fair, modern, simple and effective
- the Law Commission Act 2009 compels the government to give reasons why it has not implemented any proposal of the Law Commission
- examples of recent work showing its purpose can be utilised, for example the proposals that led to the Criminal Justice and Courts Act 2015

Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
3	**4 - 5**	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the purpose of the Law Commission. Response is clear, detailed and fully developed.
2	**2 - 3**	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the purpose of the Law Commission. Response is generally clear, detailed and developed.
1	**1**	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the purpose of the Law Commission. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

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3. Sarah Jones is a passionate protester against war and she is regularly involved in protests around Parliament Square in London, even staying overnight on occasions in a tent. The Government has recently been concerned by the growing number of protesters, and to stop the protestors the Government has sought to use enabling powers under the Crime and Order (Fictitious) Act 2016 to ban existing, future and continuing demonstrations in and around Parliament Square. Sarah wishes to challenge this delegated legislation and is seeking your advice on how she can go about it.

   Advise Sarah as to the ways in which she can challenge delegated legislation. In your answer you should include consideration of law and society. [15]

Indicative content

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

In advising Sarah, candidates are expected to apply the full range of legal rules and principles that affect the control of delegated legislation. In this case they will apply both parliamentary and judicial controls to the given scenario in order to present a legal argument.

The response might consider issues such as:

- advising Sarah as to why Parliament needs to have control of delegated legislation – to maintain Parliamentary Sovereignty and so that devolved bodies do not exceed their powers
- advising Sarah that the main way she can challenge the delegated legislation is by judicial review of the use of delegated legislation through the courts; by way of judicial review, Sarah can challenge the delegated legislation: *ultra vires* – the nature of law, law and society - the rule of law
- advising Sarah that judicial review will allow the courts to look at whether the Government was acting within their powers (*intra vires*) - substantive and procedural – possibly supported by the Aylesbury Mushroom Case and reference to the case of Strickland
- advising Sarah that the court will consider the reasonableness of the delegated legislation in reaching their decision whether the Government was acting *intra vires* or *ultra vires*
- advising Sarah that the government is not above the law and both parliament and judicial review are means of enforcing the rule of law. The law has to balance public and private interests. There is a separation of powers and the courts have a role in checking that the executive do not exceed their powers.

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Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	**12-15**	• Excellent application of legal rules and principles to Sarah's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the control of delegated legislation. The legal argument is detailed, fully developed and persuasive.
3	**8-11**	• Good application of legal rules and principles to Sarah's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the control of delegated legislation. The legal argument is generally detailed, developed and persuasive.
2	**4-7**	• Adequate application of legal rules and principles to Sarah's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the control of delegated legislation. The legal argument includes some detail which is developed in places.
1	**1-3**	• Basic application of legal rules and principles to Sarah's situation. • Basic presentation of a legal argument using minimal legal terminology relating to the control of delegated legislation. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

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4. Environmental Protection (Fictitious) Act 2016

Section 1:
"Any person who throws down, drops or otherwise deposits in, into or from any place to which a member of the public has access and leaves anything which litters the environment shall be guilty of an offence."

Karen, a teacher, has a car which has a convertible roof. Whilst driving her car with the roof down, a number of her student's mock exam papers were blown out of the car. She stopped the car and recovered as many papers as she could from the road but could not find some papers which had blown into a thick thorny hedge. Karen is being prosecuted under Section 1 of the Act.

Advise Karen as to whether an offence has been committed under the Environmental Protection (Fictitious) Act 2016 in this situation. In your answer you should include consideration of law and society. [15]

Indicative content

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

In advising Karen candidates are expected to apply the full range of legal rules and principles that affect the application of the rules of statutory interpretation to Karen's situation. In this case candidates may apply the literal, golden, mischief and purposive rules, plus other aids of interpretation, including both intrinsic and extrinsic aids, to the given scenario in order to present a legal argument.

The response might consider issues such as:

- referring the four rules of statutory interpretation to Karen's situation
  - the literal rule gives words the natural and grammatical meaning, even if the result is absurd; support from cases such as *Whitely v Chappel*, *Lees v Secretary of State, Fisher v Bell, London LNER v Berriman;* application of the literal rule to the scenario
  - the golden rule allows words in a statute to be modified in order to avoid an absurdity or repugnant result; support from cases such as *Sweet v Parsley, Adler v George, Re SIgsworth, R v Allen*; application of the golden rule to the scenario
  - the mischief rule looks at the gap in the law Parliament intended to fill. Established in *Heydon's Case*; support from cases such as *Smith v Hughes, Royal College of Nursing v DHSS, Pepper v Hart*; application of the mischief rule to the scenario
  - the purposive rule looks at the 'spirit of the law' and looks to see what Parliament intended, favoured approach of interpretation of EU Law; support from cases such as *Magor v St Mellons*, *Quinataville, Jones v Tower Boot Company*; application of the purposive rule to the scenario
- applying other methods of interpretation to Karen's situation including:
  - whether the use of intrinsic aids (short title, long title, preamble interpretation sections, margin notes, Rules of Language) would help Karen
  - whether the use of extrinsic aids (Hansard, dictionaries, textbooks, Human Rights Act 1998, international conventions) would help Karen
  - presumptions
- advising Karen that the application of statutory interpretation shows how the judiciary balances conflicting interests and identifies the different interests of parties to a dispute. The law also has to decide the extent to which fault should lead to criminal liability. It is a court's role to interpret the law and not make it. Given the separation of powers, law-making is the responsibility of the legislature and not judges.

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Band	Marks	AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology
4	**12-15**	• Excellent application of legal rules and principles to Karen's situation. • Excellent presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation. The legal argument is detailed, fully developed and persuasive.
3	**8-11**	• Good application of legal rules and principles to Karen's situation. • Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation. The legal argument is generally detailed, developed and persuasive.
2	**4-7**	• Adequate application of legal rules and principles to Karen's situation. • Adequate presentation of a legal argument using some appropriate legal terminology, case law and other legal authorities relating to the rules of statutory interpretation. The legal argument includes some detail which is developed in places.
1	**1-3**	• Basic application of legal rules and principles to Karen's situation. • Basic presentation of a legal argument using minimal legal terminology relating to the rules of statutory interpretation. The legal argument includes minimal detail.
	0	Response not creditworthy or not attempted.

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Section B

5. (a) Explain the role of tribunals in the English legal system [10]

Indicative content

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

In explaining the role of tribunals, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the role of tribunals in the English legal system. In demonstrating this knowledge and understanding candidates are required to focus on tribunals and no other forms of alternative dispute resolution.

The response might consider issues such as:

- the different types of tribunals e.g. administrative tribunals
- the role of tribunals as an alternative to court
- the composition of tribunals
- history of tribunals - the UK tribunal system can be seen as beginning with the coming into force of the National Insurance Act 1911 which provided for adjudication of disputes by administrative agencies
- the Franks Report of 1957 - its principal effect was to move tribunals from an executive and administrative model towards a judicial model; the Franks Report resulted in the Tribunals and Inquiries Act 1958 which established the Council on Tribunals
- the Leggatt Report and the Tribunals, Courts and Enforcement Act 2007 created a new unified structure for tribunals and recognises legally qualified members of tribunals as members of the judiciary of the United Kingdom. The Act created two new tribunals to which pre-existing jurisdictions were transferred: a First-tier Tribunal and an Upper Tribunal. The tribunals are divided into several "chambers", grouped around broad subject headings. There is a right of appeal on a question of law from the First-tier to the Upper Tribunal. There is a right of appeal to the Court of Appeal.

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Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
4	**8-10**	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the role of tribunals. Response is clear, detailed and fully developed.
3	**5-7**	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the role of tribunals. Response is generally clear, detailed and developed.
2	**3-4**	• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the role of tribunals. Response includes some detail which is developed in places.
1	**1-2**	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the role of tribunals. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

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5. (b) Analyse and evaluate the importance of magistrates in the criminal justice system. In your answer you should include consideration of law and justice. [15]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from areas including criminal process, the English legal system and the nature of law. For example, a response may include reference to the importance of magistrates within the criminal process, and their role in upholding justice.

Candidates will offer an analysis of the legal rules, principles, concepts and issues in order to evaluate the importance of magistrates in the criminal justice system. In order to reach a substantiated judgement about this issue, candidates may argue that magistrates are the backbone of the criminal justice system and that if they were to be replaced with judges this would have a significant negative impact on the criminal justice system. Candidates might consider challenging this judgment by arguing that full time, paid judges would offer a more reliable and efficient criminal justice system. Overall candidates will offer a debate and come to a substantiated judgement regarding the importance of magistrates in the criminal justice system.

The response might consider issues such as:

- role of magistrates is very important, including the right to hear summary and either way trials, grant warrants, bail and other administrative issues at the Early Administrative Hearing, role of magistrates in the Youth Court, role in appeals in Crown Court. Use of Sentencing Guidelines
- distinction can be drawn between Lay Magistrates and District Judges – number of lay magistrates (30,000+) outweighs the number of District Judges (100) – this highlights the importance of lay magistrates within the justice system
- the criteria for selection of magistrates – six key qualities, role of Local Advisory Committees and the Lord Chief Justice, 18-65 - make sure the best people are selected.
- the exclusions on magistrates that exclude persons from appointment – bankrupts, over 70, close relative of someone else on the bench/in the police force – ensure that the best people are selected and demonstrate their importance to the criminal justice system
- the role of Legal Justice Clerk who ensures that lay magistrates have access to legal advice and guidance, to ensure their role is upheld and decisions are made within the law
- the importance can be evaluated by reference to the advantages of magistrates – evenly split between male and female, inexpensive, local knowledge, trial by peers, additional training for Youth Court and appeals
- importance can also be evaluated by reference to possible disadvantages such as prosecution bias, inconsistency in sentencing, not legally qualified, insufficient training.
- importance can also be evaluated by reference to the demand for reform – replace magistrates with District Judges because of better training and legal knowledge
- considerations of law and justice include the meaning of 'justice' and the role of magistrates in upholding that justice. Magistrates introduce a lay element into the administration of justice. A magistrate is often more representative of the local community than a judge and this might enhance the justice that they provide.

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Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	**12-15**	• Excellent analysis of legal rules, principles, concepts and issues relevant to the importance of magistrates in the criminal justice system. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the importance of magistrates in the criminal justice system, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**8-11**	• Good analysis of legal rules, principles, concepts and issues relevant to the importance of magistrates in the criminal justice system. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the importance of magistrates in the criminal justice system, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**4-7**	• Adequate analysis of legal rules, principles, concepts and issues relevant to the importance of magistrates in the criminal justice system. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the importance of magistrates in the criminal justice system, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**1-3**	• Basic analysis of legal rules, principles, concepts and issues relevant to the importance of magistrates in the criminal justice system. Analysis includes minimal detail. • Basic evaluation of the importance of magistrates in the criminal justice system. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

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6. (a) Explain the structure, powers and appellate functions of the civil courts. [10]

Indicative content

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

In explaining the structure, powers and appellate functions of the civil courts, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles underlying the civil court system. In demonstrating this knowledge and understanding candidates are required to focus on the civil courts and not include the criminal courts, unless they have a civil role.

The response might consider issues such as:

- reference to the civil court hierarchy to include the County Court, the High Court – three divisions: Queen's Bench Division, Chancery Division, Family Division, the Court of Appeal (civil and criminal division) and the Supreme Court
- reference to powers including remedies, compensation and injunctions. Powers of the civil courts to hear contract, tort, family and other civil matters
- reference to Appeal from County Court to Divisional High Court; Appeal from High Court to Court of Appeal Civil Division; Appeals to Supreme Court on matters of public importance – for example, MPs expenses scandal.

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Band	Marks	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles
4	**8-10**	• Excellent knowledge and understanding of the English legal system and legal rules and principles relating to the structure, powers and appellate functions of the civil courts. Response is clear, detailed and fully developed.
3	**5-7**	• Good knowledge and understanding of the English legal system and legal rules and principles relating to the structure, powers and appellate functions of the civil courts. Response is generally clear, detailed and developed.
2	**3-4**	• Adequate knowledge and understanding of the English legal system and legal rules and principles relating to the structure, powers and appellate functions of the civil courts. Response includes some detail which is developed in places.
1	**1-2**	• Basic knowledge and understanding of the English legal system and legal rules and principles relating to the structure, powers and appellate functions of the civil courts. Response includes minimal detail.
	0	Response not creditworthy or not attempted.

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6. (b) Analyse and evaluate the importance of 'no win, no fee' arrangements. In your answer you should include consideration of law and justice. [15]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
In order to achieve the highest marks, candidates must demonstrate their ability to draw together details from areas including civil courts, the English legal system and the nature of law. For example, a response may include reference to how 'no win, no fee' arrangements operate within the civil process, and whether they promote or create barriers to justice.

Candidates will offer an analysis of the legal rules, principles, concepts and issues in order to evaluate the importance of 'no win, no fee' arrangements. In order to reach a substantiated judgement about this issue, candidates may argue that 'no win, no fee' arrangements have widened access to justice and have contributed to lessening the problems with unmet legal need. Candidates might consider challenging this by arguing the range of key issues and concerns with 'no win, no fee' arrangements, such as the uplift fee and the unavailability of these arrangements for certain areas of civil law. Overall candidates will offer a debate and come to a substantiated judgement regarding the importance of 'no win, no fee' arrangements.

The response might consider issues such as:

- the unmet need for legal services – litigants cannot afford their own legal fees because of the tight civil legal aid budget. 'No win, no fee' arrangements are important because they offer an alternative for those who would not otherwise have access to justice as per Dicey's Rule of Law – everyone is equal before the law
- the background legal context including the Courts and Legal Services Act 1990 which introduced the concept of conditional fee arrangements
- the Access to Justice Act 1999 which introduced concept of uplift fee and success fees
- the Legal Aid, Sentencing and Punishment of Offenders Act 2012 – success fee is no longer recoverable by losing party, limited categories of cases eligible for civil legal aid. Under this Act there are now two types of 'no win no fee' agreements: Conditional Fee Arrangements, and Damages Based Agreements. Both of these are important because they give litigants alternatives to court and reduce the number of litigants in person
- access to justice to those who cannot otherwise afford it; abolition of success fee
- pressure to settle out of court – is this a "second best" resolution; lawyers will not take on high risk cases; pressure from insurance companies; winning litigants will be left with hardly any damages after paying fees
- considerations of law and justice include the meaning of 'justice' and the extent to which 'no win no fee' arrangements achieve justice or create barriers to justice. There can be different strengths between a claimant and a defendant and, without help for financially weaker parties, justice might not be achieved.

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Band	Marks	AO3: Analyse and evaluate legal rules, principles, concepts and issues
4	**12-15**	• Excellent analysis of legal rules, principles, concepts and issues relevant to the importance of conditional fee arrangements. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the importance of conditional fee arrangements, including a valid, substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**8-11**	• Good analysis of legal rules, principles, concepts and issues relevant to the importance of conditional fee arrangements. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the importance of conditional fee arrangements, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**4-7**	• Adequate analysis of legal rules, principles, concepts and issues relevant to the importance of conditional fee arrangements. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the importance of conditional fee arrangements, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**1-3**	• Basic analysis of legal rules, principles, concepts and issues relevant to the importance of conditional fee arrangements. Analysis includes minimal detail. • Basic evaluation of the importance of conditional fee arrangements. • Basic citation of supporting case law and legal authorities.
	0	Response not creditworthy or not attempted.

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A LEVEL

LAW

COMPONENT 2

Substantive Law in Practice

SAMPLE ASSESSMENT MATERIALS

2 hours 15 minutes

ADDITIONAL MATERIALS

In addition to this examination paper, you will need a 12 page answer book.

INSTRUCTIONS TO CANDIDATES

Answer **three** questions in total, each question from a different section.

Section A – Law of Contract (private law)
Section B – Law of Tort (private law)
Section C – Criminal Law (public law)
Section D – Human Rights Law (public law)

The same three sections that you choose for this examination must also be chosen for the Component 3 examination.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets at the end of each question or part-question.

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*Answer **three** questions in total.*

Section A

Law of Contract

*Answer **one** question from this section if you have studied this area of private law.*

The questions which follow require you to:

- *demonstrate knowledge and understanding of the English legal system;*
- *apply legal rules and principles to the scenario; and*
- *present a legal argument using appropriate legal terminology.*

Credit will be given for the use of relevant supporting case law and authority.

EITHER

1. Grant put his car up for sale so that he could buy a new one. In response to the advertisement, Frank sent Grant an email saying *"I will give you £3,000 for the car"*. Grant replied, *"Interesting suggestion. Would you go to £3,250?"* Frank sent another message stating, *"Yes, consider it sold at £3,250. No need to reply. I'll collect it later in the week"*. However, Frank later learned from a mutual friend that Grant had subsequently accepted a higher offer for the car from Sophie. A week later, Frank was very surprised when it turned out that Grant's deal with Sophie had fallen through and that Grant was now expecting Frank to buy the car. Frank angrily refused.

Advise Frank whether he has a contract with Grant for the sale of the car, applying your knowledge of legal rules and principles. [25]

OR

2. Florence bought a new TV aerial from 'TVs R Us', who assured her that it would be perfect for improving the quality of her television reception. Florence arranged for James to install the aerial. James missed two appointments, for which Florence had taken time off work. When he finally turned up for the third appointment, James damaged the roof tiles when he dropped his tools whilst installing the aerial. Though the aerial was properly installed, the aerial was of poor quality and failed to improve the television reception in any way. 'TVs R Us' refused to accept any responsibility. Also, James pointed out that Florence had signed a "completion of work" form, which included a statement that James would not be liable for any damage resulting from the installation work.

Advise Florence whether there has been a breach of any implied or express terms for the purchase and installation of the aerial, applying your knowledge of legal rules and principles. [25]

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Section B

Law of Tort

*Answer **one** question from this section if you have studied this area of private law.*

The questions which follow require you to:

- *demonstrate knowledge and understanding of the English legal system;*
- *apply legal rules and principles to the scenario; and*
- *present a legal argument using appropriate legal terminology.*

Credit will be given for the use of relevant supporting case law and authority.

EITHER

3. Andy bought a large yard in a quiet, rural area. He used the yard to keep and maintain coaches to provide transport for school children and holidaymakers. Sam, who owned the house next to the yard, was fed up with the persistent noise and diesel fumes coming from the coaches. After four months, Sam complained to Andy, who responded by causing even more disturbance by noise and fumes. In addition, Andy's coaches were often parked in a narrow public road next to the yard, causing obstruction to motorists. Andy bought a large supply of diesel oil. He kept the oil in a tank in his yard. The tank was situated near to Sam's garden. One night some of the oil leaked from the tank and caught fire. The fire immediately spread to Sam's garden and destroyed his fence and shed.

   Advise Sam of any legal action he may be able to take against Andy under the law of tort, applying your knowledge of legal rules and principles. [25]

OR

4. James paid Peter, a builder, to replace broken tiles on his roof. Peter placed his ladder against the roof guttering in order to climb up and check the roof. Peter was not aware that the guttering was rotten. Peter was halfway up his ladder when the guttering gave way causing his ladder to fall. Peter fell and hit his head on the ground. He suffered cuts to his face and was temporarily knocked unconscious. On admission to hospital, Peter told Dr Smith what had happened. Dr Smith, who had only recently qualified, treated Peter's cuts but, without further examinations, advised him to go home and rest. In doing so, Dr Smith ignored a commonly held medical view that patients who suffered unconsciousness should have a brain scan. The next day, Peter suffered left side paralysis as a result of his undiagnosed head injuries sustained in the fall.

   Advise Peter if James and Dr Smith could be held liable in tort for his injuries, applying your knowledge of legal rules and principles. [25]

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Section C

Criminal Law

*Answer **one** question from this section if you have studied this area of public law.*

The questions which follow require you to:
- *demonstrate knowledge and understanding of the English legal system;*
- *apply legal rules and principles to the scenario; and*
- *present a legal argument using appropriate legal terminology.*

Credit will be given for the use of relevant supporting case law and authority.

EITHER

5. Jamal became very depressed after his girlfriend Jenny, ended their relationship and married David. He wrote dozens of letters to Jenny, begging her to leave David and come back to him. Eventually, David went to see Jamal at his flat, and told him that this behaviour would have to stop. Jamal was overcome by a jealous rage and struck David on the head with a coffee pot. The blow fractured David's skull, which was abnormally thin. Jamal immediately summoned an ambulance, and David was taken to hospital. By the time the ambulance arrived at the hospital, David's heart had stopped beating and he was no longer breathing. David was rushed to the intensive care unit and placed on a life-support system. The doctors told Jenny that even if David survived he would be irreversibly brain-damaged. Jenny wanted to let David die with dignity, so while the doctors were out of the room, she disconnected the machines that were keeping him alive.

   Advise both Jamal and Jenny whether they may be criminally liable for David's death, applying your knowledge and understanding of legal rules and principles. [25]

OR

6. John began to experience hallucinations during which he thought he was back in the Army. Eventually, he was diagnosed as having a small, non-malignant brain tumour. The doctors at the hospital decided that his condition was not urgent enough to require immediate treatment, so John was sent home to await a date for his operation. John went shopping in a supermarket, where the bright overhead lighting began to affect him. He took a mop handle from one of the shelves and began to swing it around like a weapon. A uniformed security guard arrived to find out what was going on. John thought that the security guard was an enemy soldier and struck him savagely with the mop handle, causing him fatal injuries.

   Advise John on what defence(s) might be available to him if he is charged with the murder of the security guard, applying your knowledge and understanding of legal rules and principles. [25]

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Section D

Human Rights Law

*Answer **one** question from this section if you have studied this area of public law.*

The questions which follow require you to:
- *demonstrate knowledge and understanding of the English legal system;*
- *apply legal rules and principles to the scenario; and*
- *present a legal argument using appropriate legal terminology.*

Credit will be given for the use of relevant supporting case law and authority.

EITHER

7. A doctor's surgery was burgled one evening as the practice nurse was locking up. Footage from the surgery's CCTV showed a young female helping herself to drugs from the medicine cabinet. After several days had passed without the police being able to identify the female, PC Jones saw Claire, a young female whose sister had a record of drug-related offences, strolling down the street wearing a new designer jacket. PC Jones stopped Claire and questioned her about the burglary at the surgery. PC Jones was unhappy with Claire's answers and searched her pockets. He found some tablets wrapped in silver foil. Claire was taken to the police station, where an intimate search for drugs was carried out by two police officers. The police also took Claire's fingerprints and a sample of her DNA. Claire was detained in police custody and questioned about the burglary for more than 36 hours. Throughout this time, she was refused permission to contact her family or speak to a solicitor. Meanwhile, investigations revealed that the tablets found on Claire were prescribed for her cat by a vet. After 42 hours, Claire was released without charge.

   Advise Claire on the legality of the actions of the police, applying your knowledge and understanding of legal rules and principles. [25]

OR

8. New Horizons Productions created a successful weekly children's television show, Inside Olivia, which used hi-tech medical equipment to explain to youngsters how the human body works. The show won several awards for its educational value, and its young presenter, Olivia became a national celebrity. The editor of the Daily Trash, Susan Smith, obtained photos of Olivia taken outside an alcohol treatment clinic during filming of an episode designed to warn young viewers of the dangers of binge-drinking. Susan Smith published the photos under the headline: "What Really Goes On Inside Olivia", together with an article claiming that Olivia was a secret alcoholic. The article contained an additional photograph of Olivia at a birthday meal, her glass of wine had been digitally altered and replaced by a two litre jug of alcohol. The article resulted in thousands of complaints to New Horizons productions, who as a result terminated Emma's contract. The Minister for Youth, Jane Jones, made a speech in Parliament describing Olivia as a bad role model. She then repeated these comments on her Twitter page.

   Advise Olivia whether she can sue for defamation, applying your knowledge and understanding of legal rules and principles. [25]

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COMPONENT 2

SUBSTANTIVE LAW IN PRACTICE

Mark Scheme

Marking Guidance for Examiners

Summary of assessment objectives for Component 2

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

The structure of the mark scheme

The mark scheme for each question has two parts:

- Indicative content which can be used to assess the quality of the specific response. The content is not prescriptive and candidates are not expected to mention all material referred to. Examiners should seek to credit any further relevant evidence offered by the candidates.

- An assessment grid showing bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1 and AO2.

Stage 1 - Deciding on the band

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

If an answer covers different aspects of different bands within the mark scheme, a 'best fit' approach should be adopted to decide on the band and then the learner's response should be used to decide on the mark within the band. For instance if a response is mainly in band 2 but with a limited amount of band 3 content, the answer would be placed in band 2, but the mark awarded would be close to the top of band 2 as a result of the band 3 content. Examiners should not seek to mark candidates down as a result of small omissions in minor areas of an answer.

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

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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.

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COMPONENT 2

SUBSTANTIVE LAW IN PRACTICE

Section A

Law of Contract

1. Grant put his car up for sale so that he could buy a new one. In response to the advertisement, Frank sent Grant an email saying *"I will give you £3,000 for the car"*. Grant replied, *"Interesting suggestion. Would you go to £3,250?"* Frank sent another message stating, *"Yes, consider it sold at £3,250. No need to reply. I'll collect it later in the week"*. However, Frank later learned from a mutual friend that Grant had subsequently accepted a higher offer for the car from Sophie. A week later, Frank was very surprised when it turned out that Grant's deal with Sophie had fallen through and that Grant was now expecting Frank to buy the car. Frank angrily refused.

   Advise Frank whether he has a contract with Grant for the sale of the car, applying your knowledge of legal rules and principles. [25]

Indicative Content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Frank, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of essential elements of a contract.

The response may include:

- the concept of offer must be communicated to Frank; possible support from cases such as *Harvey v Facey*
- the counter offer must also be communicated – serving as a rejection of original offer; possible support from cases such as *Hyde v Wrench*
- any requests for further information do not constitute an offer
- there can be further explanation of subsequent messages/events in terms of offer and counter offer
- acceptance and withdrawal of offer through rejection or lapse of time. *Felthouse v Bindley* may be used for support here
- remedies should be considered – including suitability of damages, specific performance and rescission.

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AO2

Candidates are expected to apply the full range of legal rules and principles to Frank and Grant's situation, including concepts such as offer, counter offer, acceptance and remedies for breach of contract.

The response may include issues such as:

- a consideration of the legal status of the advertisement - is it an offer or an invitation to treat? The legal significance of the difference between the two could be considered. If it is an invitation to treat, supporting case law might be added to support this such as *Partridge v Crittenden*
- is Frank's first communication an offer? If Grant's first communication is an invitation to treat, then Frank's communication is more likely to be an offer not an acceptance. Some candidates might consider whether Frank's communication is a request for information rather than offer
- is Grant's response classified as a counter offer or a request for information? Frank's response might be concluded to be acceptance. If so, does he have the right to sell to Sophie? If no acceptance because there was no offer, then it might be argued he can sell to Sophie. Supporting case law might be added such as Hyde v Wrench
- the remedies available to Frank might be considered such as damages (issues such as remoteness of damage and measure of damages could be mentioned), specific performance and injunctions.

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

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OR

2. Florence bought a new TV aerial from 'TVs R Us', who assured her that it would be perfect for improving the quality of her television reception. Florence arranged for James to install the aerial. James missed two appointments, for which Florence had taken time off work. When he finally turned up for the third appointment, James damaged the roof tiles when he dropped his tools whilst installing the aerial. Though the aerial was properly installed, the aerial was of poor quality and failed to improve the television reception in any way. 'TVs R Us' refused to accept any responsibility. Also, James pointed out that Florence had signed a "completion of work" form, which included a statement that James would not be liable for any damage resulting from the installation work.

   Advise Florence whether there has been a breach of any implied or express terms for the purchase and installation of the aerial, applying your knowledge of legal rules and principles. [25]

Indicative Content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Florence, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of express and implied terms of a contract.

The response may include consideration of the following:

- the Consumer Rights Act 2015
- satisfactory quality/fitness for purpose
- whether the service was carried out with reasonable care and skill; information said to the consumer is binding where the consumer relies on it; the service must be done for a reasonable price; service must be carried out within a reasonable time
- advice given should be clear regarding remedies: significance of business and consumer contracts; alternative dispute resolution under the new Act; right to reject; repair and replacement; repeat performance or price reduction
- Consumer Contracts (information, cancellation and additional charges) Regulations 2013 – 14 day cooling off period.

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AO2

Candidates are expected to apply the full range of legal rules and principles to Frank and Grant's situation, including concepts such as offer, counter offer, acceptance and remedies for breach of contract.

The response may include consideration of the following:

- the Consumer Rights Act 2015 in relation to Florence and 'TVs R Us' such as satisfactory quality and fitness for purpose
- whether the service was carried out with reasonable care and skill; information said to Florence is binding if Florence has relied on it
- whether the service from TV R Us was done for a reasonable price and whether the service was carried out within a reasonable time
- the remedies available to Florence might be considered such as alternative dispute resolution under the new Act or the right to reject or repair, replacement; repeat or price reduction
- consideration may be given to the impact of the Consumer Contracts (information, cancellation and additional charges) Regulations 2013 – 14 day cooling off period.

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

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Section B

Law of Tort

3. Andy bought a large yard in a quiet, rural area. He used the yard to keep and maintain coaches to provide transport for school children and holidaymakers. Sam, who owned the house next to the yard, was fed up with the persistent noise and diesel fumes coming from the coaches. After four months, Sam complained to Andy, who responded by causing even more disturbance by noise and fumes. In addition, Andy's coaches were often parked in a narrow public road next to the yard, causing obstruction to motorists. Andy bought a large supply of diesel oil. He kept the oil in a tank in his yard. The tank was situated near to Sam's garden. One night some of the oil leaked from the tank and caught fire. The fire immediately spread to Sam's garden and destroyed his fence and shed.

   Advise Sam of any legal action he may be able to take against Andy under the law of tort, applying your knowledge of legal rules and principles. [25]

Indicative Content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising Sam, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the subject of torts connected to land.

The response may include:
- private nuisance: interfering with the enjoyment or use of another's property
- public nuisance: a crime that might be actionable in tort
- rule in *Rylands v Fletcher*
- remedies available for torts connected to land.

AO2

Candidates are expected to apply the full range of legal rules and principles to Sam's situation, including concepts such as private nuisance, public nuisance, the rule in *Rylands v Fletcher* and possible remedies available to Sam, in order to present a legal argument.

The response may include:
- application of private nuisance for noise and fumes from the coaches including the existence of an unreasonable interference with enjoyment of land and a consideration of possible relevant factors, especially the quiet, rural location and duration
- consideration of the importance of possible malice and intentional interference following Sam's complaint
- remedies including damages and injunctions
- explanation of the concept of public nuisance for obstruction
- consideration of the need for unreasonable interference, section of the public, need for 'special damage' to support tort claim
- reference to *Rylands v Fletcher* for damage to fence and shed
- other legal rules and principles that may be of value to Sam include the need for a 'thing liable to do mischief…', accumulation, non-natural user, escape, damage, remoteness, remedy of damages, strict liability.

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

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4. James paid Peter, a builder, to replace broken tiles on his roof. Peter placed his ladder against the roof guttering in order to climb up and check the roof. Peter was not aware that the guttering was rotten. Peter was halfway up his ladder when the guttering gave way causing his ladder to fall. Peter fell and hit his head on the ground. He suffered cuts to his face and was temporarily knocked unconscious. On admission to hospital, Peter told Dr Smith what had happened. Dr Smith, who had only recently qualified, treated Peter's cuts but, without further examinations, advised him to go home and rest. In doing so, Dr Smith ignored a commonly held medical view that patients who suffered unconsciousness should have a brain scan. The next day, Peter suffered left side paralysis as a result of his undiagnosed head injuries sustained in the fall.

   Advise Peter if James and Dr Smith could be held liable in tort for his injuries, applying your knowledge of legal rules and principles. [25]

Indicative Content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

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

The response may include:
- the Occupier's Liability Act 1957 including duty, nature of the duty, breach of the duty, with particular reference to s2 (3) (b)
- remedies available under the Act
- common law negligence.

AO2

Candidates are expected to apply the full range of legal rules and principles to Peter's situation, including concepts such as the Occupier's Liability Act 1957, negligence and the possible remedies available to Peter, in order to present a legal argument.

The response might consider issues such as:
- applying the Occupier's Liability Act 1957 in relation to James' liability to Peter
- the duty, nature of the duty, breach of the duty, with particular reference to s2 (3) (b) and whether the risk was 'ordinarily incident' to Peter's calling
- remedies available to Peter including damages and injunctions
- common law negligence as an alternative in relation to Peter's situation
- duty of care owed by James and any possible breach of duty of care by James, applying the concepts of remoteness and contributory negligence to the situation
- common law negligence may include the remedies available under negligence to Peter.

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

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Section C

Criminal Law

5. Jamal became very depressed after his girlfriend Jenny, ended their relationship and married David. He wrote dozens of letters to Jenny, begging her to leave David and come back to him. Eventually, David went to see Jamal at his flat, and told him that this behaviour would have to stop. Jamal was overcome by a jealous rage and struck David on the head with a coffee pot. The blow fractured David's skull, which was abnormally thin. Jamal immediately summoned an ambulance, and David was taken to hospital. By the time the ambulance arrived at the hospital, David's heart had stopped beating and he was no longer breathing. David was rushed to the intensive care unit and placed on a life-support system. The doctors told Jenny that even if David survived he would be irreversibly brain-damaged. Jenny wanted to let David die with dignity, so while the doctors were out of the room, she disconnected the machines that were keeping him alive.

   Advise both Jamal and Jenny whether they may be criminally liable for David's death, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

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

The response might consider issues such as:

- the *actus reus* of murder – that the defendant must cause the death of a human being.
- causation – both factual and legal – 'but for' test (White) and legal causation – operating and substantial cause
- the *mens rea* of murder – the intention to kill or cause grievous bodily harm. Reference to both direct and oblique intention. Support may come from discussion of virtual certainty test: Woolin; Nedrick
- involuntary manslaughter. Cases that may be cited include Franklin and Newbury; that mens *rea* is simply the intention to do the unlawful act may be discussed with reference to Scarlett or Owino.

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AO2

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

The response might consider issues such as:

- advising Jenny and Jamal whether David's death is legally attributable to their actions
- whether David was still alive when Jenny turned off the life support system. Under the conventional criteria (no heartbeat, not breathing) David was dead when he reached hospital; however, the courts have shown willingness to accept the medical criterion of brain-stem death. In Malcherek and Steel, the Court of Appeal upheld convictions for murder where victims were on life-support machines and the doctors switched off the machine after tests showed that the victims were brain-dead. The Court of Appeal recognised that brain death is the accepted medical criterion of death, but did not actually decide that this is the legal definition of death
- dicta in the House of Lords to the effect that brain-stem death is the legal test of death - *Airdale NHS Trust v Bland*
- if Jamal's actions were held to be the legal cause of death, he may be guilty of murder or manslaughter depending on his state of mind when he struck David
- involuntary manslaughter – if Jamal lacked intention to kill or cause grievous bodily harm, he may be convicted of manslaughter on the basis of an unlawful and dangerous act – Franklin Newbury – *mens rea* is simply the intention to do the unlawful act – Scarlett, Owino
- possible defences – diminished responsibility on the basis that Jamal suffers from depression; loss of control.

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

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6. John began to experience hallucinations during which he thought he was back in the Army. Eventually, he was diagnosed as having a small, non-malignant brain tumour. The doctors at the hospital decided that his condition was not urgent enough to require immediate treatment, so John was sent home to await a date for his operation. John went shopping in a supermarket, where the bright overhead lighting began to affect him. He took a mop handle from one of the shelves and began to swing it around like a weapon. A uniformed security guard arrived to find out what was going on. John thought that the security guard was an enemy soldier and struck him savagely with the mop handle, causing him fatal injuries.

   Advise John on what defence(s) might be available to John if he is charged with the murder of the security guard, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

In advising John, candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the defences available for a charge of murder.

The response might consider issues such as:

- the defences of insanity, self-defence, diminished responsibility, loss of control
- definition of insanity under the M'Naughten Rules (1843); that the burden of proof is on defendant
- the meaning of disease of the mind, citing the cases of Kemp or Bratty
- the dividing line between insanity and automatism: this can include the difference between 'internal' and 'external' causes; support can be provided by use of Quick, Hennesey. Sullivan, Clarke.

AO2

Candidates are expected to apply the full range of legal rules and principles to John's situation, including the defences of insanity, self-defence, diminished responsibility and loss of control, in order to present a legal argument.

The response might consider issues such as:

- John can be advised with regard to his delusions including reference to the M'Naughten Rules and the defendant to be treated as if the facts he believed were real
- the nature and quality of John's act
- the Criminal Procedure (Insanity and Fitness to Plead) Act 1991 in relation to John, especially in giving some discretion except in cases of murder
- partial defences for John in reducing murder to manslaughter may include: diminished responsibility; reference to the Coroners and Justice Act 2009 could be used here
- John could also be advised in relation to the possibility of pleading self-defence in the circumstances
- further advice to John could be provided by Attorney-General's Reference (No.3 of 1998).

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

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Section D

Human Rights Law

7. A doctor's surgery was burgled one evening as the practice nurse was locking up. Footage from the surgery's CCTV showed a young female helping herself to drugs from the medicine cabinet. After several days had passed without the police being able to identify the female, PC Jones saw Claire, a young female whose sister had a record of drug-related offences, strolling down the street wearing a new designer jacket. PC Jones stopped Claire and questioned her about the burglary at the surgery. PC Jones was unhappy with Claire's answers and searched her pockets. He found some tablets wrapped in silver foil. Claire was taken to the police station, where an intimate search for drugs was carried out by two police officers. The police also took Claire's fingerprints and a sample of her DNA. Claire was detained in police custody and questioned about the burglary for more than 36 hours. Throughout this time, she was refused permission to contact her family or speak to a solicitor. Meanwhile, investigations revealed that the tablets found on Claire were prescribed for her cat by a vet. After 42 hours, Claire was released without charge.

    Advise Claire on the legality of the actions of the police, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

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

The response might consider issues such as:

- provisions of Article 5 European Convention on Human Rights, right to respect for liberty and security of the person; Article 5 exceptions and restrictions
- provisions of Article 6 European Convention on Human Rights, right to a fair trial; nature of an absolute right
- the police powers to stop and search: reference may be made to ss 1-3 of the *Police and Criminal Evidence Act 1984* (PACE) and Code A of the Codes of Practice
- the police powers to arrest: section 24 of PACE as amended by section 110 of the Serious Organised Crime and Police Act 2005, section 28 of PACE and Code G of the Codes of Practice
- the rights of a suspect during detention: sections 55, 56, 58 and 61-63 of PACE and Code C of the Codes of Practice
- the time limits on detention: sections 40-44 of PACE
- protection of rights under UK law.

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AO2

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

The response might consider issues such as:

In the case of the stop and search
- reasonable suspicion to stop and search Claire under Code A of the Codes of Practice– should not be based on personal factors alone
- requirements of a valid search: information given to Claire under section 2 of PACE; the failure renders search invalid: the Osman case could be cited to support this
- requirements under section 3 of PACE to supply Claire with a record of the stop and search

In the case of the arrest
- Claire should be advised that the police can arrest her; under s.24 of PACE as amended by section 110 of SOCPA 2005 provided that they reasonably suspect that an offence is about to be committed, is being committed, or has been committed. The power to arrest Claire can only be exercised if the police have reasonable grounds to believe it is necessary under section 24(5) of PACE
- the procedural requirements of a valid arrest including the fact Claire is under arrest; also the grounds for arrest (s.28) and that she should be cautioned

In the case of the detention
- how Claire should be treated in police custody: Code C. Her rights should be explained including the right to have someone informed of arrest: s.56 of PACE. and her right to legal advice: s.58 of PACE, and the circumstances when these rights can be withheld by the police and whether these apply to Claire
- procedural requirements needed for the taking of Claire's fingerprints (section 61 of PACE) and DNA (section 62 and section 63 of PACE)
- time limits: on detention: section 41 allows police to authorise detention up to 36 hours but further detention up to 96 hours requires authorisation by magistrates. Claire's detention should be reviewed after 6 hours and then every 9 hours thereafter by a review officer not involved in the case: section 40 of PACE.

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

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8. New Horizons Productions created a successful weekly children's television show, Inside Olivia, which used hi-tech medical equipment to explain to youngsters how the human body works. The show won several awards for its educational value, and its young presenter, Olivia became a national celebrity. The editor of the Daily Trash, Susan Smith, obtained photos of Olivia taken outside an alcohol treatment clinic during filming of an episode designed to warn young viewers of the dangers of binge-drinking. Susan Smith published the photos under the headline: "What Really Goes On Inside Olivia", together with an article claiming that Olivia was a secret alcoholic. The article contained an additional photograph of Olivia at a birthday meal, her glass of wine had been digitally altered and replaced by a two litre jug of alcohol. The article resulted in thousands of complaints to New Horizons productions, which, as a result. terminated Olivia's contract. The Minister for Youth, Jane Jones, made a speech in Parliament describing Olivia as a bad role model. She then repeated these comments on her Twitter page.

   Advise Olivia whether she can sue for defamation, applying your knowledge and understanding of legal rules and principles. [25]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question. In order to achieve the highest marks a response must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured.

AO1

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

The response might consider issues such as:

- provisions of Article 8 European Convention on Human Rights, right to respect for private and family life, home and correspondence
- provisions of Article 10 European Convention on Human Rights, right to freedom of expression. Article 10 exceptions, restrictions
- the meaning of defamation under the Defamation Act 2013, including section 1 which imposes a requirement of serious harm to the reputation of the claimant
- a statement is not defamatory unless its publication has caused, or is likely to cause, serious harm to the claimant's reputation eg *Sim v Stretch*, *Byrne v Dean*. Reference may be made to *Cassidy v Daily Mirror, Charlesworth v MGN* on the impact of photos
- elements of defamation: the statement must be defamatory; it must refer to the claimant, and it must have been published
- possible defences that may be used including reference to the pre-Defamation Act 2013; these will also include: justification –it has to be shown that the statement is substantially true; fair comment – rebranded "honest comment" in *Spiller v Joseph* and now replaced with "honest opinion" under the Defamation Act 2013; the Reynolds defence of publication in the public interest – *Reynolds v Times Newspaper* and now replaced with defence of Publication on a matter of public interest, under s.4 of the Defamation Act 2013
- the Post Defamation Act 2013 – the defence of justification has been abolished and replaced by the defence of truth: s.2 Defamation Act 2013.

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AO2

Candidates are expected to apply the full range of legal rules and principles to Olivia's situation, including the Defamation Act 2013 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

In the case of whether the defamatory statements refer to the claimant

- in advising Olivia, the newspaper article, headline and picture refers to her, as required by the Defamation Act 2013. There is a picture of Olivia and the article refers to her by name
- in the case of the Twitter comments by Jane Jones, the statements refer to Olivia by name

In the case of whether the statements are defamatory

- almost certainly the damage to Olivia's reputation by the newspaper article/photo would be considered as causing serious damage as required by section 1 *Defamation Act 2013*. Olivia's reputation been adversely affected or put at risk by the statement and she has lost her contract with New Horizons
- regarding the Twitter comments describing Olivia as a bad role model, these would also cause serious harm to Olivia's reputation. Reference may be made to *Sim v Stretch*
- right thinking members of society would consider Olivia's reputation lowered. Reference may be made to *Byrne v Dean*

In the case of whether the statements have been published

- publishing means that the information has passed from the defendant to a person other than the claimant or the defendant's spouse. In Olivia's case, the information has passed to the public via a newspaper article/headline/photos. Publication can also be online as in the case of the Twitter comments

In the case of whether there are any defences applicable

- truth as a defence - it has to be shown that the statement is substantially true under section 2 of the *Defamation Act 2013*. In this case, the article is not true
- other defences that might apply – responsible publication on a matter of public interest – does not apply as it is not responsible publication though defendant could argue they reasonably believe the publication was a matter of public interest
- privilege – the statements by Jane Jones may be covered by Parliamentary privilege but this would not extend to Twitter.

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

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A LEVEL

LAW

COMPONENT 3

Perspectives of Substantive Law

SAMPLE ASSESSMENT MATERIALS

2 hours 15 minutes

ADDITIONAL MATERIALS

In addition to this examination paper, you will need a 12 page answer book.

INSTRUCTIONS TO CANDIDATES

Answer **three** questions in total, each question from a different section.

Section A – Law of Contract (private law)
Section B – Law of Tort (private law)
Section C – Criminal Law (public law)
Section D – Human Rights Law (public law)

The three sections that you choose for this examination must be the same three sections that you chose for the Component 2 examination.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets at the end of each question or part-question.

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*Answer **three** questions in total.*

Section A

Law of Contract

*Answer **one** question from this section if you have studied this area of private law.*

The questions which follow require you to:
- *demonstrate knowledge and understanding of the English legal system*
- *analyse and evaluate legal rules, principles, concepts and issues.*

Credit will be given for the use of relevant supporting case law and authority.

EITHER

1. To what extent does the Misrepresentation Act 1967 protect buyers against negligent statements made by sellers? [25]

OR

2. Analyse and evaluate the importance of the doctrine of the privity of contract. [25]

Section B

Law of Tort

*Answer **one** question from this section if you have studied this area of private law.*

The questions which follow require you to:
- *demonstrate knowledge and understanding of the English legal system*
- *analyse and evaluate legal rules, principles, concepts and issues.*

Credit will be given for the use of relevant supporting case law and authority.

EITHER

3. "The rule in *Rylands v Fletcher* has no place in modern tort law. It is both unfair and wrong to impose strict liability in tort". Discuss. [25]

OR

4. Analyse and evaluate the burden that the law on vicarious liability imposes on employers. [25]

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Section C

Criminal Law

*Answer **one** question from this section if you have studied this area of public law.*

The questions which follow require you to:
- *demonstrate knowledge and understanding of the English legal system*
- *analyse and evaluate legal rules, principles, concepts and issues.*

Credit will be given for the use of relevant supporting case law and authority.

EITHER

5. "The courts, in recent years, have developed a completely clear set of principles for deciding whether an offence should be one of strict liability." Discuss. [25]

OR

6. Analyse and evaluate whether the law on murder should be reformed. [25]

Section D

Human Rights Law

*Answer **one** question from this section if you have studied this area of private law.*

The questions which follow require you to:
- *demonstrate knowledge and understanding of the English legal system*
- *analyse and evaluate legal rules, principles, concepts and issues.*

Credit will be given for the use of relevant supporting case law and authority.

EITHER

7. To what extent are the powers of the police to conduct secret surveillance balanced by some safeguards to protect individual privacy? [25]

OR

8. “The media face few legal controls over their right to intrude into the private lives of individuals.” Discuss. [25]

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COMPONENT 3

PERSPECTIVES OF SUBSTANTIVE LAW

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.

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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.

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COMPONENT 3

PERSPECTIVES OF SUBSTANTIVE LAW

Section A

Law of Contract

1. To what extent does the Misrepresentation Act 1967 protect buyers against negligent statements made by sellers? [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 law of contract. For example, a response may include reference to how misrepresentation protects buyers, the importance of the law on misrepresentation within contract law, and the remedies available through the civil courts.

AO1

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

The response may include:

- meaning of misrepresentation: a statement of material fact, made by one party to a contract to the other party, during the negotiations leading up to the formation of the contract, which induced the other party to enter the contract, but which was not intended to be a binding obligation, and which was untrue or falsely or incorrectly stated
- meaning of negligent misrepresentation
- protection available under the Misrepresentation Act 1967 for negligent misrepresentation
- remedies available for misrepresentation under the Misrepresentation Act 1967
- examples of case law such as Hedley Byrne.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the assessment of the extent to which the Misrepresentation Act 1967 protects buyers against negligent statements made by sellers, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the extent of the protection offered.

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The response might consider issues such as:

- an analysis of the requirements of a misrepresentation: a statement of material fact, made by one party to a contract to the other party, during the negotiations leading up to the formation of the contract, which induced the other party to enter the contract, but which was not intended to be a binding obligation, and which was untrue or falsely or incorrectly stated
- classification of misrepresentation is not so relevant since 1967 Act – previously only fraudulent misrepresentation could be awarded damages, otherwise innocent misrepresentation could be awarded rescission. Since 1967 Act, negligent misrepresentation is actionable with damages
- reference and comparison with the common law rule possibly with support from Hedley Byrne highlighting the requirement for a "special relationship", where the person making the misrepresentation owed a duty of care to the other party.
- discussion of s2 (1) of the Misrepresentation Act 1967 especially that there is no need to prove fraud or the existence of a "special relationship".
- requirements that the defendant must show he had a reasonable belief in the truth of the statement; that the claimant has a choice to sue under the 1967 Act or under the Hedley Byrne principle, that there is no need to prove special relationship.
- relevant citation which addresses the extent to which the 1967 Act protects buyers against negligent statements made by sellers.

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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	**[8-10 marks]** • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation. Response is clear, detailed and fully developed.	**[12-15 marks]** • Excellent analysis of legal rules, principles, concepts and issues relevant to misrepresentation. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding misrepresentation, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**[5-7 marks]** • Good knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation. Response is generally clear, detailed and developed.	**[8-11 marks]** • Good analysis of legal rules, principles, concepts and issues relevant to misrepresentation. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the principles regarding misrepresentation, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**[3-4 marks]** • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation. Response includes some detail which is developed in places.	**[4-7 marks]** • Adequate analysis of legal rules, principles, concepts and issues relevant to misrepresentation. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the principles regarding misrepresentation, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**[1-2 marks]** • Basic knowledge and understanding of the English legal system and legal rules and principles relating to misrepresentation. Response includes minimal detail.	**[1-3 marks]** • Basic analysis of legal rules, principles, concepts and issues relevant to misrepresentation. Analysis includes minimal detail. • Basic evaluation of the principles regarding misrepresentation. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

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Law of Contract

2. Analyse and evaluate the importance of the doctrine of the privity of contract. [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 privity of contract, the English legal system and law of contract. For example, a response may include reference to the impact of judicial decisions within privity of contract, and the need for development and reform of contract 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 privity of contract.

The response may include:
- the meaning of privity of contract: a contract does not confer rights or impose obligations arising under it on any person except the parties to the contract
- the Common Law exceptions such as under the Road Traffic Act, restrictive convenants and trusts
- relevant cases including *Dunlop v Selfridge*, *Dunlop v Lambert* and *Tulk v Moxhay*.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the doctrine of the privity of contract, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the extent of the importance of the doctrine of the privity of contract.

The response may include:
- an analysis of the basic rule: this can be supported by *Dunlop v Selfridge* especially that contract does not automatically confer rights or obligations on third parties.
- evaluation of the impact of the Rule especially that it unfairly prevents third parties identified as gaining rights under a contract from enforcing those rights
- evaluation of the Common Law exceptions. These may include:
  - Road Traffic Act 1988: motorists are obliged to take out third party liability insurance
  - Trusts: a trust beneficiary can sue the trustee if the trustee is not following the contract
  - Restrictive Covenants: no matter who buys the property, the buyer has to abide by the restrictions on the property; support can be provided by cases such as *Tulk v Moxhay*
  - The *Dunlop v Lambert* case involving goods lost at sea
  - Cases known as 'holiday cases' – the loss of enjoyment by a family, where the holiday did not meet the specification meant that the holiday company was liable and the family could sue; support can be provided by cases such as *Jackson v Horizon Holidays*
- the importance of the large numbers of exceptions which seemed to indicate that there were problems with the doctrine and so there was a need for reform which came from the 1999 Act

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- statutory Exceptions including the Contract (Rights of Third Parties) Act 1999; Lord Denning's decision in *Beswick v Beswick* has been given effect in this statute that a party intending to benefit from a contract can enforce it in specified circumstances
- relevant citation which helps evaluate the importance of the doctrine of the privity of contract.

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	**[8-10 marks]** • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to privity of contract. Response is clear, detailed and fully developed.	**[12-15 marks]** • Excellent analysis of legal rules, principles, concepts and issues relevant to privity of contract. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding privity of contract, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**[5-7 marks]** • Good knowledge and understanding of the English legal system and legal rules and principles underlying privity of contract. Response is generally clear, detailed and developed.	**[8-11 marks]** • Good analysis of legal rules, principles, concepts and issues relevant to privity of contract. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the principles regarding privity of contract, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**[3-4 marks]** • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to privity of contract. Response includes some detail which is developed in places.	**[4-7 marks]** • Adequate analysis of legal rules, principles, concepts and issues relevant to privity of contract. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the principles regarding privity of contract, including reference to a judgement. • Adequate citation of case law and legal authorities.
1	**[1-2 marks]** • Basic knowledge and understanding of the English legal system and legal rules and principles relating to privity of contract. Response includes minimal detail.	**[1-3 marks]** • Basic analysis of legal rules, principles, concepts and issues relevant to privity of contract. Analysis includes minimal detail. • Basic evaluation of the principles regarding privity of contract. • Basic citation of case law and legal authorities.
0	Response not creditworthy or not attempted.	

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Section B

Law of Tort

3. "The rule in *Rylands v Fletcher* has no place in modern tort law. It is both unfair and wrong to impose strict liability in tort'. 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 Ryland v Fletcher, the English legal system and law of tort. For example, a response may include reference to the relationship of the rule in Reylands v Fletcher with other torts, and suggestions for how the law in this area could be reformed.

AO1

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

The response may include:
- background to the case: the escape of water into a mine
- principle: "the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape"
- relationship with other torts include private nuisance, public nuisance and negligence
- suggestions for reform
- defences to rule in *Rylands v Fletcher*
- relevant case law such as Transco, Rickards, Read and West Bristol Tramways.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the rule, the impact of the decision in Cambridge Water, the rule's position with other torts, the defences available to the rule, 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 it has a role in modern tort law.

The response might consider issues such as:
- understanding of the nature of collecting and keeping something; possible support from *Miles v Forest Rock Granite*
- discussion of the non-natural use of land; possible support from *Rickards v Lothian*, *Read v J Lyons*, *Transco v Stockport*
- the fairness of 'Likely to do mischief if it escapes'; possible support from West Bristol Tramways Co

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- discussion of the extent of strict liability following *Cambridge Water Co v Eastern Counties Leather PLC*; the comments of Lord Goff may be used as support
- discussion of the critical responses to the decision in *Cambridge Water Co v Eastern Counties Leather PLC* . For example, the rule that strict liability is needed to ensure environmental protection
- discussion of defences: contributory negligence, consent, act of God, acts of strangers and statutory authority
- arguments that the tort is not needed because it is covered by other torts such as private nuisance, negligence and trespass
- defences to rule in *Rylands v Fletcher*
- relevant citation of the place of the rule in *Rylands v Fletcher* in modern tort law.

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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	**[8-10 marks]** • 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.	**[12-15 marks]** • 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. • Excellent evaluation of the principles regarding the rule in *Rylands v Fletcher*, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**[5-7 marks]** • 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.	**[8-11 marks]** • Good analysis of legal rules, principles, concepts and issues relevant the rule in *Rylands v Fletcher.* Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the principles regarding the rule in *Rylands v Fletcher,* including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**[3-4 marks]** • 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.	**[4-7 marks]** • Adequate analysis of legal rules, principles, concepts and issues relevant to the rule in *Rylands v Fletcher*. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the principles regarding the rule in *Rylands v Fletcher,* including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**[1-2 marks]** • 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.	**[1-3 marks]** • Basic analysis of legal rules, principles, concepts and issues relevant to the rule in *Rylands v Fletcher*. Analysis includes minimal detail. • Basic evaluation of the principles regarding the rule in *Rylands v Fletcher.* • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

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Law of Tort

4. Analyse and evaluate the burden that the law on vicarious liability imposes on employers. [25]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including vicarious liability, the English legal system and law of tort. For example, a response may include reference to the liability within civil law for employers and independent contractors, criticisms of the law in this area and the development of case law on vicarious liability.

AO1

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

The response may include:
- the meaning of vicarious liability in context of the question: the responsibility of the employer for the acts of the employee
- the control test: does the employer control the work and how it is done?
- the organisation test: is there a contract of service?
- the economic reality test: does the employee work for payment?
- examples of relevant cases such as Yewen and Stevenson, Jordan and Harrison.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues concerning vicarious liability and its impact on employer defences available, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue, candidates will offer a debate and come to a substantiated judgement regarding the extent of the burden imposed.

The response might consider issues such as:
- analysis of the control test: does the employer control the work and how it is done? Possible support may come from *Yewen v Noakes*
- analysis of the organisation test; the difference between a contract of service and a contract for service; possible support may come from Stevenson, Jordan and Harrison Ltd v McDonnell and Evans
- analysis of the economic reality test (employee provides work for payment, employee agrees to work under the control of the employer, all other circumstances are consistent with an employment contract situation); possible support may come from *Ready Mixed Concrete Ltd v Minister of Pensions*
- evaluation and comparison of the fairness on the employer and victim if employer is not liable for an employee's authorised act in an unauthorised manner; possible support may come from *Century Insurance v NI Road Transport Board*

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- the argument that the employer gains from the employee's work and should therefore be responsible if the employee commits a tort
- the employer is not liable if employee acts beyond the scope of his employment; possible support may come from *Beard v London Omnibus Co*
- express prohibitions by employer; there should be distinction between prohibitions relating to manner and scope; possible support may come from *London County Council v Cattermoles (Garages)*, *Iqbal v London Transport Executive*
- the employer might be liable for unlawful acts by employee; possible support may come from *Lister v Hesley Hall Ltd*
- the employer is not liable for all torts, only those taking place during employment; for instance, the employer is not liable if an employee is on a frolic of his own; possible support may come from *Storey v Ashton*
- the employer is better placed to pay compensation
- if an employee is acting in an authorised way, then the employer should be liable. It can encourage employer to reduce risk-taking.

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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	**[8-10 marks]** • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. Response is clear, detailed and fully developed.	**[12-15 marks]** • Excellent analysis of legal rules, principles, concepts and issues relevant to vicarious liability. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding vicarious liability, including a valid and substantiated judgement. • Excellent use of supporting case law and legal authorities.
3	**[5-7 marks]** • Good knowledge and understanding of the English legal system and legal rules and principles relating to the vicarious liability. Response is generally clear, detailed and developed.	**[8-11 marks]** • Good analysis of legal rules, principles, concepts and issues relevant to vicarious liability. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the principles regarding vicarious liability, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**[3-4 marks]** • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. Response includes some detail which is developed in places.	**[4-7 marks]** • Adequate analysis of legal rules, principles, concepts and issues relevant to vicarious liability. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the principles regarding vicarious liability, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**[1-2 marks]** • Basic knowledge and understanding of the English legal system and legal rules and principles relating to vicarious liability. Response includes minimal detail.	**[1-3 marks]** • Basic analysis of legal rules, principles, concepts and issues relevant to vicarious liability. Analysis includes minimal detail. • Basic evaluation of the principles vicarious liability. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

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Section C

Criminal Law

5. "The courts in recent years have developed a completely clear set of principles for deciding whether an offence should be one of strict liability." 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 strict liability, the English legal system and criminal law. For example, a response may include reference to the elements of criminal liability, the purpose of the criminal law, the burden and standard of proof within strict liability, and the interpretation of legislation by judges.

AO1

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

The response might include issues such as:
- the nature of strict liability and a distinction between strict and absolute liability; possible support may come from Larsonneur, Winzar
- how the courts determine whether an offence is intended by Parliament to be one of strict liability
- the seriousness of the penalty: the more serious the penalty, the less likely it is that Parliament intended the offence to be strict
- the Gammon principles, with examples of case law such as *Callow v Tillstone*, *Sweet v Parsley*, *DPP v B* (A minor), *Smedleys v Breed*, *LBC of Handsworth v Shah*, *Storkwain, Alphacell v Woodward*.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the decision of whether an offence is one of strict liability, including analysis and evaluation of relevant supporting case law. In order to reach a judgement about this issue candidates will offer a debate and come to a substantiated judgement regarding whether there are a completely set of clear principles for deciding whether an offence should be one of strict liability.

The response might include issues such as:
- determining Parliament's intention – the subject matter of the statute; whether it relates to activities posing a risk of danger to the public; whether it places particular responsibilities on certain classes of person (*Cundy v Le Cocq*, *Pharmaceutical Society of Great Britain v Storkwain*, *Harrow LBC v Shah*)
- whether the offence relates to matters of general social concern e.g. the environment (*Alphacell v Woodward*). The seriousness of the offence; whether the offence carries a social stigma (*Sweet v Parsley, B v DPP*); whether the offence is "truly criminal" or merely regulatory

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

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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	**[8-10 marks]** • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to strict liability. Response is clear, detailed and fully developed.	**[12-15 marks]** • Excellent analysis of legal rules, principles, concepts and issues relevant to deciding whether an offence should be one of strict liability. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the principles regarding strict liability, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**[5-7 marks]** • Good knowledge and understanding of the English legal system and legal rules and principles relating to strict liability. Response is generally clear, detailed and developed.	**[8-11 marks]** • Good analysis of legal rules, principles, concepts and issues relevant to deciding whether an offence should be one of strict liability. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the principles regarding strict liability, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**[3-4 marks]** • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to strict liability. Response includes some detail which is developed in places.	**[4-7 marks]** • Adequate analysis of legal rules, principles, concepts and issues relevant to deciding whether an offence should be one of strict liability. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the principles regarding strict liability, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**[1-2 marks]** • Basic knowledge and understanding of the English legal system and legal rules and principles relating to strict liability. Response includes minimal detail.	**[1-3 marks]** • Basic analysis of legal rules, principles, concepts and issues relevant to deciding whether an offence should be one of strict liability. Analysis includes minimal detail. • Basic evaluation of the principles regarding strict liability. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

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Criminal Law

6. Analyse and evaluate whether the law on murder should be reformed. [25]

Indicative content

NOTE: The content is not prescriptive and candidates are not expected to mention all the material mentioned below. Each answer will be assessed on its merits according to the assessment grid and the indicative content. Examiners should seek to credit any further admissible evidence offered by candidates.
This is an extended response question where candidates are expected to draw together different areas of knowledge, skills and/or understanding from across the relevant specification content. In order to achieve the highest marks candidates must construct and develop a sustained line of reasoning which is coherent, relevant, substantiated and logically structured; they must also demonstrate their ability to draw together details from areas including homicide, the English legal system and criminal law. For example, a response may include reference to the offences of murder, involuntary and voluntary manslaughter, the suggestions for reform from the Law Commission and recent judicial decisions on joint enterprise.

AO1

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

The response might include issues such as:
- a definition of murder as a common law offence
- direct intention and oblique intention with possible reference to cases such as Mohan, Nedrick, Woollin
- the nature of voluntary manslaughter: killing with malice aforethought but in circumstances where the offence of murder is reduced to manslaughter by one of the special defences. A verdict of voluntary manslaughter is only possible where one of the special defences succeeds
- Diminished Responsibility: Coroners and Justice Act 2009 including a definition of diminished responsibility with relevant citation. Loss of control: Coroners and Justice Act 2009. Cases cited can include Camplin, Morhall, Luc Thiet Thuan, Clinton, *A-G for Jersey v Holley*, James; Karimi.

AO3

Candidates will offer an analysis and evaluation of the relevant legal rules, principles, concepts and issues in order to discuss the extent to which the law on murder needs to be reformed. In order to reach a judgement about these issue candidates will offer a debate and come to a substantiated judgement regarding whether there is a need for reform in this area of law.

The response might include issues such as:
- analysis of *actus reus* and *mens rea* of murder; in cases such as Moloney, Janjua and Choudhary, Cunningham, Mohan, Woollin, Clegg, Martin
- several aspects of the law in relation to unlawful killing have been criticised leading to strong demands that the law is need of updating and clarification
- the Law Commission's 2006 report Murder, Manslaughter and Infanticide (Report Law Com 304) in which the Commission identified that there were many problems with the law on murder

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- suggestions for reform of the law on murder in particular that of the Law Commission that murder should be divided into two separate offences: first degree murder and second degree murder; support could be provided by reference to the July 2008 consultation paper: Murder, Manslaughter and Infanticide: Proposals for Reform of the Law, CP 19/08; the reform of self-defence implemented as part of the Coroners and Justice Act 2009 and the Martin case
- the Coroners and Justice Act 2009 does not address the problem of the lack of duress as a defence to murder.
- the recent debate on mercy killings and reference to modern authorities such as Inglis
- the recent change in the law on joint enterprise following Jogee.

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	**[8-10 marks]** • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to whether the law on murder needs to be reformed. Response is clear, detailed and fully developed.	**[12-15 marks]** • Excellent analysis of legal rules, principles, concepts and issues relevant to the debate whether the law on murder should be reformed. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the need to reform of the law on murder, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**[5-7 marks]** • Good knowledge and understanding of the English legal system and legal rules and principles relating to whether the law on murder needs to be reformed. Response is generally clear, detailed and developed.	**[8-11 marks]** • Good analysis of legal rules, principles, concepts and issues relevant to the debate whether the law on murder should be reformed. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the need to reform of the law on murder, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**[3-4 marks]** • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to whether the law on murder needs to be reformed. Response includes some detail which is developed in places.	**[4-7 marks]** • Adequate analysis of legal rules, principles, concepts and issues relevant to the debate whether the law on murder should be reformed. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the need to reform of the law on murder, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**[1-2 marks]** • Basic knowledge and understanding of the English legal system and legal rules and principles relating to whether the law on murder needs to be reformed. Response includes minimal detail.	**[1-3 marks]** • Basic analysis of legal rules, principles, concepts and issues relevant to the debate on whether the law on murder should be reformed. Analysis includes minimal detail. • Basic evaluation of the need to reform of the law on murder. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

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Section D

Human Rights Law

7. To what extent are the powers of the police to conduct secret surveillance are balanced by some safeguards to protect individual privacy? [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 powers of surveillance, the English legal system and human rights law. For example, a response may include reference to an evaluation of the legislation allowing intrusive surveillance by the police, the role of the surveillance tribunal, and the right to privacy under the Human Rights Act 1998.

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.

The response might include issues such as:
- Article 8 of the ECHR which gives a right to a private and family life - a qualified right
- background to current legislation regulating surveillance; cases such as *Malone v UK*, *Khan v UK*
- powers of surveillance were increased by the *Police Act 1997* and the *Regulation of Investigatory Powers Act 2000*; that requirements under section 93 and section 92 of the Police Act 1997 for police to gain a warrant for surveillance and that authorisation for the warrant can be given by the Chief Constable or Assistant Chief Constable (s.94)
- procedures under the Police Act 1997 which are supervised by the Surveillance Commissioners. This is to protect the citizen against abuse of police powers and that every authorisation must be notified to a Commissioner
- the *Regulation of Investigatory Powers Act 2000*, Part II, provides the legal basis for actions not covered by the PA 1997, and also deals with covert surveillance. Covert surveillance is defined in section 26 of RIPA.

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues that affect the balance between the rights of individuals to protect their privacy and the right of the State to carry out secret surveillance. Candidates are expected to consider and debate the safeguards surrounding the authorisation of state surveillance, and the challenging viewpoint that citizens have very little protection against intrusive surveillance by the State.

The response might include issues such as:
- analysis and evaluation of article 8 of the ECHR meaning and implication of it being a qualified right. Can be removed when prescribed by law, necessary and proportionate and fulfils a legitimate aim

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- analysis of cases such as *Malone v UK*, *Khan v UK*
- analysis and evaluation of the increase to the police powers of surveillance by the Police Act 1997 and the Regulation of Investigatory Powers Act 2000. Safeguards in place to protect the citizen
- procedures under the Police Act 1997 which are supervised by the Surveillance Commissioners: analysis and evaluation that this is to protect the citizen against abuse of police powers and that every authorisation must be notified to a Commissioner
- the Regulation of Investigatory Powers Act 2000 - a distinction between surveillance and intrusive surveillance: analysis of the fact the police have to get more authority to conduct intrusive surveillance which is a safeguard to protect the public from having their privacy invaded and against abuses of power by the police
- powers to conduct directed surveillance are given to a wide range of bodies including the Department of Social Security, Department of Trade and Industry, and also to local authorities: analysis and evaluation of scope of powers
- balance can be provided by the RIPA Tribunal – a specialised court for people to complain if they feel their privacy has been breached.

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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	**[8-10 marks]** • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to law on State surveillance. Response is clear, detailed and fully developed.	**[12-15 marks]** • Excellent analysis of legal rules, principles, concepts and issues relevant to the powers of the State to conduct secret surveillance. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the law regarding individual privacy, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**[5-7 marks]** • Good knowledge and understanding of the English legal system and legal rules and principles relating to law on State surveillance. Response is generally clear, detailed and developed.	**[8-11 marks]** • Good analysis of legal rules, principles, concepts and issues relevant to the powers of the State to conduct secret surveillance. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the law regarding individual privacy, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**[3-4 marks]** • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to law on State surveillance. Response includes some detail which is developed in places.	**[4-7 marks]** • Adequate analysis of legal rules, principles, concepts and issues relevant to the powers of the State to conduct secret surveillance. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the law regarding individual privacy, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**[1-2 marks]** • Basic knowledge and understanding of the English legal system and legal rules and principles relating to law on State surveillance. Response includes minimal detail.	**[1-3 marks]** • Basic analysis of legal rules, principles, concepts and issues relevant to the powers of the State to conduct secret surveillance. Analysis includes minimal detail. • Basic evaluation of the law regarding individual privacy. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

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Human Rights Law

8. "The media faces few legal controls over their right to intrude into the private lives of individuals." 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 privacy, the English legal system and human rights law. For example, a response may include reference to a discussion of the balance between freedom of expression by the media and an individual's right to privacy, and the remedies available to a claimant through the civil courts.

AO1

Candidates are expected to demonstrate knowledge and understanding of the English legal system and legal rules and principles relevant to the legal controls over the media.

The response might include issues such as:

- at present there is no specific right to privacy in the law of England and Wales eg the case of *Kaye v Robertson*
- an explanation of Article10 of the European Convention on Human Rights involving freedom of expression eg the case of *Goodwin v UK*
- Section 12(4) of the HRA 1998 states that UK courts must have particular regard to the convention right to freedom of expression, and where the material in question is journalistic, literary or artistic material, to the extent to which is in the public interest for it to be published, and any relevant privacy code
- Article 8 of the European Convention on Human Rights: "Everyone has the right to respect for his private and family life, his home and his correspondence" *Spencer v UK (1998)*, *Von Hannover v Germany (2005).*

AO3

Candidates will offer an analysis and evaluation of the legal rules, principles, concepts and issues surrounding the right of the media to intrude into private lives of citizens. Candidates are expected to consider and debate the full range of issues and controls affecting the media, including an analysis and evaluation of human rights law, breach of confidence and the recent use of super injunctions. In order to reach a judgement about these issues candidates will offer a debate and come to a substantiated judgement regarding whether the media does face few legal controls regarding interference with the privacy of individuals.

The response might include issues such as:

- analysis and evaluation of Article 10 as a qualified right
- analysis and evaluation of the further legal controls available: in the absence of a specific right to privacy a claimant may be able to use the law on defamation, malicious falsehood, trespass, nuisance, copyright or breach of confidence
- analysis and evaluation of breach of confidence which has been developed by the courts so as to provide some protection for privacy; expansion of breach of confidence , for example, *Lord Woolf in A v B and C*; Lord Goff in *A-G v Guardian Newspapers (No.2)*
- analysis and evaluation of the case of *Venables v News Group Newspaper*

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- further examples of cases which illustrate the balance between the freedom of expression of the media and the individual's right to privacy eg *Prince Albert v Strange*; *Argyll v Argyll*; *Stephens v Avery*; *Douglas v Hello!*; *Campbell v MGN*
- analysis and evaluation of the recent use of "super injunctions" to protect the identity of the claimant
- updates following Leveson, including the need for the establishment of Independent Press Standards Organisation which has been set up to regulate the media.

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	**[8-10 marks]** • Excellent knowledge and understanding of the English legal system and legal rules and principles relating to legal controls over the media. Response is clear, detailed and fully developed.	**[12-15 marks]** • Excellent analysis of legal rules, principles, concepts and issues relevant to legal controls. Analysis is detailed with appropriate range of supporting evidence which draws together knowledge, skills and understanding. • Excellent evaluation of the law regarding the private lives of individuals, including a valid and substantiated judgement. • Excellent citation of supporting case law and legal authorities.
3	**[5-7 marks]** • Good knowledge and understanding of the English legal system and legal rules and principles relating to legal controls over the media. Response is generally clear, detailed and developed.	**[8-11 marks]** • Good analysis of legal rules, principles, concepts and issues relevant to legal controls over the media. Analysis is generally detailed with appropriate range of supporting evidence. • Good evaluation of the law regarding the private lives of individuals, including a valid judgement. • Good citation of supporting case law and legal authorities.
2	**[3-4 marks]** • Adequate knowledge and understanding of the English legal system and legal rules and principles relating to legal controls over the media. Response includes some detail which is developed in places.	**[4-7 marks]** • Adequate analysis of legal rules, principles, concepts and issues relevant to legal controls over the media. Analysis includes some detail with some supporting evidence. • Adequate evaluation of the law regarding the private lives of individuals, including reference to a judgement. • Adequate citation of supporting case law and legal authorities.
1	**[1-2 marks]** • Basic knowledge and understanding of the English legal system and legal rules and principles relating to legal controls over the media. Response includes minimal detail.	**[1-3 marks]** • Basic analysis of legal rules, principles, concepts and issues relevant to legal controls over the media. Analysis includes minimal detail. • Basic evaluation of the law regarding the private lives of individuals. • Basic citation of supporting case law and legal authorities.
0	Response not creditworthy or not attempted.	

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