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# **GCE A LEVEL MARKING SCHEME**

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**SUMMER 2022**

**A LEVEL  
LAW - UNIT 3  
THE PRACTICE OF SUBSTANTIVE LAW  
1150U30-1**

## **INTRODUCTION**

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

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

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

## WJEC GCE A LEVEL LAW

### UNIT 3: THE PRACTICE OF SUBSTANTIVE LAW

#### SUMMER 2022 MARK SCHEME

#### Marking guidance for examiners

##### Summary of assessment objectives for Unit 3

The questions assess AO1 and AO2. The assessment objectives focus on the ability to demonstrate knowledge and understanding of legal rules and principles; the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate 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 the material referred to. Examiners should seek to credit any further admissible evidence offered by the candidates.
- an assessment grid advising bands and associated marks that should be allocated to responses which demonstrate the characteristics needed in AO1 and AO2.

##### Stage 1 - Deciding on the band

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

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

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

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

## **Stage 2 - Deciding on the mark**

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

Examiners should mark the examples and compare their marks with those of the Principal Examiner.

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

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

## Section A

**1 0** The Government recently set up a scheme under which the job seekers allowance benefit was paid instead to a private company. Unemployed people were set to work in the community and allowed a proportion of their benefits depending on how many hours they worked each week. Stories soon began to circulate about the large profits being made by the company and the terrible poverty which the scheme was causing to unemployed people and their families. The editor of the *Daily Deceiver*, Katie Kittle was informed by a usually reliable source that Digby Dollard, one of the government ministers responsible for setting up the scheme, had been receiving payments from the company. Katie printed the story, together with a photo of Digby coming out of an expensive restaurant, under the headline: “Digby Dines while Families Face Hard Times”. As a result of the Article, Digby has received death threats and has been suspended from his role as government minister. In fact, the story was not quite accurate, as it was actually Digby’s ex-wife who had received payments from the company.

In light of reported case law and other sources of law, consider whether Digby has a case for defamation against the *Daily Deceiver* and Katie. [50]

### 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 Digby candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of defamation. Candidates are expected to apply the full range of legal rules and principles to Digby’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:

- The meaning of defamation under the Defamation Act 2013.
- Defamation Act s.1 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. Almost certainly the damage to reputation would be considered serious. Further support can be provided by reference to *Sim v Stretch*, *Byrne v Dean*
- Cases on what can amount to defamation such as *Cassidy v Daily Mirror*, *Charlesworth v MGN* on the impact of photos
- Applying the elements of defamation to Digby’s case: the statement must be defamatory; it must refer to the claimant, and it must have been published
- Mistaken identity, citing cases like *Hulton v Jones* or *O’Shea v MGN*; for a mistaken identity case to succeed now, the claimant would have to show serious harm to his/her reputation
- Applying the possible defences that may be used by the *Daily Deceiver* and Kate including “honest opinion” under the Defamation Act 2013; defence of Publication on a matter of public interest, under s.4 of the Defamation Act 2013.
- The Defamation Act 2013 – the defence of justification has been abolished and replaced by the defence of truth: s.2, which is substantially the same as the old defence
- A court will consider Digby’s right to privacy, and the newspaper’s freedom of expression.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed knowledge and understanding of legal rules and principles relating to the law of defamation.</li> </ul>
<b>3</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>• Good knowledge and understanding of legal rules and principles relating to the law of defamation.</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>• Satisfactory knowledge and understanding of legal rules and principles relating to the law of defamation.</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>• Basic knowledge and understanding of legal rules and principles relating to the law of defamation.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>• Excellent, detailed application of legal rules and principles to Digby's situation.</li> <li>• Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to defamation.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>• Very good application of legal rules and principles to Digby's situation.</li> <li>• Very good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to defamation.</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules and principles to Digby's situation.</li> <li>• Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to defamation.</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>• Satisfactory application of legal rules and principles to Digby's situation.</li> <li>• Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to defamation.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules and principles to Digby's situation.</li> <li>• Basic presentation of a legal argument, using minimal legal terminology relating to defamation.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

2 | 0

In 2011 Adam suffered a massive stroke which left him completely paralysed from the neck down, but he could move his head and his eyes. For many years, he had wanted to end his life, but could not do so without assistance, other than by self-starvation which was a long, painful and distressing death. He wanted someone to kill him by injecting him with a lethal drug. If necessary he was prepared to kill himself by means of a machine which, after being loaded with a lethal drug, could be digitally activated by Adam, using a password, via an eye blink computer. Adam wants to apply to the High Court for a declaration that it would be lawful for a doctor to assist him in terminating his life this way, or if the court refused then Adam would like a declaration that the current law, which states that encouraging or assisting a suicide is a crime, is incompatible with his right to a private life under article 8 of the European Convention on Human Rights.

Advise Adam of the powers that judges have under the Human Rights Act 1998 to challenge the law on assisted suicide. [50]

### 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 Adam candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of the Human Rights Act 1998. Candidates are expected to apply the full range of legal rules and principles to Adam's situation, including the European Convention on Human Rights, the Human Rights Act 1998 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- s.7 HRA 1998 – rights now directly applicable in domestic courts
- s.6 Adam can sue a public body for breach of human rights – meaning of a public body Poplar Housing case
- s.2 – domestic judiciary must take into account Strasbourg jurisprudence, but are not bound by it
- s.3 – judges must interpret all laws to be compatible with human rights, in so far as they can do so
- s.4 declaration of incompatibility – could judges issue one in Adam's situation? – support with cases e.g. A & Others (2004) Wilson (2001), Bellenger
- S10 – changes to laws via fast track procedure
- S.19 requirement that all law state whether they are compatible or not with human rights

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>Excellent, detailed knowledge and understanding of legal rules and principles relating to human rights</li> </ul>
<b>3</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of legal rules and principles relating to human rights</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>Satisfactory knowledge and understanding of legal rules and principles relating to human rights</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of legal rules and principles relating to human rights</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>Excellent, detailed application of legal rules and principles to Adam's situation.</li> <li>Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to the human rights.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>Very good application of legal rules and principles to Adam's situation.</li> <li>Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to human rights</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Adam's situation.</li> <li>Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to human rights</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles to Adam's situation.</li> <li>Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to relating to human rights.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Adam's situation.</li> <li>Basic presentation of a legal argument, using minimal legal terminology, relating to relating to human rights</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

## Section B

3 0

Active Athletics stadium in Cardiff was to host the annual race event on 10th, 11th and 12th October 2019. As the event would attract more crowds than usual, Active Athletics contracted with Builders R Us for them to build a bigger car park close to the stadium. As part of the contract Builders R Us were required to relay and widen the existing car park. The new car park was to be completed by 7th October 2019. A deposit of £40,000 was payable by Active Athletics before the 7th September 2019 and the balance of £80,000 was payable on the 7th October 2019.

Mr King, a local resident, decided to make some money out of the forthcoming event, and knowing that visitors to the event would be looking for accommodation, he let out his house in Cardiff for £2,000 for the 3 days of the event to Mrs Mann. Mrs Mann paid a deposit of £800 on entering into the contract with Mr King and the balance was due on 10th October 2019.

During the first week of October 2019 Cardiff suffered from exceptionally heavy rain. The stadium, which was next to the local river, was flooded so the athletics event had to be cancelled and it cannot be rescheduled. The area is no longer suitable for any development. Builders R Us are claiming the balance of the money they say are due. They say that their labour costs for the new car park amount to £50,000 and they wish to recover this from Active Athletics. Mrs Mann has also informed Mr King that as the event has been cancelled she no longer wants to stay at his house in Cardiff.

Advise Active Athletics as to their liability to Builders R Us and also advise Mr King who is seeking to recover the balance of £1,200 from Mrs Mann. [50]

### 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 Active Athletics and Mr. King candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to discharge of contracts. Candidates are expected to apply the full range of legal rules and principles to Active Athletics and Mr. King's situation, including the doctrine of frustration and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- The scenario relates to the doctrine of frustration and asks whether the contracts can be set aside on the basis that it is no longer possible for the parties to perform their obligations under the contracts.
- This case appears to be one in which the doctrine of frustration could apply, enabling Builders R Us and active Athletics to avoid any further performance of the contract. The reason for this is that the contract can no longer physically be performed as the car park has been completely destroyed. The leading case is Taylor v Caldwell in which the concert hall was destroyed two days before the concert and the parties were entitled to treat the contract as frustrated.
- The fact that the carpark can no longer be built in the contracted location must render the contract radically different to what the parties had agreed. For these reasons, it is likely that the frustration doctrine will apply to this case.

- Under the initial contract Builders R Us were entitled to a further £80,000 following the completion of the works and a deposit of £40,000 has already have been paid to them. When a contract is set aside on the basis that it can no longer be performed, the contracting parties are required to return any deposit paid and expect no further payment under the contract. In this instance it is noted that Builders R Us anything have incurred costs of £50,000 on the basis that the construction work had commenced before the flood occurred. The Law Reform (Frustrated Contracts) Act 1943 makes some provision for expenses incurred prior to the frustrating event. Section 1(2) states that any monies advanced should be repaid, which identifies that the initial £40,000 paid to Builders R Us should be returned. The provision requires the court to determine whether expenses can be claimed, and if this is successful the court will determine the amount can be claimed. It may be possible for Builders R Us to retain the expenses incurred. However, it is not straightforward as to how the court will make an award as to expenses that may be reclaimed.
- Letting of Mr King's House
- The general principle of the doctrine of frustration is that the contract will not be treated as frustrated if it is still capable of being performed. It is noted that the letting of the house was to occur during the three days of the event however, there is no detail that the letting was contingent on the event going ahead. Neither is there any detail as to what should happen in the event of the event being cancelled. From the information the house is still capable of letting and therefore both Mrs Mann and Mr King will be expected to perform their respective obligations under the contract. It is noted that a £800 deposit has been paid by Mrs Mann under the contract, which will not be returnable. Mrs Mann will still be liable to pay the further £1,200 due under the contract. Mr King will be obligated to provide access to the house for the three days in which the event was due to be held. The event may have been cancelled but Mrs Mann could still enjoy the provision of the house during those three days and hence the contract will not be frustrated.
- It is however, entirely possible that the flooding has also affected the house on the basis that it is situated near to the race course. If access to the house is not possible due to the flooding, or the house itself has flooded then it will be possible to treat the contract as frustrated. In this context, Mr King will be required to return the deposit and Mrs Mann will be released from her obligations under the contract.<sup>26</sup>
- The courts are reluctant to allow the doctrine of frustration to be used in all but the most exceptional cases. This is where it is deemed no longer possible to perform the contract as the very nature of performance renders the contract different to that which the parties originally intended.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>Excellent, detailed knowledge and understanding of legal rules and principles relating to discharge by frustration.</li> </ul>
<b>3</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of legal rules and principles relating to discharge by frustration.</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>Satisfactory knowledge and understanding of legal rules and principles relating to discharge by frustration</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of legal rules and principles relating to discharge by frustration</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>Excellent, detailed application of legal rules and principles to Active Athletics and Mr. King's situation.</li> <li>Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to discharge by frustration</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>Very good application of legal rules and principles to Active Athletics and Mr. King's situation.</li> <li>Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to discharge by frustration</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Active Athletics and Mr. King's situation.</li> <li>Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to misrepresentation</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles Active Athletics and Mr. King's situation.</li> <li>Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to relating to discharge by frustration.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Active Athletics and Mr. King's situation.</li> <li>Basic presentation of a legal argument, using minimal legal terminology, relating to discharge by frustration</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

4 | 0

Fiona bought a new pond filter system from Pond Life Ltd who assured her that it would be perfect for improving the quality of the water in her garden fish pond. Fiona arranged for Jack to install the filter system. Jack missed two appointments, for which Fiona had taken time off work. When he finally turned up for the third appointment, Jack damaged the mosaic garden tiles around the pond when he dropped his tools whilst installing the filter system. Though Jack properly installed the filter system, it was of poor quality and failed to improve the water quality of the pond leading to several fish dying. Pond Life Ltd refused to accept any responsibility. Jack also pointed out that Fiona had signed a “completion of work” form, which included a statement that he would not be liable for any damage resulting from the installation work.

Advise Fiona whether there has been a breach of any implied or express terms for the purchase and installation of the filter system, applying your knowledge of legal rules and principles. [50]

### 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 Fiona candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of express and implied terms of a contract. Candidates are expected to apply the full range of legal rules and principles to Fiona’s situation, in order to present a legal argument.

The response might consider issues such as:

- 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.
- the Consumer Rights Act 2015 in relation to Fiona and Pond Life Ltd such as satisfactory quality and fitness for purpose
- whether the service was carried out with reasonable care and skill; information said to Fiona is binding if Fiona has relied on it
- whether the service from Pond Life Ltd was done for a reasonable price and whether the service was carried out within a reasonable time
- the remedies available to Fiona 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.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>Excellent, detailed knowledge and understanding of legal rules and principles relating to express and implied terms of a contract.</li> </ul>
<b>3</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of legal rules and principles relating to relating to express and implied terms of a contract</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>Satisfactory knowledge and understanding of legal rules and principles relating to relating to express and implied terms of a contract</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of legal rules and principles relating to express and implied terms of a contract</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>Excellent, detailed application of legal rules and principles to Fiona's situation.</li> <li>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.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>Very good application of legal rules and principles to Fiona's situation.</li> <li>Very 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</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Fiona's situation.</li> <li>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</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles to Fiona's situation.</li> <li>Satisfactory 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.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Fiona's situation</li> <li>Basic presentation of a legal argument, using minimal legal terminology, relating to express and implied terms of a contract</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

## Section C

5 0

Steven enjoys driving his open top sports car at speed. On a beautiful sunny day Steven is driving very fast through a country village when he passes Davina, a pedestrian, who is out walking. Davina is so startled by the speed of the car passing her, on the narrow road, that she leaps out of Steven's way and in doing so she falls over, suffering cuts and bruises to her arms and legs. Aidan, a passer-by, helps Davina to her feet. Davina's boyfriend, Mike, hears Davina's cries and rushes to find out what is going on. He sees Aidan holding Davina's arm. He runs over and shouts at Aidan, 'Let go of her or I will kill you!' Meanwhile Steven has stopped his car to see what is going on. Mike, realising that Steven is to blame for Davina falling over and hurting herself, drags Steven from the car and kicks and punches him repeatedly, breaking four of Steven's ribs.

Advise Steven and Mike as to whether they have committed any non-fatal offences, applying your knowledge and understanding of legal rules and principles. [50]

### 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 Steven and Mike candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to non-fatal offences against the person. Candidates are expected to apply the full range of legal rules and principles to Steven and Mike's situation, including the Offences Against the Person Act 1861 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- The *mens rea* for s20 is the intention or recklessness to cause some harm (some injury or ABH) but the *actus reus* or the outcome has to be a wound or serious injury/GBH. As Steven is driving recklessly he is reckless in causing at least some harm, so the *mens rea* is proved. However, Davina suffers only cuts and bruises. Harms can be direct or indirect but Davina's injuries do not constitute a wound or GBH. Therefore Steven might not be liable for s20 but he could be liable for s47.
- The *mens rea* for s47 is the intention or recklessness to commit an assault, meaning the intention or recklessness to cause the victim fear of unlawful force or applying unlawful force. The *actus reus* of s47 is any injury or hurt caused which leaves a mark but is not permanent; it should not be too trivial or too insignificant. Cuts and bruises are often seen as being s47 so this will apply to Davina. As Steven is speeding he is driving recklessly and Davina's injuries are the result of his driving so he will be liable.
- An assault is when Mike puts Aidan in fear of immediate unlawful force. This can be a thing said or done, signs or even silence. The *mens rea* for assault is intention or recklessness as to causing the victim to fear immediate unlawful force, while the *actus reus* can be as little as fear. As Mike threatens to kill Aidan this suggests he has the intention of causing immediate unlawful force. Mike causes Aidan to feel fear and so he is liable.
- S18 requires the intention to cause serious injury/GBH or to wound. The *actus reus* is a wound which breaks all layers of the skin or a serious injury. Mike kicks and punches Steven repeatedly which clearly shows he has the intention to cause serious injury. As Steven's ribs are broken this is enough for serious injury/GBH. Mike is liable
- It is helpful to consider the *actus reus* before the *mens rea* and then reach a conclusion.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>Excellent, detailed knowledge and understanding of the legal rules and principles relating to non-fatal offences against the person</li> </ul>
<b>3</b>	<b>11-16</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the legal rules and principles relating to defences to non-fatal offences against the person</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>Satisfactory knowledge and understanding of the legal rules and principles relating to non-fatal offences against the person</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the legal rules and principles relating to non-fatal offences against the person</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>Excellent, detailed application of legal rules and principles to Steven and Mike's situation.</li> <li>Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>Very good application of legal rules and principles to Steven and Mike's situation.</li> <li>Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to non-fatal offences against the person</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Steven and Mike's situation.</li> <li>Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to non-fatal offences against the person</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles to Steven and Mike's situation.</li> <li>Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to relating to non-fatal offences against the person</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Steven and Mike's situation.</li> <li>Basic presentation of a legal argument, using minimal legal terminology, relating to relating to non-fatal offences against the person</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

6 0

Alfie and Simon went to a music festival together. They watched numerous bands and drank lots of cider. Whilst in the festival bar Alfie taunted Simon saying that his favourite band was better than Simon's favourite band and they began to argue, resulting in Alfie punching Simon on the chin, causing him to fall and bang his head on the floor. The barman, Richie, physically threw them both out into the field, causing Simon to fall over and bang his head for a second time. By now Simon was barely conscious, so Alfie ran over to the St John's Ambulance tent, who arranged for an ambulance to take Simon to the accident and emergency department of the nearest hospital. Simon was examined by Chris, a young and inexperienced doctor. Chris sent Simon for an x-ray, but did not think it necessary to order a brain scan. The x-ray looked normal, so Chris told Simon he could go home. In fact Simon had suffered a serious brain injury which did not show up on the x-ray, but which could have been diagnosed and treated if Chris had ordered a brain scan. Simon died a few days later.

In the light of reported case law and other sources of law, consider whether Alfie may be criminally liable for Simon's death. [50]

### 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 Alfie candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to homicide. Candidates are expected to apply the full range of legal rules and principles to Alfie's situation, including murder and manslaughter and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Applying the actus reus of murder to Alfie's case: that the defendant must cause the death of a human being. Causation – both factual and legal causation can be explained. Further advice in this area can include factual causation – 'but for' test, e.g. White Dalloway and legal causation, operating and substantial cause
- Applying mens rea of murder to Alfie's case: the intention to kill or cause grievous bodily harm to Simon. Advice should include reference to both direct and oblique intention. Support may come from discussion of virtual certainty test: Woolin; Nedrick
- Is there coincidence of actus reus and mens rea in Alfie's case (i.e. the application of the 'same transaction' principle)? Reference to Thabo Meli, Church, Le Brun
- Applying Novus actus interveniens to Alfie's case: consideration of circumstances which would be sufficient to break the chain of causation – act of a third party which is "free, deliberate and informed" (Pagett)
- Chain of causation: whether broken by medical negligence: Smith,
- Jordan, Cheshire.
- Involuntary manslaughter: unlawful act manslaughter: Franklin, Lamb;
- Gross negligence manslaughter: Adamoko.

<b>Band</b>	<b>Marks</b>	<b>AO1: Demonstrate knowledge and understanding of legal rules and principles</b>
<b>4</b>	<b>16-20</b>	<ul style="list-style-type: none"> <li>Excellent, detailed knowledge and understanding of the legal rules and principles relating to homicide</li> </ul>
<b>3</b>	<b>11-16</b>	<ul style="list-style-type: none"> <li>Good knowledge and understanding of the legal rules and principles relating to homicide</li> </ul>
<b>2</b>	<b>6-10</b>	<ul style="list-style-type: none"> <li>Satisfactory knowledge and understanding of the legal rules and principles relating to homicide</li> </ul>
<b>1</b>	<b>1-5</b>	<ul style="list-style-type: none"> <li>Basic knowledge and understanding of the legal rules and principles relating to homicide.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

<b>Band</b>	<b>Marks</b>	<b>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology</b>
<b>5</b>	<b>25-30</b>	<ul style="list-style-type: none"> <li>Excellent, detailed application of legal rules and principles to Alfie's situation.</li> <li>Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to homicide.</li> </ul>
<b>4</b>	<b>19-24</b>	<ul style="list-style-type: none"> <li>Very good application of legal rules and principles to Alfie's situation.</li> <li>Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to homicide.</li> </ul>
<b>3</b>	<b>13-18</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Alfie's situation.</li> <li>Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to homicide.</li> </ul>
<b>2</b>	<b>7-12</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles to Alfie's situation.</li> <li>Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to homicide.</li> </ul>
<b>1</b>	<b>1-6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Alfie's situation</li> <li>Basic presentation of a legal argument, using minimal legal terminology, relating to homicide.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.