



GCE A LEVEL MARKING SCHEME

SUMMER 2023

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

INTRODUCTION

This marking scheme was used by WJEC for the 2023 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 2023 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

Human Rights Law

1 0 Following some unpleasant racist incidents, Zara and Harry organised a march to call for peace and reconciliation. The march was to be followed by an open-air gathering in the town centre with music and dancing to celebrate harmony between different cultures. Around a thousand people took part in the march. As they approached the town centre, the police officer in charge of the march, Superintendent Jones, received information that a loud group of individuals known to be responsible for previous racist attacks was on its way to the town centre to confront the marchers. Superintendent Jones therefore gave instructions to the marchers to alter their route to avoid going anywhere near the town centre. Zara and Harry protested that this would make it very difficult for people to take part in the planned gathering. Superintendent Jones told them that, with great regret, he had banned their gathering as well. In the town centre itself, police officers ordered everyone who had already arrived for the gathering to leave the town centre immediately. Those who objected were arrested for taking part in a banned assembly and brought before the magistrates the following day.

In light of reported case law and other sources of law, advise Zara and Harry as to whether the police were acting within their powers to control these public order situations. [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 Zara and Harry candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of public order. Candidates are expected to apply the full range of legal rules and principles to Zara and Harry's situation, including the Public Order Act 1986 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Public Order Act 1986 and Criminal Justice and Public Order Act 1994
- Under s.11 of the POA 1986, Zara and Harry, the organisers of the procession are required to give notice six clear days in advance stating the date of the procession, the start time, the proposed route and the name and address of at least one person organising it. The notice must be delivered by hand or by post to a police station in the area where the procession is to start. Failure to give notice is a summary offence punishable by a fine.
- It is not the case that organisers require permission from the police, nor do they have to wait for police permission before going ahead. Failure to give notice is an offence as above, but the procession is not illegal. Under s.13 the Chief Constable can apply to the district council to ban all processions of a particular type in the area for up to three months, subject to approval by the Home Secretary: organising or participating in a banned procession is a summary offence under s.13.

- Section 11 is one of the few sections of the POA 1986 which did not give the police a power to arrest, but since the SOCPA amendments to PACE 1984, s.24, the police have power to arrest for any offence.
- Powers of police in relation to processions: s.12 of the POA 1986. Power to impose conditions on processions: s.12(1) – the “four triggers” – where the senior officer present at the scene reasonably believes that the procession may result in serious public disorder, serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is intimidation. Conditions which can be imposed: the senior officer can impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation that is feared. There is no requirement that the officer’s decision be based on reasonable grounds. There is no list of conditions that can be imposed, but the section specifically mentions that they may include the route to be followed, and a condition not to enter a given public place. Organisers of the procession under s.12(4) and those who take part under s.12(5) commit an offence if they refuse to comply with a condition.
- Power to impose conditions on assemblies are contained in s.14 and are virtually the same as in s.12. s.14 only applies to static assemblies: DDP v Jones 2002, so cannot be used to impose conditions on movement – but in Jones the court held it could sever any conditions which was ultra vires and leave the other conditions intact. There is no power for the senior officer at the scene to ban an assembly, so strictly speaking Superintendent Jones is acting outside of his powers. However, the order to leave the town centre may be treated as a condition imposed under s.14, as in Brehony v CC of Greater Manchester, DPP v Jones, Broadwith v CC of Thames Valley Police, etc. The organiser and participants in an assembly commit an offence by refusing to comply with a condition: s.14 (4) and (5).
- Under s.14A-C, inserted by the CJPOA 1994, assemblies which are classed as trespassory may be the subject of an advance ban. The assembly here could be classed as trespassory – it is on the highway (s.14A(9)), and one of the grounds on which an assembly can be banned is that there is reason to believe that it may result in serious disruption to the life of the community. Once a ban is in force, it is an offence knowingly to organise or participate in a banned assembly. The power to ban lies with the chief constable, subject to approval by the Home Secretary in London and the local authority elsewhere. Convention rights: the rights to freedom of expression (Art. 10) and freedom of assembly (Art. 11) must be taken into account.
- Discussion of breach of the peace; In Austin -v- Metropolitan Police Commissioner, the House of Lords held that the practice of confining demonstrators (“kettling”) was lawful as an exercise of the power to impose conditions under s.14, even if the police did not have these in mind. There was no breach of Art.5: freedom of movement, where the confinement was only for the time necessary to prevent serious public disorder; if a cordon was maintained beyond this merely to punish the demonstrators, it would be a breach of Art.5.

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

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

2 | 0

Daniel, a sixth-form student, was on his lunch break and he was wandering around the shops in town. He was observed by two police constables, PC Fenn and PC Owen, who noticed the school's logo on his sweatshirt and formed the opinion that Daniel was probably up to no good. PC Fenn took Daniel by the arm and said, "Alright, lad, let's see what you've got." He then proceeded to search Dan in front of the passers-by. Finding nothing, he was about to let Daniel go when PC Owen commented that the school which Daniel attended had been the scene of a recent stabbing. The two officers then told Daniel that he was going to the police station so he could be questioned about the stabbing. At the station Daniel was beginning to lose his temper, and when he was taken before the custody officer, the shouted: "I know my rights; I'm studying law." The custody officer replied: "Well, you won't want a solicitor, then," and put Daniel straight into a cell. Daniel sat in the cell waiting to be interviewed before he was taken out and forced to give his fingerprints. He was then questioned for twelve hours before being returned to the cell for the night. Daniel asked for his mother to be contacted, but the detective thought that Daniel would be more likely to confess if he was refused contact with his family. The questioning continued all next day. After being in custody for more than 42 hours, Daniel confessed to the stabbing.

In the light of reported case law and other sources of law, advise Daniel as to the legality of the actions of the police. [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 Daniel candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of police powers. Candidates are expected to apply the full range of legal rules and principles to Daniel's situation, including the Police and Criminal Evidence Act 1984 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Police and Criminal Evidence Act 1984
- Power to stop and search: ss 1-3 and Code A
- Applying the requirement for reasonable suspicion to the scenario: Code A – should not be based on personal factors alone.
- Applying the requirements for a valid search to the search of Daniell: information to be given under s.2; failure renders search invalid: Osman
- Procedure following search: s.3
- Applying the power of arrest to the actions of PC Fenn and Owen: s.24 as amended by the Serious Organised Crime and Police Act 2005, S.110, and code G police may arrest anyone who is, or is reasonably suspected to be, about to commit an offence; or in the act of committing an offence; or is guilty of committing an offence; or is reasonably suspected to be guilty of having committed an offence
- Arrest power must only be exercised if PC Fenn and Owen have reasonable grounds to believe it is necessary s.24(5) the grounds are: to enable the name and address of the person to be ascertained if it is not known, or the police believe it to be false; to prevent the person causing physical injury to himself or another, suffering physical injury, causing loss or damage to property, committing an offence against public decency, or causing unlawful obstruction of the highway; to protect a child or other vulnerable person; to allow the prompt and effective investigation of the offence of the conduct of the person; to prevent any prosecution for the offence being hindered by the disappearance of the person

- Applying the procedural requirements of a valid arrest: should be informed of the fact he is under arrest and also the ground for arrest (s.28) and he should be cautioned
- Treatment of Daniel in police custody: Code C
- Daniel's right to have someone informed of his arrest: s.56
- Daniel's right to legal advice: s.58
- Daniel's time limits on detention: s.41 - 44 allows police to authorise detention up to 36 hours but further detention up to 96 hours requires authorisation by magistrates
- Daniel's detention should be reviewed after 6 hours and then every 9 hours by a review officer not involved in the case- s 40
- Daniel's right to an appropriate adult: s.57 if he is a juvenile (as the scenario suggests) or a vulnerable adult

Whether the confession is admissible sections 76 & 78 PACE

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

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

Section B

Law of Contract

3 0

Adam, a dealer in rare books, obtains a rare and valuable Harry Potter First Edition book. He decides to give two of his regular customers, Carl and Debbie, the opportunity to purchase it and writes individually to them telling them of this unique offer. He states in both letters that he is prepared to sell the book for around £10,000 and asked them to telephone him no later than 25 May if they are interested. Carl replies by email on 25 May, saying "I agree to pay £10,000, subject to you issuing a certificate of authenticity". Debbie posts a letter on 24 May indicating that she wishes to purchase the book for £10,000. Although correctly addressed, Debbie's letter is delayed in the post and does not reach Adam until 26 May. By the time Adam received Debbie's letter, he has already despatched the book to Carl with a covering letter stating that he cannot issue a certificate of authenticity.

Advise Adam as to whether he can change his mind and sell the book to Debbie, 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 Adam candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the postal rule and acceptance. Candidates are expected to apply the full range of legal rules and principles to Adam's situation, including relevant case law, in order to present a legal argument.

The response might consider issues such as:

- The main focus of this question is upon the postal rule and the mode of acceptance and the appropriateness of Carl in replying by a swifter method of communication, notably by email. The rule says that where it is reasonable for the offeree to accept by post, acceptance takes place when the offeree posts his acceptance (*Adams v Lindsell*, 1818).
- Two consequences follow: first, the offeror is bound, even before he can know of the acceptance, even if its arrival is delayed, and even if the letter is lost so that he never actually receives the acceptance (*Household Fire and Carriage Accident Insurance Co. Ltd. v Grant*, 1879); second, the offeror cannot revoke his offer after the offeree's acceptance is posted, even though the offeror has not yet received it. In *Byrne v Van Tienhoven* (1880) V sent an offer to sell tinplate on 1 October. On receipt of this, on 11 October, B sent off an immediate acceptance. However, on 8 October, V sent a letter revoking its offer which reached B on 20 October. It was held that the contract was concluded on 11 October. Since the postal rule does not apply to revocations, the revocation only took effect on 20 October, by which time a contract was already in existence.
- Candidates should receive credit for a critical reflection on the justification for the postal rule, for example, that the Post Office is the agent of both parties; that the offeror who initiates negotiations through the post should assume the risk; that the offeree is less likely to detect that his acceptance letter has gone astray; that the offeror can always contract out of the postal acceptance rule. Note in *Holywell Securities v Hughes* it was held that the rule does not apply "where it would produce manifest inconvenience and absurdity".
- Relevant citation

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

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

4 0

Ann wanted to purchase a piece of antique furniture. She went to Ken's shop which was world famous for selling antique furniture. She saw a table which she particularly liked. It had only come in that morning and Ken's new assistant, Ian, who had never worked in an antique shop before had brought it into the main showroom of the shop. Ann asked Ken if she could see the table and examine it. She said that she liked the table but would only buy it if it was a genuine antique. Although Ken had not examined the table properly, he assured her that in his opinion it was a 17th century antique table. In fact, the table is a 1980s reproduction. Ann has now discovered this to be the case and the table is worth less than 10% of the price that she paid for it. Furthermore, had the table been genuine it would now be worth more than twice the price that she paid for it.

Advise Ann as to whether there was a misrepresentation, 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 Ann candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to misrepresentation. Candidates are expected to apply the full range of legal rules and principles to Ann's situation, including the Misrepresentation Act 1967 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Nature of misrepresentation and differentiating between the different types of misrepresentation.
- Statutory misrepresentation under the Misrepresentation Act 1967
- Fraudulent misrepresentation and remedies available
- Innocent misrepresentation and remedies available
- Negligent misrepresentation and remedies available
- The distinction between fact and opinion.
Is this an express term of a contract.
Sale by description
- Relevant citation

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

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

Section C

Criminal Law

5 0

Section 1 of the Law Library Act 2019 (fictitious) states that it is a criminal offence “to be in possession of a hardback or paperback law textbook, law report or law journal”. Ella is the law librarian at a local university. In preparation for renovations to the library building she removes all the law books and stores them in cupboards in her office.

One of the law lecturers, Mike, is leaving the university soon for a new job; as a thank you for all the help she has given him over the years Mike hands Ella a wrapped thank you present, which she places on her desk, planning to open it later. The present is a limited edition of a Criminal Law textbook.

When Ella leaves to go home that night she is arrested under section 1 of the Act

Advise Ella as to whether she might have committed a strict liability offence, 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 Ella candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of strict liability. Candidates are expected to apply the full range of legal rules and principles to Ella’s situation, including the distinction between strict and absolute liability, and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- This question requires consideration of strict liability offences. Candidates should explain that offences of strict liability lack at least one mens rea element in respect of the actus reus.
- Distinguish between strict and absolute liability.
- It is often difficult to identify offences of strict liability as Acts do not specifically state that an offence is strict liability. Where the statute uses a mens rea word, then the mens rea is clear and the offence is not one of strict liability. However, where a statute is not clear on the mens rea of the offence, it is left to the courts to determine whether the offence is one of strict liability or not.
- Discussion of the general presumption in favour of the requirement of mens rea, which means that criminal offences are presumed to contain mens rea elements, even where the statute is silent as to the mens rea. However, this presumption may be misplaced, rendering the offence one of strict liability. Consider *Sweet v Parsley* (1970) and *Gammon (Hong Kong) Ltd v Attorney General of Hong Kong* (1985). The presumption was more recently confirmed by the House of Lords in *B (A minor) v DPP* (2000).
- Consider the offence under the Law Library Act 2019. The offence is one of possession. Although Ella does not intend to be in possession of the book, nor is she really reckless the statute does not specifically mention any mens rea words such as intention or recklessness.

- Consider the guidelines set out by Lord Scarman in *Gammon (Hong Kong) Ltd v Attorney General of Hong Kong* (1985). (1) there is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence; (2) the presumption is particularly strong where the offence is “truly criminal” in character; (3) the presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute; (4) the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern, and public safety is such an issue. (5) even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can also 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.
- Candidates should consider each of these guidelines and apply them to the facts in the question. Truly criminal offences are more likely to require proof of mens rea. Consider whether this offence is truly criminal in its nature or whether it is likely to be considered a regulatory offence.
- The court will consider the severity of the offence: *B (A minor) v DPP* (2000). This is not a serious offence. Regulatory offences are more likely to be strict liability.
- Consideration must be given to whether the offence deals with a social concern. e.g. *Warner v Metropolitan Police Commissioner* (1969). In this case, the possession offence was deemed to be one of strict liability. Thus, the prosecution did not need to prove that the defendant knew that he was in possession of a controlled drug. Applying this to the problem scenario, the prosecution would not need to prove that Ella knew that the present contained a law textbook, provided it was proved that she knew she was in possession of a parcel. However, you might distinguish this case on the basis that there is a clear issue of social concern in Warner, namely the misuse of drugs. Can the same be said of this case?
- Would a strict liability offence here encourage greater vigilance?

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

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

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Dean looked after his mother, who was old and weak. When visiting Dean's mother the family GP, Dr. Price, noticed that Dean seemed anxious and tired and was complaining of bad headaches. Dr. Price examined Dean and diagnosed he was suffering from depression. She also suspected that Dean might be showing symptoms of an incurable brain disease, so she arranged for Dean to have some tests, to check whether Dean's mental functioning was becoming impaired. However, before this could be done, Dean was arrested for the murder of his mother. The explanation which Dean gave for his actions was that his mother always said, when she wanted to go to bed, "It's time to sleep now." On the night of his mother's death, Dean has put his mother to bed as usual and watched her fall asleep. But later in the night he kept hearing his mother's voice in his head, saying over and over again, "It's time to sleep now." Believing that his mother was still awake and talking to him, Dean had gently placed a pillow over his mother's face thinking that it would help him fall asleep.

Advise Dean whether he may have any defences to a charge of murder, 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 Dean candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the possible defences available here to a murder charge. Candidates are expected to apply the full range of legal rules and principles to Dean's situation, including the defences of insanity and diminished responsibility and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Possible defences: insanity, diminished responsibility.
- Insanity: M'Naghten Rules – defect of reason, due to disease of the mind, D does not know the nature and quality of his/her act or else does not know that it was (legally) wrong (Windle). Insanity requires an internal cause: examples of cases, e.g., Hennessey (diabetes); Burgess (sleep disorder); Sullivan (epilepsy); Thomas (sleep disorder) – contrast Clarke (absent-mindedness); Quick (insulin). Nature and quality of the act: Dean not aware that his action is one of killing - Codere. Insanity is for the jury to decide, but they may not acquit except on the evidence of two medical practitioners: Criminal Procedure (Insanity and Unfitness to Plead) Act 1991. Insanity is a complete defence: under the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 the court may make a hospital order, a supervision order or grant a complete discharge, but not where the charge is murder.
- Diminished responsibility; not a complete defence; reduces murder to voluntary manslaughter; allows judge discretion in sentencing. Diminished responsibility now governed by Coroners and Justice Act 2009, s.52. Elements of defence: D is suffering from an abnormality of mental functioning which arose from a recognised medical condition; the abnormality of mental functioning must be a significant contributory factor to the killing, and the abnormality of mind must have substantially impaired D's ability to (a) understand the nature of his/her conduct, or (b) form a rational judgment, or (c) exercise self-control. Need for a recognised medical condition: query whether depression as in Dietschmann would qualify
- Credit relevant citation.

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

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