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# **GCE A LEVEL MARKING SCHEME**

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**SUMMER 2019**

**A LEVEL (NEW)**

**LAW - UNIT 3**

**THE PRACTICE OF SUBSTANTIVE LAW**

**1150U30-1**

## **INTRODUCTION**

This marking scheme was used by WJEC for the 2019 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 2019 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. The local council decided to demolish the community youth centre and sell off the land to developers to build luxury houses. Catrin, who runs the youth centre, organised a protest against the closure. Around two hundred people turned up and set off to march to the council offices, with Catrin in the lead. Some of the marchers carried home-made placards saying: "Demolish the Council!" As the marchers drew near to the council offices, Sergeant Jones arrived in a police car, accompanied by PC Evans. Sergeant Jones told Catrin that they were marching without police permission, and would have to stop. Catrin refused, so Sergeant Jones arrested her. While this was going on, PC Evans ordered the marchers who were carrying placards to put them down. Some of the marchers waved their placards in defiance, so PC Evans arrested them. The march came to a standstill as the rest of the marchers tried to find out what was happening. Fearing trouble, Sergeant Jones radioed for reinforcements. Several police vans arrived filled with officers, who imposed a tight cordon around the marchers and kept them there for five hours. Catrin was charged with a public order offence and convicted by the magistrates' court.

In light of reported case law and other sources of law, advise Catrin 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 Catrin 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 Catrin'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.
- Under s.11 of the POA 1986, Catrin, the organiser of a procession is 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.
- The police have power under s.12 of the POA 1986 to impose conditions on processions: these may be imposed in advance by the Chief Constable in writing (s.12(3)), or by the senior police officer present at the scene (s.12(2)(a)).

- The grounds for imposing conditions (s.12(1)) are that the senior officer reasonably believes that the procession may result in serious public disorder, or serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is to intimidate others into doing something which they have a right not to do, or refraining from doing something which they have a right to do. These grounds are commonly called the “four triggers”.
- Conditions which may be imposed: s.12(1) states that the officer may impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation. S.12(1) specifies that these may include conditions as to the route to be followed and that the procession is not to enter some particular public place, but presumably extends beyond these.
- Since the HRA 1998, conditions imposed must be “proportionate” in order not to breach Art.11 of the ECHR.
- Refusal to comply with a condition is an offence (s.12(4) for organisers, s.12(5) for participants).
- The placards: s.5 of the POA 1986 creates the offence of causing harassment, alarm or distress. This may be committed in two ways: by using threatening, abusive or insulting words or behaviour, or by engaging in disorderly behaviour. The behaviour must take place within the sight or hearing of a person likely to be caused harassment, alarm or distress thereby (s.5(1)). This can include a police officer: DPP -v- Orum. Cases: DPP -v- Clarke; DPP -v- Fidler. The arrest power under s.5 required the officer first to give a warning, and only arrest if this was ignored, but this has been superseded by the amended s.24 of PACE 1984.
- PC Evans may not have the power to impose conditions if Sergeant Jones is near enough to be considered present at the scene. In that case, the marchers would commit no offence by failing to comply. However, she could arrest them for the offence under s.5.
- Once a procession comes to a standstill, it becomes an assembly and the police may impose conditions under s.14. The triggers are identical to s.12 and the police can impose virtually any conditions they consider necessary.
- 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

<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 public order.</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 public order.</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 public order.</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 public order.</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 Catrin's situation.</li> <li>Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to public order law.</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 Catrin's situation.</li> <li>Very good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to public order law</li> </ul>
<b>3</b>	<b>13 - 18</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Catrin's situation.</li> <li>Good presentation of a legal argument using appropriate legal terminology, case law and other legal authorities relating to public order law.</li> </ul>
<b>2</b>	<b>7 - 12</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles to Catrin's situation.</li> <li>Satisfactory presentation of a legal argument, using some appropriate legal terminology, case law and other legal authorities relating to public order law.</li> </ul>
<b>1</b>	<b>1 - 6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Catrin's situation.</li> <li>Basic presentation of a legal argument, using minimal legal terminology relating to public order law.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

2. Paul was walking down the street singing happily because he had just been offered a place at college to train as a professional photographer. The noise annoyed PC Clarke who tapped Paul on the shoulder and told him to be quiet. Paul said, "I'm not doing anything wrong, am I?" PC Clarke replied: "Let's find out, shall we?", and proceeded to carry out a thorough search of Paul's clothing and bag. In the bag, PC Clarke found an expensive camera. PC Clarke thought that this was highly suspicious, that someone as young as Paul would have such an expensive camera, so he arrested Paul in order to carry out further enquiries. At the police station, Paul was put in a cell while waiting to be interviewed. During that time he made several requests to be allowed to phone his mother and speak to a solicitor, but each time he was told he would have to wait as the police were too busy. After 18 hours in the cell, Paul was interviewed by detectives who were investigating a number of burglaries in the area. Paul explained repeatedly that the camera had been lent to him by the college, but as it was now the middle of the night, he was told that he would have to remain in custody until the police could confirm his story. The next morning the police contacted the college, who confirmed that the camera had been loaned to Paul as part of his college course, so after Paul had spent a total of 46 hours in police custody he was released.

In the light of reported case law and other sources of law, advise Paul 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 Paul 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 Paul'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 Paul: 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 Clarke: 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 Clarke has 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: Paul 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 Paul in police custody: Code C
- Paul's right to have someone informed of his arrest: s.56
- Paul's right to legal advice: s.58
- Paul'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
- Paul's detention should be reviewed after 6 hours and then every 9 hours by a review officer not involved in the case- s 40
- Paul's right to an appropriate adult : s.57 if he is a juvenile ( as the scenario suggests) or a vulnerable adult

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

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

## Section B

3. Denise runs a small printing business from her home. She needed a quiet fast printer that was cheap to run and maintain. She contacted a specialist printer supply company called Printers R Us . She spoke to one of their consultants, Tony; she explained her needs and requirements to him and Tony recommended the printer model “Deluxe Whisper 2000”. Denise stressed to Tony that she knew nothing about printers and that it must be a quiet printer as her baby was in the house and she did not want the printer to disturb her baby when sleeping. She also said to Tony that unless the printer was cheap to run she would not even ask the price, as she would not be interested unless it was reasonable to run and maintain. Tony told her that the price was £400. Denise purchased the printer. However, the printer was not quiet, fast or cheap to run and as a result Denise was not able to use the printer and lost a lucrative contract to print posters for a new shop opening in her town.

Advise Denise 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 Denise 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 Denise’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
- Is this an expressed term of a contract?
- The distinction between fact and opinion.
- Relevant citation

<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 misrepresentation.</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 misrepresentation</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 misrepresentation</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 misrepresentation</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 Denise's situation.</li> <li>• Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to misrepresentation.</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 Denise'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 misrepresentation</li> </ul>
<b>3</b>	<b>13 - 18</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules and principles to Denise'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 to Denise'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 misrepresentation .</li> </ul>
<b>1</b>	<b>1 - 6</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules and principles to Denise's situation.</li> <li>• Basic presentation of a legal argument, using minimal legal terminology, relating to relating to misrepresentation</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

4. On Thursday Anna visited Olivia's make-up and beauty salon, The Beauty Zone, because she wanted to have eyelash extensions done for a 21st birthday party that she was attending on the following Saturday. When Olivia had finished, Anna was so delighted with her new eyelashes that she said she would give Olivia an extra £40 as a tip. When Anna looked in her purse she realised she did not have enough money with her to pay the tip she had promised, but said she would call in with it after the party on the Monday to give it to her. On Monday, Anna phoned Olivia to tell her that she no longer intended on giving her the tip of £40. Olivia, in reliance of Anna's promise, bought a new dress on the Saturday and is pressing Anna to pay the tip.

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

The response might consider issues such as:

- The issue of consideration and identifying the nature of consideration of Contract Law.
- The issue of past consideration, e.g. the case of *Re McArdle (1951)*; *Pae On –v- Lau Yiu Long (1980)*.
- The nature of the relationship as being commercial.
- The question of intention to create legal relations.
- Relevant citation.

<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 consideration.</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 consideration</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 consideration</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 consideration</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 Anna's situation.</li> <li>• Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to consideration .</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 Anna'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 consideration</li> </ul>
<b>3</b>	<b>13 - 18</b>	<ul style="list-style-type: none"> <li>• Good application of legal rules and principles to Anna's situation.</li> <li>• Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to consideration</li> </ul>
<b>2</b>	<b>7 - 12</b>	<ul style="list-style-type: none"> <li>• Satisfactory application of legal rules and principles to Anna'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 consideration .</li> </ul>
<b>1</b>	<b>1 - 6</b>	<ul style="list-style-type: none"> <li>• Basic application of legal rules and principles to Anna's situation.</li> <li>• Basic presentation of a legal argument, using minimal legal terminology, relating to relating to consideration</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.

## Section C

5. Amy was feeling depressed as her boyfriend had recently split up with her, so her friend Penny invited Amy round to her flat for the evening to try and cheer her up. The girls shared a bottle of prosecco, and Penny gave Amy some of her own anti-depressant tablets which had been prescribed by her doctor. The girls then settled down to watch a zombie movie on TV. Both girls fell asleep on the sofa before the end of the movie. The mixture of the tablets with the alcohol caused Amy to have a terrifying dream in which Penny had turned into a flesh eating zombie and was trying to kill her. Believing that she was fighting for her life, Amy grabbed the necklace that Penny was wearing, and twisted it tightly until Penny let her go. When Amy woke up, she discovered that she had strangled Penny.

Advise Amy as to whether she might 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 Amy candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to the subject of defences to a charge of murder. Candidates are expected to apply the full range of legal rules and principles to Amy's situation, including the possible defences of automatism and intoxication, and possibly also insanity or diminished responsibility, and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Diminished responsibility: Coroners and Justice Act, 2009, s.52 – Amy suffering from an abnormality of mental functioning, arising from a recognised medical condition, which was a significant contributory factor to the killing. In *Dietschmann* (2003) D was suffering from depression but was also drunk: court accepted diminished responsibility. There is doubt as to whether depression would count as a recognised medical condition under the new law: if it does, then the key issue is whether it was a significant contributory factor regardless of whether D was also intoxicated. Effect of defence: reduces murder to voluntary manslaughter.
- Possible defences: automatism, intoxication, possibly also insanity or diminished responsibility. Candidates should be credited for defences which would be unlikely to succeed so long as they are at least plausible and explained and applied in a coherent way.
- Automatism: where an action is done without any control by the mind, e.g., concussion, sleepwalking: *Bratty v A-G for Northern Ireland*, *Hill v Baxter*.
- Automatism may be insane or non-insane depending on whether the cause is internal (insane) or external (non-insane). Where the cause is external, such as a drug, the outcome depends on whether automatism was involuntary or self-induced. Case: *Bailey* – self-induced automatism not a defence where (a) D was reckless in becoming an automaton, or (b) if automatism was caused by illegal drink or drugs. However, it was said that (c) automatism is available if D did not know that his actions were likely to result in automatism, as he would not have been reckless in becoming an automaton. Case: *Hardie* – D reckless in becoming an automaton.
- Automatism is a complete defence to specific intent crimes and also to basic intent crimes when not self-induced as above – hence Amy may have a complete defence to murder and manslaughter.

- Intoxication – not a true defence in itself, but Amy may adduce evidence of intoxication to show lack of mens rea as in automatism. Distinction between voluntary and involuntary intoxication and crimes of specific and basic intent. Involuntary intoxication can result from unforeseen effects of a normally harmless drug: Hardie, and can be used both in crimes of specific or basic intent. Voluntary intoxication is regarded as reckless, hence cannot be used in crimes of basic intent, e.g., manslaughter: Lipman. If the crime is one of specific intent it can result in acquittal or conviction for a lesser offence of basic intent: Majewski.
- Insanity – unlikely here, but Crown might seek to prove that Nelly was suffering from insanity under the M'Naghten Rules on the basis that Amy suffers from a sleep disorder (internal cause) as in Burgess.

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

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

6. Caroline and Lisa are lecturers in a Further Education College. They share a staff room with two other members of staff. Caroline is preparing mock exam papers for her students and needs a stapler to staple them together, she can't find hers but sees a stapler on Lisa's desk, and she uses it and puts it back on her own desk. Later in the day, Lisa, when looking for her stapler, sees Caroline's purse on her desk with a £50 note sticking out of it, Lisa is very short of money this month due to an expensive car repair bill, so she takes the £50 note. Josie, one of Caroline's students comes into the staffroom to find Caroline, to ask her a question about the forthcoming exam, no one is in the staff room, but Josie sees on Caroline's desk the mock exam papers, she quickly takes one, rushes to the photocopier, photocopies it and puts the original back on Caroline's desk. As she is leaving the staffroom, Caroline returns, Josie, concerned that Caroline may have seen her take the exam paper, rushes past Caroline and knocks against her so hard that Caroline falls to the floor, bruising her arm.

Advise Caroline, Lisa and Josie as to their potential liability under the Theft Act 1968, 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 Caroline, Lisa and Josie candidates are expected to demonstrate knowledge and understanding of legal rules and principles relevant to theft and robbery. Candidates are expected to apply the full range of legal rules and principles to their situation, including the Theft Act 1968 and relevant case law, in order to present a legal argument.

The response might consider issues such as:

- Define and explain theft – section 1 Theft Act 1968.
- Explain and apply the actus reus of theft: Section 3 – appropriation – any interference with any of owner's rights with or without consent – McPherson, Lawrence, Morris, Gomez; Section 4 – property – this must be tangible – Oxford v Moss; Section 5 – belonging to another – ownership, possession or control – Turner
- Explain and apply the mens rea of theft: Section 2 – dishonesty – no statutory definition but Section 2 (1) (a) – defendant not dishonest if honestly believe have legal right to property; Section 2 (1) (b) – defendant not dishonest if honestly believe owner would consent – Holden; Section 2 (1) (c) – defendant not dishonest if honestly believe owner cannot be found by taking reasonable steps ; If none of above apply jury apply common sense. If guidance is still needed the jury must decide if the defendant was dishonest by the standards of the reasonable man and, if so, the defendant knew they were dishonest by that standard – Ghosh ; Section 6 – intention to permanently deprive – intention to take forever or for period equivalent to outright taking, even if is intention to return property – Lloyd, Warner
- Define and explain robbery – charged under section 8 Theft Act 1968
- Actus reus – theft accompanied by use or threat of force before or at time of stealing and in order to steal – Dawson and James, Hale, Lockley
- Mens rea – intention to steal



<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 theft and robbery</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 theft and robbery</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 theft and robbery</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 defences to theft and robbery</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 Caroline, Lisa and Josie's situation.</li> <li>Excellent presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to theft and robbery.</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 Caroline, Lisa and Josie's situation.</li> <li>Very good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to theft and robbery.</li> </ul>
<b>3</b>	<b>13 - 18</b>	<ul style="list-style-type: none"> <li>Good application of legal rules and principles to Caroline, Lisa and Josie's situation.</li> <li>Good presentation of a legal argument, using appropriate legal terminology, case law and other legal authorities relating to relating to theft and robbery..</li> </ul>
<b>2</b>	<b>7 - 12</b>	<ul style="list-style-type: none"> <li>Satisfactory application of legal rules and principles to Caroline, Lisa and Josie'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 theft and robbery.</li> </ul>
<b>1</b>	<b>1 - 6</b>	<ul style="list-style-type: none"> <li>Basic application of legal rules and principles to Caroline, Lisa and Josie's situation</li> <li>Basic presentation of a legal argument, using minimal legal terminology, relating to theft and robbery.</li> </ul>
	<b>0</b>	Response not creditworthy or not attempted.