

GCSE

Law

41602/Unit 2 Law in Action
Mark scheme

4160
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Version 1.0 Final

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts: alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Assessment Writer.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this Mark Scheme are available from aqa.org.uk

GCSE Law

Suggested answers are neither prescriptive nor exhaustive.

Within the exam paper as a whole, questions are set involving a varying number of marks. In general, marks can vary between a minimum of 3 marks up to a maximum of 12 marks. All of these questions, irrespective of the number of marks, are to be marked according to the following banded types of response. Marks are to be awarded for identifying the legal issue(s) involved, together with the quality of the explanation, showing the application of knowledge and understanding of the legal issues involved and/or the level of critical awareness displayed. All answers must be judged according to the standard one would expect from a notional 16 year old.

Banded Mark Scheme

Band 0	Inappropriate answer showing no understanding	The number of marks will reflect the marks appropriate to the individual question
Band 1	Basic awareness	
Band 2	Answer based on limited understanding	
Band 3	Appropriate answer showing sound understanding	

To assist in clarifying the banded Mark Scheme, many questions will have a note included within the mark scheme potential content stating that it is 'required content for max marks'. Such content will be clearly marked with an asterisk. This content has been identified as being central to the required answer. A student whose answer does not include **all** the asterisked content cannot be awarded maximum marks. The answer can still be seen as demonstrating sound understanding, but not at the top of the Band. It does not automatically follow that where all the required content is present in the answer, the student must be awarded maximum marks. The answer is very likely to be demonstrating sound understanding, but the overall quality may still fall short of that expected for maximum marks, even for a notional 16 year old under examination conditions. The examiner standardisation process will provide examples of such answers.

In addition to the above banded mark scheme, the mark scheme for some questions will include marks for specific points. Such questions will clearly be identified in the detailed Mark Scheme which follows.

Some questions are marked on the basis of a maximum mark (with required content to achieve that maximum) and also a less creditworthy answer into a lower maximum.

An example would be Q 1(b)(i)

Maximum marks are only available for an answer on the tort of conversion which includes a relevant case.

A lower maximum of 3 marks is available for a good answer on trespass to goods. Whilst such an answer will probably include a relevant case, that is not a requirement for this alternative answer.

This pattern also appears in other questions.

While it is not expected that alternative answers to such questions will attract credit, students may, on occasions, interpret questions in an unexpected way and produce answers which, though not expected, should still be credited. Answers such as these will be discussed prior to marking and credited where appropriate.

Quality of Written Communication is to be assessed in certain questions within each paper. The relevant questions are clearly identified on the front cover of the question paper, and, within the body of the paper, they also carry the instruction 'Answer in continuous prose'. The mark bands for these questions indicate the criteria which examiners should use to decide which band to place a student in, looking at both legal content and QWC to arrive at a band of 'best fit'.

Tort

Question 1

<p>1 (a) Consider Ben's liability for trespass both when he entered the restroom in AS's store and when he stayed after closing time.</p>
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[5 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

Entry to the storeroom

- Recognition of trespass to land based on unlawful entry
- Recognition that although Ben is allowed in the store, he is not allowed in private areas
- Application and conclusion
- Case/example*, eg Harrison v Duke of Rutland.

Staying after closing time

- Recognition of trespass to land based on unlawfully remaining on land after permission has ceased
- Possible recognition of a continuing trespass
- Application and conclusion
- Possible case/example.

Note – only one aspect dealt with: max 3 marks.

*Note – content marked with * is required content for max marks.*

Note – Criminal answers not creditworthy.

[AO1:1, AO2:4, AO3:0]

1 (b)(i) Discuss Ben's liability in tort with respect to drinking the whisky, smashing the wine bottles and unplugging the freezer.

[5 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

- Recognition of potential liability under the Torts (Interference with Goods) Act 1977
- Recognition that all of these actions lead to the permanent ending of the rights to possession of the owner
- Recognition of the tort of **conversion***
- Application and conclusion
- Case/example*, eg Amory v Delamirie.

*Note – content marked with * is required content for max marks.*

Note – answer based on trespass to goods only: max 3 marks for a good answer

[AO1:2, AO2:3, AO3:0]

1 (b)(ii) Discuss Ben's liability in tort with respect to knocking over the rack, and the dirty clothes.

[4 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

- Recognition of potential liability under the Torts (Interference with Goods) Act 1977
- Recognition that all of these actions lead to the interference with the rights to possession of the owner
- Recognition of the tort of trespass to goods*
- Application and conclusion
- Case/example*, eg Kirk v Gregory.

*Note – content marked with * is required content for max marks.*

[AO1:1, AO2:3, AO3:0]

1 (b)(iii) Discuss Ben's liability in tort with respect to him threatening **and** hitting Calvin.

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Ben threatening Calvin

- Recognition of trespass to the person based on assault
- Definition
- Application and conclusion
- Case/example, eg Stephens v Myers.

Ben hitting Calvin

- Recognition of trespass to the person based on battery
- Definition
- Application and conclusion
- Case/example, eg Lane v Holloway.

Note – only one aspect dealt with: max 4 marks for a good answer

Note – max marks only if at least one of the two aspects is supported by authority

[AO1:2, AO2:4, AO3:0]

1 (c) You have received a letter from Ben’s solicitor indicating that Ben is considering claiming damages from AS and/or Calvin because Ben had been locked in the office.

Briefly discuss the liability of both Calvin **and** of AS for Calvin’s actions towards Ben.

[5 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

Calvin’s liability to Ben

- Recognition of trespass to the person based on false imprisonment
- Definition
- Application and conclusion
- Possible case/example, eg Bird v Jones.

AS’s liability to Ben

- Recognition of vicarious liability
- Employee/acting in the course of employment? (possible reference to ‘frolic of his own’)
- Application and conclusion
- Case/example, eg Limpus v LGO (possibly Beard v LGO).

Note – only one aspect dealt with: max 3 marks

Note – max marks only if at least one of the two aspects is supported by authority

[AO1:1, AO2:4, AO3:0]

1 (d) Discuss AS's liability for nuisance caused to the local residents affected by 24-hour opening.

[4 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

- Recognition of public nuisance
- Definition
- Application and conclusion (credit both civil and criminal enforcement)
- Case/example*, eg *A/G v PYA Quarries*.

*Note – content marked with * is required content for max marks*

[AO1:1, AO2:3, AO3:0]

1 (e) Discuss AS's liability to Dai for nuisance.

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

- Recognition of private nuisance
- Definition + factors
- Application and conclusion
- Case/example, eg *Sturges v Bridgeman*.

- Recognition of public nuisance
- Definition + recognition of 'particular damage'
- Application and conclusion
- Case/example, eg *Castle v St Augustine's Links*.

Note – private nuisance only: max 5 marks for an excellent answer

Note – public nuisance only: max 4 marks for a good answer

Note – max marks only if at least one of the two aspects is supported by authority

Note – answer which does not distinguish between public and private nuisance – Max 4

[AO1:2, AO2:4, AO3:0]

1 (f) Compare and contrast the tort of trespass to land and the tort of nuisance.
(Answer in continuous prose.)

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 4 marks), then assess the QWC on the following basis:

- Average performance for a notional 16 year old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0 marks
Band 1	Basic awareness. The student spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	1-2 marks
Band 2	Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	3-4 marks
Band 3	Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5-6 marks

Potential Content

Comparison may include:

- Both trespass to land + private nuisance protect interests in land
- Both trespass to land + private nuisance protect the interests of the person in possession of the land
- Both torts can be remedied by way of damages and/or an injunction.

Contrast may include:

- Trespass to land is direct (possible example), private nuisance is indirect (possible example)
- Trespass to land can be a single incident (possible example), private nuisance must be repetitive (possible example)
- Trespass is actionable per se, private nuisance requires damage to be proved
- Trespass to land is a tort only as is private nuisance; public nuisance is a tort/crime.

Note – credit any other credible comparisons/contrasts

Note – comparisons only: max 3 marks (including QWC)

Note – contrasts only: max 5 marks for a good answer (including QWC)

Note – explanation of features without comparison or contrasts: max 3 marks (including QWC) if accurate

[AO1:0, AO2:0, AO3:6]

1 (g) The main remedies for both trespass to land and nuisance are damages and/or an injunction.

Briefly comment on the use of these remedies.

[4 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

- Recognition of the limitations of the traditional remedies, ie damages only compensate prior fault + cannot prevent repetition
- Injunctions try to protect against future transgressions but do not compensate for losses already incurred
- Combination of these remedies may be the best tort-based solution.

Note - credit possible discussion of the difficulties involved in civil action (time, cost, etc)

- Possible recognition of/comments on any of the alternatives to civil action , such as
- police powers to abate a nuisance
- Local Council/Environmental Health
- criminal prosecution for nuisance/harassment, etc
- Anti-Social Behaviour Orders
- (neighbour) mediation.

Note – credit any sensible comments made in respect of the alternatives, eg difficult to persuade the ‘authorities’ to act

Note – credit any other sensible points raised

Note – max marks can be obtained with simply a discussion of the merits/limitations of damages and injunctions, provided sound understanding is demonstrated

Note – Answer which is wholly / largely descriptive of the remedies – Max 2 marks

[AO1:0, AO2:0, AO3:4]

Criminal Law**Question 2**

2 (a) Consider whether Eric should be charged with the murder of Fergus.

[5 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

- Recognition of the actus reus and mens rea of murder
- Application of the actus reus elements + conclusion (no issue)
- Application of the mens rea requirement + conclusion (looks like a clear intention to at least cause gbh + therefore no issue)
- Case/example*, eg Woollin.

*Note – content marked with * is required content for max marks.*

[AO1:1, AO2:4, AO3:0]

2 (b)(i) Assume that Eric is charged with Fergus's murder. Consider the legal effect at Eric's trial of what Fergus said to Eric **and** Eric's reaction following the collision.

[5 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

- Recognition of the partial defence of loss of control
- Qualifying trigger (in this case, the anger trigger)
- Things done or said/extremely grave character/justifiable sense of being seriously wronged
- 'Normal' man test + circumstances (excluding personality disorder)
- Application + conclusion (could be argued either way)
- Authority* – Coroners and Justice Act 2009 and/or case/example, eg Camplin.

*Note – content marked with * is required content for max marks.*

Note – 'old law' provocation only: max 2 marks

[AO1:1, AO2:4, AO3:0]

2 (b)(ii) Assume that Eric is charged with Fergus's murder. Consider the legal effect at Eric's trial of his major personality disorder.

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

- Recognition of the partial defence of diminished responsibility
- Abnormality of mental functioning
- Arising from a recognised medical condition
- Substantially impairs Eric's ability to understand, nature of conduct/form a rational judgment/exercise self-control
- Provides an explanation for Eric's acts
- Application + conclusion (could be argued either way)
- Authority* – Coroners and Justice Act 2009 and/or case/example, eg Byrne.

Note – 'old law' diminished responsibility – max 3 marks.

- Recognition of the general defence of insanity
- Disease of the mind
- Defect of reason
- 'Nature and quality' or 'Wrong' test
- Application + conclusion (could be argued either way, but probably against the defence)
- Authority* – Coroners and Justice Act 2009 and/or case/example, eg M'Naghten, Kopsch.

Note – diminished responsibility only: max 6 marks for a good answer

Note – insanity only: max 5 marks

Note – where both 'defences' are dealt with, credit the best answer + enhance the mark with the other

*Note – content marked with * is required content for max marks.*

[AO1:2, AO2:4, AO3:0]

2 (b)(iii) Briefly comment on **one** of the following:

Either

- how well the law deals with those people who commit criminal offences whilst suffering from some form of mental disorder

or

- how well the law deals with people who kill having lost self-control.

[4 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

Mentally abnormal offenders

For insanity:

- M’Naghten Rules are outdated
- Stigma of the term insanity
- Non-medical definition
- Standard of proof required to plead the defence successfully
- Irresistible impulse not included
- ‘Wrong’ defined very narrowly, etc.

For diminished responsibility:

- Recognition of the improved, more medically-based definition under the Coroners and Justice Act 2009
- However, still issues of imprecision, eg ‘substantially’ impairs D’s ability? ‘Significant’ contributory factor?
- Standard of proof required to plead the defence successfully, etc.

Note – students can achieve max marks with a commentary on either insanity or diminished responsibility or via a combination of both

Note – credit any other sensible comments made

Loss of self-control

- The removal of ‘sudden’ is welcome, but how does that equate with losing control?
- Normal person test is narrowly based in terms of the characteristics of the accused
- Anger trigger – what are circumstances of an ‘extremely grave character’?
- Why is sexual infidelity excluded?
- Self-induced provocation now excluded – rightly?
- Why should there be a ‘special’ defence available for those who kill out of fear or anger but not, for example, out of compassion? etc.

Note – credit any other sensible comments made

[AO1:0, AO2:0, AO3:4]

2 (c)(i) In relation to sentencing in homicide cases, briefly explain the difference between a mandatory sentence and a discretionary sentence.

[3 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

Potential Content

- Mandatory – a sentence that the court must **impose**
- Discretionary – a sentence where the court has a choice up to the maximum for the offence
- Example(s) to illustrate*, eg life for murder, disqualification for drink driving, max life for manslaughter, etc.

*Note – content marked with * is required content for max marks.*

[AO1:2, AO2:1, AO3:0]

2 (c)(ii) Comment on how well the law deals with sentencing in murder cases.
(Answer in continuous prose.)

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 4 marks), then assess the QWC on the following basis:

- Average performance for a notional 16 year old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the 'best fit' in the light of both the legal content and the QWC.

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0 marks
Band 1	Basic awareness. The student spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	1-2 marks
Band 2	Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	3-4 marks
Band 3	Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5-6 marks

Potential Content

Comments could include any of the following:

- problems with the mandatory sentence (not all murders are equal, but the sentence is fixed), eg euthanasia killings
- life does not mean life except in extreme cases/murderers are still released into the community
- fixing the tariff at trial is guesswork on the part of the judge
- views of victim's family are often ignored
- sentence addresses punishment and largely ignores rehabilitation
- eye for an eye/bring back the death penalty, etc.

Note – credit any other credible comments relating to sentencing for murder

[AO1:0, AO2:0, AO3:6]

2 (d)(i) Eric has been charged with the manslaughter of Holly.

Discuss which type of manslaughter would be the appropriate charge **and** what the prosecution will need to prove.

[5 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

- Recognition of constructive (unlawful act) manslaughter – **1 mark**
- Elements of the offence – unlawful and dangerous act with death causally linked to the act
- Application of the actus reus elements + conclusion (is pushing objectively dangerous?)
- Application of the mens rea requirement + conclusion (looks like a clear intention to apply force + therefore no issue)
- Case/example*, eg Lamb.

*Note – content marked with * is required content for max marks.*

[AO1:1, AO2:4, AO3:0]

2 (d)(ii) Briefly discuss Eric's criminal liability with respect to grabbing Holly's phone.

[3 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

Potential Content

- Recognition of theft – **1 mark**
- Definition of theft
- Application + conclusion (does Eric intend to permanently deprive?)
- Possible case/example, eg Lloyd.

- Recognition of robbery – **1 mark**
- Definition of robbery
- Application + conclusion (does Eric intend to use force in order to steal?)
- Possible case/example, eg Hale.

Note – max marks available for a discussion of either theft or robbery or both

Note – assault and/or battery only – Max 1 mark

[AO1:1, AO2:2, AO3:0]

2 (e)(i) Eric has been charged with the manslaughter of Greta.

Discuss which type of manslaughter would be the appropriate charge **and** what the prosecution will need to prove.

[5 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

- Recognition of gross negligence manslaughter – **1 mark**
- Elements of the offence – failure to act when under a duty, duty arising out of a duty to mitigate the initial consequences, negligence must be ‘so bad’ as to justify conviction, shows a disregard for the lives and safety of others
- Application of the elements of the offence + conclusion (probably suggesting that the elements have been met)
- Case/example*, eg Miller, Adomako, Misra.

*Note – content marked with * is required content for max marks*

[AO1:1, AO2:4, AO3:0]

2 (e)(ii) Briefly discuss the legal consequences for Eric of the doctor's failure to treat Greta promptly.

[3 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

Potential Content

- Recognition of causation (irrespective of how it is applied) – **1 mark**
- Relevant tests, especially significant contribution
- Application + conclusion (Greta's injuries were still life-threatening, therefore Eric remains responsible) (credit reasoned alternative)
- Possible case/example, eg Smith (Jordan).

[AO1:1, AO2:2, AO3:0]

Family Law

Question 3

3 (a)(i) Kahil and Oliver want to make their relationship more permanent, and are aware that there are two legal options available to them in order to have their relationship legally recognised.

Identify the two options available. Advise them on the legal requirements for **both** of these options.

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Recognition of both marriage (**1 mark**) and a civil partnership (**1 mark**)

Marriage

- Residence + notice requirements
- Registration
- Can take place in any registered building or approved premises.
- Other requirements eg age, prohibited degrees etc.

Possible reference to the following can be used to enhance quality of answer:

- same sex marriage not currently recognised under the authority of the Church of England
- Is recognised by other faiths practising in England – authorised by certificate.

Civil partnerships

- Residence + notice requirements
- Registration
- Can take place in any registered building or approved premises.
- Other requirements eg age, prohibited degrees etc.

Application of both options to Kahil and Oliver

Statutory Reference* (s) – Marriage Act 1949 (as amended), Civil Partnership Act 2004, Marriage (Same Sex Couples) Act 2013.

*Note – content marked with * is required content for max marks.*

Note – One aspect only – Max 4 marks.

[AO1:3, AO2:3, AO3:0]

3 (a)(ii) Comment on the reasons why Parliament has chosen to extend the right to marry to same-sex couples.

[4 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

- Recognition that both marriage and a civil partnership exist for same-sex couples
- Comment may focus on equality issues or recognise that relaxing the law of marriage may cause difficulties, especially for the Church (of England)
- Comment may also recognise that with two processes available, same-sex couples have more choices than couples of different gender
- Up-to-date students may well be aware of the current debate in the Church of England over this issue, and also the potential for legal challenge in the European Court of Human Rights.

Note – credit any other credible comments relating to any of the issues raised in the question

Note – comments which are homophobic in nature are not creditworthy

[AO1:0, AO2:0, AO3:4]

3 (b)(i) Explain the legal position if Lata is pressurised by her father into marrying Parvez, without her consent.

[4 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

- Marriage would lack consent and would be voidable
- Marriage can be annulled at Lata’s request/High Court Family Division
- Reference to Matrimonial Causes Act 1973
- Possible relevance to forced marriage (Forced Marriage Act 2007).

[AO1:1, AO2:3, AO3:0]

3 (b)(ii) Explain the legal position if Lata decides she is going to marry Ray against her father's wishes.

[5 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2-3 marks
Band 3	Appropriate answer showing sound understanding	4-5 marks

Potential Content

- Recognition of the fact that Lata is only 17 (under 18)*
- Permission from both her parents required (unlikely to be given on the facts)*
- Lata can get permission from magistrates (Family Proceedings Court)*
- Alternatively, Lata and Ray could marry in Scotland
- Marriage would be valid if Lata marries in England or Wales without valid permission*
- Lata and Ray face potential fraud prosecution if permission is forged or Lata lies about her age
- Possible statutory reference (Age of Marriage Act 1929 or Marriage Act 1949).

*Note – content marked with * is required content for max marks*

[AO1:1, AO2:4, AO3:0]

3 (b)(iii) Explain the legal position if Maha decides she is going to marry her boyfriend in secret. **[4 marks]**

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

- Recognition of the fact that Maha is only 15*
- Marriage would be void if Maha marries at that age*
- Implications of a void marriage – ie never existed*
- Maha would have to wait until she is 16 and seek permission to marry
- Possible statutory reference (Marriage Act 1949).

*Note – content marked with * is required content for max marks*

[AO1:1, AO2:3, AO3:0]

3 (c) Jamila has approached a solicitor about a divorce from Imran. Explain the following to her, in her situation.

- What the solicitor meant by mediation
- What the solicitor meant by decree nisi and decree absolute
- What the solicitor meant by maintenance and child maintenance.

[10 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-3 marks
Band 2	Answer based on limited understanding	4-7 marks
Band 3	Appropriate answer showing sound understanding	8-10 marks

Potential Content

Mediation

- Out-of-court attempt to resolve issues between the parties **(1 mark)**
- Used to try and save the marriage or resolve key issues on divorce (children + finances)
- Court appointed or via Relate
- Mediator attempts to get the parties to agree their own solution
- Application.

Decree nisi and decree absolute

- Decree nisi and decree absolute – recognition of stages in divorce **(1 mark)**
- Translations + meaning/effect
- 6 week rule + purpose
- Possible reference to the Matrimonial Causes Act 1973
- Application.

Maintenance and child maintenance

- Maintenance – definition **(1 mark)** + types of settlement (capital payment, transfer of interest in property, ongoing financial payments)
- Reference to Matrimonial and Family Proceedings Act 1984 criteria, eg children's needs first priority, clean break principle, financial resources of the parties (current + future), financial obligations of the parties, etc
- Child maintenance – payments in respect of minor children + those still in full-time education
- Application
- Reference to the Child Maintenance Service instead of or in addition to references to the Child Support Agency – credit fully.

Note – One aspect only: max 4 marks for a very good answer

Note – Two aspects only: max 7 marks for two good answers

Note – No application to the problem: max 7 marks

i.e answer must be about Jamila/solicitor or Imran, not simply the relevant law with no attempt at application.

[AO1:3, AO2:7, AO3:0]

3 (d) Discuss whether Jamila can seek a divorce from Imran and, if she can, on what basis. **[6 marks]**

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

- Recognition that the parties have been married for more than 1 year
- Recognition of irretrievable breakdown as the only ground for divorce + explanation*
- Recognition of the need to prove 1 of the 5 proof requirements (identify)*
- Application* + conclusion* (probably based around unreasonable behaviour on Imran’s part)
- Reference to relevant authority*, eg Matrimonial Causes Act 1973, Matrimonial and Family Proceedings Act 1984

*Note – content marked with * is required content for max marks*

Note – credit alternative reasoned conclusion

[AO1:1, AO2:5, AO3:0]

3 (e) Comment on the problems related to the payment of maintenance and child maintenance. **(Answer in continuous prose.)**

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Note: Quality of Written Communication is to be assessed in this part-question. Assess the law content first (up to max of 4 marks), then assess the QWC on the following basis:

- Average performance for a notional 16 year old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

Band 0	Inappropriate answer showing no understanding. The student spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	0 marks
Band 1	Basic awareness. The student spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	1-2 marks
Band 2	Answer based on limited understanding. The student spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	3-4 marks
Band 3	Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5-6 marks

Potential Content

Comments could include any of the following:

- problems associated with assessment of maintenance + child maintenance, particularly where second families are involved and/or where income or circumstances change
- problems associated with non-payment of both maintenance and child maintenance – difficulties with enforcing payment through the civil courts, difficulties in persuading the CSA to chase reluctant payers
- more general problems associated with the CSA , eg problems with administration, delays, mis-assessments, CSA more willing to chase those who already pay rather than those who do not pay at all, etc.

- possible reference to problems associated with rights of access to children, especially where payments are being made and court orders are ignored, Fathers for Justice campaign, etc.
- references to the Child Maintenance Service instead of or in addition to references to the Child Support Agency – credit fully.

Note – credit any other creditable comments relating to any of the issues raised in the question

[AO1:0, AO2:0, AO3:6]

Rights and Responsibilities

Question 4

4 (a) Article 5 of the Human Rights Act 1998 contains the right to liberty. There are a number of exceptions to the right to personal liberty.

Explain how **two** of these exceptions may have applied to Ant on the day of the demonstration in Trumpton.

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Credit any **two** of the following restrictions.

Note – if all three are explained, credit the best two answers given

- Recognition of trespass to land – definition
- Application to A’s entry to private land
- Conclusion – civil action for damages by the owner
- Case(s)/example(s) in support*, eg Harrison v Duke of Rutland

- Recognition of the right of the police to close a public highway to prevent disorder (Public Order Act 1986)
- Application to the police blocking a street
- Case(s)/example(s) in support*, eg Austin v Metropolitan Police Commissioner, Bird v Jones

- Recognition of arrest – definition. Police powers and citizen’s arrest
- Application to A’s arrest (without a warrant)
- Authority in support*, ie act/case(s)/example(s), eg PACE 1984

Note – only one aspect: max 4 marks for a good answer

*Note – one of the parts of content marked with * is required content for max marks*

[AO1:1, AO2:5, AO3:0]

4 (b)(i) Article 10 of the Human Rights Act 1998 contains the right to freedom of expression (speech). There are a number of exceptions to this freedom, including the tort of defamation.

Outline what is meant by defamation.

[4 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

- Definition – statement which lowers a person in the estimation of right-thinking members of society
- Proof requirements – defamatory, reference to claimant, publication, damage (serious harm)
- Forms of defamation – libel and slander
- Case(s)/example(s) in support*, eg *Byrne v Deane*, *Cassidy v Daily Mirror*, *Newstead v Express*
- Possible statutory reference, eg Defamation Act 2013

*Note – content marked with * is required content for max marks*

[AO1:4, AO2:0, AO3:0]

4 (b)(ii) Discuss **each** of the following:

- whether Vic would have a valid claim for defamation against Spencer
- whether Spencer would have a valid claim for defamation against Vic.

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Vic suing Spencer

- Application of proof requirements – defamatory, reference to Vic, publication, damage (serious harm)
- Form of defamation – slander
- Possible reference to defences, eg justification, fair comment?
- Case(s)/example(s) in support, eg *Newstead v Express*
- Conclusion – that Vic is unlikely to have a claim* (no reference to Vic and/or defence applies)

Spencer suing Vic

- Application of proof requirements – defamatory, reference to Spencer, publication, damage (serious harm)
- Form of defamation – libel
- Possible reference to defences, eg justification, fair comment?
- Case(s)/example(s) in support, eg *Byrne v Deane*
- Conclusion – that Spencer is more likely to have a claim* (self-serving and discriminatory attitudes)

Note – only one aspect dealt with: max 4 marks for a good answer

*Note – content marked with * is required content for max marks*

[AO1:0, AO2:6, AO3:0]

4 (c) Assuming the information in Vic's leaflets is proved to be true, discuss whether Spencer's employment policies are lawful.

[7 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-5 marks
Band 3	Appropriate answer showing sound understanding	6-7 marks

Potential Content

- Recognition of discrimination on the grounds of race
- Application to Spencer's apparent failure to employ black people (How many employed? Have there been any applications from black people?)
- Authority – Equality Act 2010* (Race Relations Act)
- Conclusion – potential claim to an Employment Tribunal
- Case(s)/example(s) in support*, eg Johnson v Timber Tailors

- Recognition of discrimination on the grounds of sex
- Application to Spencer's apparent policy of employing/promoting men ahead of women (qualifications, experience?)
- Authority – Equality Act 2010* (Sex Discrimination Act)
- Conclusion – potential claim to an Employment Tribunal
- Case(s)/example(s) in support*, eg Garland v British Rail Engineering

Note – only one aspect (race or sex): max 4 marks

*Note – One mention of Act **and** case marked with * is required content for max marks*

[AO1:2, AO2:5, AO3:0]

4 (d)(i) Identify the court where Ant would have entered his initial plea.

[1 mark]

Potential Content

- Magistrates Court – **1 mark**

[AO1:1, AO2:0, AO3:0]

4 (d)(ii) Briefly explain why Ant's case was sent for trial to the Crown Court.

[2 marks]

Potential Content

- Because the case was too serious to be dealt with by magistrates (or equivalent phrase)*
– 1 mark

Any appropriate development for the second mark, such as:

- recognition that this must be an either-way offence
- possible reference to affray or violent disorder as the possible offences
- magistrates' sentencing limit of 6 months insufficient on the facts, etc.

*Note – content marked with * is required content for max marks*

Note – credit any other sensible development

[AO1:0, AO2:2, AO3:0]

4 (d)(iii) There are a number of rules which protect defendants during the criminal justice process and which should ensure a fair trial.

Explain how these rules would protect Ant, and others, if accused of an offence.

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

Potential Content

Possible answers include application of the following.

- Protection at the police station, eg taped/videotaped interviews, duty solicitor, etc)
- Right to bail
- Presence of lay people to judge the case (trained magistrates or jury)
- Rules of natural justice, ie both sides must be heard, unbiased decision-makers
- Rights of appeal
- Human Rights Act provisions relating to the right to a fair trial, eg presumption of innocence, open court, right to advice and assistance, right to an interpreter if needed, right to cross-examine, etc.

Note – credit any other sensible points raised

Note – minimum two areas explained and applied for sound understanding, minimum three areas explained and applied for maximum marks

No application – max 4 marks

[AO1:2, AO2:4, AO3:0]

4 (d)(iv) Briefly explain how these rules would be different if Ant was under the age of 18.

[3 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

Potential Content

Possible answers include application of the following.

- Recognition that different rules would have applied after Ant was arrested, at the police station, (eg parent/guardian/appropriate adult, right to legal advice, more breaks, etc)
- Relative informality in both the Youth and Crown Court
- Guarantee of legal advice and representation
- Different sentencing aims up to the age of 18 and powers up to the age of 21
- Press restrictions on reporting, etc.

Note – credit any other sensible points raised

Note – minimum two areas briefly explained for sound understanding

Note – no application: max 2 marks

[AO1:0, AO2:3, AO3:0]

4 (e) Criminal trials in the Crown Court and most defamation cases in the High Court are decided by a jury.

Briefly comment on the **disadvantages** of using a jury in both criminal trials **and** defamation cases.

[4 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

Comments can include:

Criminal

- Jury may misinterpret the law/standard of proof required
- Individual bias or incompetence
- Case could be particularly gruesome/upsetting
- Jury may be over-sympathetic for certain crimes

Civil

- Jury may not understand technicalities of a complex law
- Jury may be impressed by celebrity
- Jury have little basis to award damages fairly (cases, eg *Pressdram v Sutcliffe*), etc.

Note – credit any other sensible points raised

Note – student who only deals with comments in a civil or criminal context or who fails to distinguish between civil and criminal: max 3 marks

[AO1:0, AO2:0, AO3:4]

4 (f) The Human Rights Act 1998 attempts to balance individual rights for all citizens with restrictions on those rights to protect the rights of others.

Comment, using examples, on how well that balance is achieved.
(Answer in continuous prose.)

[6 marks]

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on limited understanding	3-4 marks
Band 3	Appropriate answer showing sound understanding	5-6 marks

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Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

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Band 3	Appropriate answer showing sound understanding. The student spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	5-6 marks

Potential Content

Comments could include any of the following.

- Recognition that rights can rarely be absolute because that would inevitably conflict with the same right being exercised by another in a different way, eg freedom of expression and national security
- Recognition that most restrictions under the HRA were already established law, eg tort of defamation
- Recognition that restrictions exist only to protect the rights of others, eg personal liberty restricted by the tort of trespass

- Recognition that the HRA facilitated enforcement by making it national rather than international, ie HRA issues enforceable in any domestic court without having to go to the ECHR
- Recognition of the potential for conflict between some rights, eg privacy (Article 8) and freedom of expression (Article 10)
- Examples of both rights and restrictions taken from anywhere within the HRA. This could also include reference to any relevant decided cases.

Note – credit any other credible comments relating to any of the issues raised in the question

Note – no examples used: max 5 marks (3 law, 2 QWC)

[AO1:0, AO2:0, AO3:6]

**ASSESSMENT GRID
PAPER 2**

	Maximum Mark	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3
Question 1	45	a) 1 b) 5 c) 1 d) 1 e) 2 f) 0 g) 0	4 10 4 3 4 0 0	0 0 0 0 0 6 4
Question 2	45	a) 1 b) 3 c) 2 d) 2 e) 2	4 8 1 6 6	0 4 6 0 0
Question 3	45	a) 3 b) 3 c) 3 d) 1 e) 0	3 10 7 5 0	4 0 0 0 6
Question 4	45	a) 1 b) 4 c) 2 d) 3 e) 0 f) 0	5 6 5 9 0 0	0 0 0 0 4 6
SUB-TOTAL	90	20	50	20

ASSESSMENT GRID OVERALL (both papers)

AO1 Target 30-40% Achieved 37.2%

AO2 Target 20-30% Achieved 27.8%

AO3 Target 30-40% Achieved 35.0%

Assessment objective coverage identical to Specimen and past Papers, taking into account also 41601