

GCE

Law

H415/03: Further law

Advanced GCE

Mark Scheme for Autumn 2021

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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Annotations

Annotation	Meaning
	Very well developed point (WDP)
	Unclear
	Applied point
	Developed point (DP)
	Well developed point (WDP)
	Not answered question
	Not Relevant
	Point
	Repetition
	Sort of
	Point has been noted, but no credit has been given / blank page has been checked for response
	Correct
	Applied
	Spare 1

Subject Specific Marking Instructions

Section A

1. Discuss the extent to which the law reflects the society it stems from.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1b: Analyse and evaluate legal concepts and issues. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may:

- Define society and the idea of shared beliefs, culture and language
- The role pluralism plays in our society
- The role of law in society and the principles governing the law – the rule of law
- Protection of the public, promoting common good, resolving disputes and persuading people to behave in a particular way
- How society can change the law through protest, riots, campaigning and civil disobedience
- The concept of the moral panic and the influence it has on social change. The role of the media in supporting such change
- Law as a social control mechanism - Roscoe Pound
- Society as a driver for change - recent examples include: Gender Recognition Act 2004, Marriage (Same Sex Couples) Act 2013
- Laws have been slow to respond to societal change
- In other areas, such as euthanasia the law still lags behind public demand for change for public policy reasons
- Explain how changes in the law can change society's views or morals e.g. homosexuality, abortion, smoking and hunting
- Explain the relationship between law and society through informal social controls such as family, schools, religious organisations and peer groups (e.g. bystander intervention and citizen patrol groups); and formal social control mechanisms such as prisons, the judiciary and the police
- Explain theories such as conflict, consensus and labelling
- Describe the realist approach to law making
- Include examples from the full course of study including sentencing policy, crime statistics, influences on parliament

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** discuss:

- how the law uses its power to influence and change social norms to reduce the instances of social unrest
- how the law reacts to civil disobedience e.g. increased police powers to deal with protestors, the harsh treatment of rioters
- examples of when society has managed to influence social change through protest e.g. gay rights, abolition of the poll tax
- the influence of the media in pushing the political agenda of the parties and/or the government
- the media as a tool to create a moral panic so that society will support changes in the law
- the changing moral values of a pluralist society
- how informal social control is achieved through socialisation to create social norms shared by groups and society as a whole
- the strengths and weaknesses of the consensus and conflict theory
- the impact of labelling theory and its ability to create subcultures
- the strengths and weaknesses of the realist theories

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question.	9–10	Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion where required by the question. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question.	6–8	Good analysis and evaluation of a range of legal concepts and issues. The response has a consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion where required by the question. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response is partially developed. There will be some reference to statutes and case law, where appropriate to the question.	3–5	Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion where required by the question.	4–7

			<i>The information has some relevance and is presented with limited structure. The information is supported by limited evidence.</i>	
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes and case law is limited.	1–2	Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is basic and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

2. Discuss the extent to which delivering justice is the main aim of the legal system.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1b: Analyse and evaluate legal concepts and issues. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may**:

- Definitions of justice (e.g. Chaim Perelman) and different types of justice: formal justice, substantive justice, distributive justice and corrective justice
- Theories of law and justice e.g. Natural Law theories (Aristotle, Aquinas, Fuller) and Positivist theories (Bentham, Hart and Austin), John Rawls, Marxism, Nozick, Rule of Law etc. credit any other relevant theories
- Use examples of formal justice – legal institutions such as the police, courts, judiciary, juries, and appeals
- Use examples of substantive justice – legal rules e.g. fault and defences in criminal law, fault in tort law, rights and freedoms in the Human Rights Act and fairness in contract law
- Use examples of distributive justice - the fair allocation of resources e.g. wealth, power, rights, resources e.g. anti-discrimination laws, minimum wage and reallocation of wealth through taxation and the welfare state
- Use examples of corrective justice – sentencing in criminal law e.g. retribution and remedies in tort and contract

Credit any other relevant point(s)

AO3 Indicative content

Answers **may**:

- Discuss the struggle to create a common definition of justice that is shared by all members of society
- Discuss the varied theories of law and justice and the struggle to create justice in a society. Credit any other relevant evaluation of the theories of justice
- Discuss the different types of justice with examples from the whole course of study:
 - Formal justice –the struggles faced by the criminal justice system in the miscarriages of justice cases. The findings of the Runciman Commission and the Criminal Cases Review Commission. The Stephen Lawrence case and the findings of the McPherson Report
 - Criticisms could be made of the judiciary
 - Evaluation of the system of 'trial by your peers'
 - Substantive justice – discussion of any legal rule and whether it achieves justice
 - Distributive justice – how the law struggles to create justice for everyone regardless of class, wealth, gender, race or disability

- Discuss how this can lead to inequality e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, institutional racism in the police force following the murder of Stephen Lawrence etc
- Corrective justice – discussion of the high re-offending rates. Inequality of bargaining power in civil cases

Reach any sensible conclusion
Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question.	9–10	Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion where required by the question. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i>	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question.	6–8	Good analysis and evaluation of a range of legal concepts and issues. The response has a consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion where required by the question. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i>	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response is partially developed. There will be some reference to statutes and case law, where appropriate to the question.	3–5	Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion where required by the question. <i>The information has some relevance and is presented with limited structure. The information is supported by limited evidence.</i>	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes and case law is limited.	1–2	Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is basic and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

3 Advise Nina whether her continued detention **and** that of her son Sam, may be challenged under Article 5 of the European Convention on Human Rights.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

- Article 5 Right to liberty and security
- Meaning of liberty – *Engel v Netherlands*
- Meaning of deprivation: a question of degree and intensity– *Guzzardi v Italy*
- No-one to be deprived of liberty unless for one of the lawful reasons set out in Article 5(1)(a) – (f) including, amongst others, detention after conviction, or on public health grounds, to detain persons of unsound mind 5(1)(e) *Winterwerp v Netherlands*
- Article 5(4) Right to challenge deprivation speedily in a court
- Article 5(5) Right to compensation
- Cases and principles:
 - In a care setting the acid test is from - *Cheshire West and Chester Council v P* - under continuous supervision and control and is not free to leave, *HL v UK*, *LB Hillingdon v Steven Neary*, *JE v DE aka Re DE* - freedom within the care setting was not conclusive unless it included the freedom to leave
 - Relevant sections of s.7 Mental Health Act 1983

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Sam's detention

- Sam's detention would initially fit the definition of a deprivation as outlined above but may be justified on the grounds that there is no-one capable of looking after him
- Article 5(1)(e) would allow for the deprivation

- There would have to be a proper assessment of his needs before the order taking him into care was made but as Nina is struggling to cope, there are grounds to do so
- He appears to be under continuous supervision and is not free to leave
- Deprivation is a question of degree and intensity
- His rights are not limited because of his disability and he has the same right to liberty as everyone else
- The justification for detaining him may well come to an end when Nina is capable of looking after him again - at this point, the deprivation could be seen as a breach of Article 5

Nina's order under the Mental Health Act

- Nina being sectioned under the Mental Health Act would be a justifiable deprivation if it followed the guidelines in *Winterwerp v Netherlands* - that her condition was a medically recognised mental condition established by an expert and sufficient to justify the detention
- The detention should only be for the duration that the disorder exists - this is questionable in Nina's case
- If Nina has recovered, then the deprivation of liberty would become unlawful at that point

Reach any sensible conclusion

Credit any other relevant points.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

4 Advise Kareem, Anika and Leo which public order offences they are most likely to be convicted of as a result of their protest.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

- Public order offences
- s68(1) Criminal Justice and Public Order Act 1994 (CJPOA) – aggravated trespass: intimidating, obstructing or disrupting the activity - *DPP v Chivers*
- s2 Public Order Act 1986 (POA) – violent disorder – 3 or more 'use or threaten' unlawful violence
- s3 POA - affray
- s4 POA - fear or provocation of violence
- s4A POA - intentional harassment, alarm or distress
- s5 POA - harassment, alarm or distress
- s70 CJPOA amending POA 14A & 14B re: trespassory assemblies
- s137 Highways Act 1980 - obstructing the highway

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Kareem forcing his way into the theatre

- Kareem (and the others) appear to have committed several assaults and their actions, taken together, would also satisfy the definition of violent disorder under s2 POA
- The actions would also satisfy the definition of affray under s3 POA as they both use and threaten violence towards another and the circumstances would cause a person of reasonable firmness to fear for their personal safety
- s4A POA and s4 POA are also possible charges here
- There are not enough members of the group present to be charged with riot

Anika glues herself to the door

- This would also be seen as an aggravated trespass as it satisfies the test in *DPP v Chivers*
- Anika could also be charged with s4A or s5 POA harassment by using disorderly behaviour
- It is possible that Anika's acts, taken with those of the others, may also lead to a charge of violent disorder – s2 POA

Leo chaining himself to the director's car

- This causes the traffic to be completely disrupted and would be likely to constitute the offence of obstructing the highway under s137 of the Highways Act 1980
- Credit a consideration of aggravated trespass but with a likely conclusion that this would not be the most likely outcome

All three - potential liability under 14B in relation to trespassory assemblies if subject to an order under 14A

Reach any sensible conclusion

Credit any other relevant points.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

5* & 8* Discuss the extent to which the courts are willing to defend freedom of expression as set out in Article 10 of the European Convention on Human Rights.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

- Article 10 of the Human Rights Act 1998 (HRA) - freedom of expression is seen as the bedrock of democracy - *Lingens v Austria*
- Covers both the right to receive and impart information and ideas without interference by public authority
- Scope of Article 10: covering artistic expression, films, painting, radio and television
- Freedom of expression by way of protest is included - *Steel v UK*
- Article 10(2) Restrictions: national security, public safety, prevention of disorder, protection of health or morals, protection of reputation/rights of others, preventing disclosure of confidential information, maintaining authority and impartiality of the judiciary
- Restriction prescribed by law
- High and low value expression
- Margin of appreciation - *Handyside v UK*
- Case law examples may include:
 - *Otto Preminger-Institut v Austria* - artistic expression
 - *Observer and The Guardian v UK* - national security
 - *Mosley v News Group Newspapers* - press freedom
 - *Goodwin v UK* - journalists revealing sources
- s12(4) HRA special focus on respecting freedom of speech in relation to journalistic, artistic/literary material
- s5 Public Order Act 1986 and the problematic crime of insulting

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

Answers **may** include:

- Democracy can only prosper where citizens are free to make their views public
- Democracy allows individuals to challenge the policies of those in power and to engage in healthy debate
- Explore how conflicting rights such as Article 8 have been dealt with in the courts
- Consider how other rights, such as Article 11 depend on the proper functioning of Article 10
- Discuss the importance of a free press especially in the light of the phone hacking scandal and Leveson report
- Consider the importance of free speech in a political context including parliamentary privilege
- Explore the issues behind the ban on political advertising and whether this has an effect on political campaigning - *R (Animal Defenders International) v SoS for Culture Media and Sport*
- Consider the boundaries between free speech and unlawful forms of expression such as defamation or s5 (above)
- Public Order offences for the offence of 'insulting' which it has been argued can stifle some forms of artistic expression, such as stand-up comedy
- Prospect of limiting effect on free speech and comedy?
- Consider limitations which are necessary to protect others such as the prevention of hate speech or holocaust denial
- Consider the need for investigative journalists to be able to expose issues of public importance such as *Sunday Times v UK*
- Consider the 'chilling effect' of 'no platforming' speakers and of muzzling the press as seen in the judgment of *Sir Cliff Richard v BBC*
- Consider the particular issue of 'celebrity injunctions' to protect anonymity

Reach any sensible conclusion

Credit any other relevant points.

	AO1	Mark	AO3 1a	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is	6–8	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the	8–11

	detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.		question. Most of the key points are well discussed and well developed to reach a valid conclusion. There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.	
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

6 Advise Jack and Eve whether their rights under Article 11 of the European Convention on Human Rights have been breached.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may** include:

- Article 11 is a qualified right protecting the right to freedom of peaceful assembly and association
- Article 11(2) Permissible restrictions will be:
 - Prescribed by law
 - Necessary in a democratic society
 - On the grounds of national security/ public safety
 - Or prevention of crime
 - For the protection of health or morals
- Scope of the right: an assembly can include a meeting, demonstrations, protests and marches. The assembly of people can be political, religious, social etc
- Possible cases include - *Appleby v UK*, *Cisse v France*, *Platfrom Artze fur das Leben*, *Redmond Bate v DPP*, *Ollinger v Austria*
- Cases on association - *Redfearn v UK* - right to join a political association; *National Union of Belgian Police v Belgium*, *Young, James and Webster v UK* – right to join a union

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Jack's participation at the sit-in and subsequent dismissal by his employer

- By participating in the sit-in Jack is exercising his rights under Article 11
- The exercise of the right is dependent on the peaceful behaviour of the protestors and that no laws are broken
- The use of the drone to disrupt the operation of the airport and endangering lives would mean that all those participating in the sit-in have potentially broken the law

- If his dismissal is based on his membership of the group this would amount to a breach under Article 11 using the principle in *Redfearn v UK*
- He has a right to join any lawful association or group in his spare-time

Eve organises a sit-in

- Eve has a right to peaceful protest by organising a sit-in
- She should notify the police of her intention to do so but this is not stated in the scenario
- The right to protest should be protected even where it annoys or gives offence to others - *Platform Artze fur das Leben v Austria*
- The right may also impose a positive obligation on the police to ensure the safety of the protestors
- The protestors do not trespass on the airport as it says they are in the nature reserve not the airport
- This would not be a trespassory assembly – *DPP v Jones*
- However, the flying of the drone is a trespass and is also endangering the safety of passengers and this changes the nature of the protest into an unlawful one
- At this point, it became necessary for the police to restrict their right to protest – *Cisse v France* – where doing so was a proportionate response

Reach any sensible conclusion
Credit any other relevant points.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

7 Advise Layla, Amir and Zac whether they each have grounds to challenge the hospital using judicial review and which orders, if any, each of them should seek from the court.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may** include:

- A hearing in the Administrative Court which reviews the lawfulness of a decision taken by government ministers and their departments or by public bodies - *Council of Civil Services Unions v Minister for the Civil Services*
- The hearing decides whether the public body is acting lawfully or *ultra vires*
- Public bodies include local authorities, health authorities, the police and prison governors
- The person bringing the claim must have sufficient interest (*locus standi*) in the case and there are time limits applied
- Grounds for review:
 - illegality – where decision-makers act without power, exceed powers given or misapply the law - *Attorney-General v Fulham Corporation*
 - procedural impropriety – where decision-makers fail to follow correct procedures - *Agricultural, Horticultural and Forestry Training Board v Aylesbury Mushrooms*
 - irrationality and proportionality
 - unreasonableness – where a decision-maker takes a decision which no reasonable decision-maker (in the same position) would make - *R (Rogers) v Swindon NHS Trust*
 - proportionality – balancing conflicting interests where human rights are concerned - *Youssef v Secretary of State for Foreign and Commonwealth Affairs*
- Orders available in judicial review cases - quashing order, prohibiting order, injunction, mandatory order, declaration and damages

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Layla's IVF treatment refusal

- There appear to be clear grounds to bring a judicial review against the decision of the hospital on the grounds of unreasonableness
- This is based on the fact that the same treatment at the same hospital was made available to a number of local women who were all older than Layla. This appears to be irrational and unreasonable decision-making - *R (Rogers) v Swindon NHS Trust*
- Credit also any discussion of proportionality being applied to Layla's fundamental human rights which may include arguments under Articles 2, 8, 12 and 14 (although not all of these are in the specification)
- Layla would seek a mandatory order to provide the treatment (also credit possible damages if the refusal has disadvantaged her in any way)

Amir's complaint

- Amir would have grounds to bring a judicial review against the hospital based on procedural impropriety
- This is because Dr Smith has failed to follow procedures laid down by the hospital and they are responsible for his decisions - *Agricultural, Horticultural and Forestry Training Board v Aylesbury Mushrooms*
- Amir would seek a mandatory order that the hospital consider his complaint in the proper manner

Zac and the car park

- Zac would have grounds to bring a judicial review against the hospital based on illegality
- This is because the hospital has acted in excess of its powers by using powers given to operate free visitor car parks to run chargeable car parks for shoppers - *Attorney-General v Fulham Corporation*
- Zac would seek a prohibiting order to stop the plans going any further

Credit should also be given to any discussion of *locus standi* or time limits

Reach any sensible conclusion

Credit any other relevant points.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in	4–7

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	lack detail in places and is partially developed. There will be some reference to statutes and case law.		places and is partially developed. Some appropriate legal terminology is used.	
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

8*

SEE QUESTION 5 (ABOVE) - SAME QUESTION AND MARK SCHEME

9 Advise whether the exclusion clauses in Catering Supplies' contracts will prevent them from being sued by Anika, Ben or Jane in relation to the ruined family dinner, the changed specification of the freezer and the personal injury.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.</p>
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

Common law protection

Explain that terms must be prominent and clear, *Thornton v Shoe Lane Parking, Interfoto v Stiletto Visual Programmes*

Explain that once a document has been signed the terms are likely to be incorporated, *L'Estrange v Graucob*

Explain that the *contra proferentem* rule prevents terms being given a wide meaning, *White v John Warrick*

Consumer Rights Act 2015

Explain that under s31 the implied terms as to satisfactory quality etc cannot be excluded in a consumer contract

Explain that under s62 unfair terms do not bind a consumer

Explain that under s62(4) a term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer

Explain that under s65 Liability for death or personal injury cannot be excluded

Explain that Schedule 2 contains a list of terms which are to be regarded as unfair

Unfair Contract Terms Act 1977

- Explain that this legislation applies to non-consumer contracts
- Explain that under s2(1) a term may not exclude negligence liability which causes death or personal injury

Credit any other relevant case(s)

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Catering Supplies and Anika, the ruined family dinner

- Identify that the terms are probably incorporated into the contract because they were signed, although in this case the terms do not seem to have been specifically pointed out or made prominent
- Identify that Anika is a consumer so the exclusion clause will be regulated by the Consumer Rights Act 2015 (CRA)
- Identify that the faulty steamer is a breach of s9 CRA which implies a term into the contract that goods must be of satisfactory quality
- Identify that under s31 CRA, the implied right under s9 CRA cannot be excluded
- Conclude that the exclusion clause will not prevent Anika from suing in relation to the ruined family dinner
- Credit an argument that the term is unlikely to be reasonable under s62

Catering Supplies and Ben, the freezer

- Identify that Ben is a consumer so CS' exclusion clause will be regulated by the CRA
- Identify that the second exclusion clause is a term which may be regarded as unfair under schedule 2 CRA
- Alternatively, identify that under s62 CRA the term is unlikely to be seen as fair, as Ben is not given any opportunity to cancel the contract if he is not happy with the changed specification of the freezer

Catering Supplies and Jane, the personal injury

- Identify that Jane is in business so the exclusion clauses will be regulated by the Unfair Contract Terms Act 1977 (UCTA)
- Identify that under s2(1) UCTA, it is not possible to exclude liability for negligence which causes death or personal injury
- Conclude that the term will not prevent Jane from suing CS

Give some credit to an argument that if Beth was a consumer the term would not be allowed under s65 CRA

Reach any sensible conclusion

Credit any other relevant point.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15

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Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

10 Advise what rights Layla, James and Nina have under the Consumer Rights Act 2015, including the implied terms which have been broken and the remedies they will be entitled to. Assume that Layla, James and Nina are all private consumers.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

Explain the rights which are implied into consumer contracts in the Consumer Rights Act 2015

- That under s9 goods must be of satisfactory quality
- That under s10 goods must be fit for purpose
- That under s11 goods must be as described

Explain the remedies for breach of any of these rights

- That there is a short term right to reject the goods under s20
- That this right can be exercised up to 30 days after purchase under s22
- That there is a right to have the goods repaired or replaced under s23
- That there is a final right to have a price reduction or to reject the goods under s24
- That any refund to the consumer may be reduced by a deduction for use, but not if the final right to reject is within 6 months of purchase

Credit any other relevant case(s)

Credit any other relevant point(s)

AO2 Indicative content

Answers may include:

Layla

- Identify that the oven is not satisfactory quality as required under s9
- Identify that under s20 she can exercise the short term right to reject the goods
- Identify that under s22 she is within the 30-day limit to exercise this right

- Identify that she can claim a full refund for the oven

James

- Identify that the fridge is not satisfactory quality as required under s9
- Identify that James falls outside the short term right to reject
- Identify that under s23 James has the right to right to ask Catering Supplies to repair or replace the fridge within a reasonable time

Nina

- Identify that the outdoor grill is not fit for purpose as required under s10
- Identify that Nina has already given Catering Supplies an opportunity to repair the goods and identify that Nina does not have to give CS more than one opportunity to repair the goods
- Identify that under s24 Nina has the right to a price reduction or a final right to reject the goods

Credit a comment that if Nina has had the grill for more than 6 months a price reduction may be applied for the use she has had

Reach any sensible conclusion

Credit any other relevant point.

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

11* & 14* Discuss whether the presumption against an intention to create legal relations in domestic cases should be reformed.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

- Explain that contracts made between friends or family members have a presumption that there is no intention to create legal relations, *Jones v Padavatton*, *Balfour v Balfour*
- Explain that the presumption can be rebutted in certain circumstances:
 - Where the parties are not contracting on a domestic basis, *Albert v Motor Insurer's Bureau*, *Snelling v Snelling*
 - Where the domestic relationship has broken down or it is anticipated that it may break down, *Merritt v Merritt*, *Granatino v Radmacher*
 - Where there has been reliance on the contract, *Parker v Clarke*
 - Where the parties are entering a competition together, *Simpkins v Pays*
- Credit any relevant reference to the rules of consideration
- Credit any relevant reference to theory of contract law, e.g. *laissez faire*, sanctity of contract

Credit any other relevant case(s)

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

Discuss reasons for the presumption remaining

- That it can be justified as it serves to protect parties who would not have expected legal consequences to arise due to the domestic nature of their agreement
- That it relieves pressure on the courts by preventing trivial domestic cases being taken there

Discuss reasons why the presumption should be abolished

- That it overlaps with the rules in consideration and that leads to unnecessary confusion
- That it leads to injustice in domestic cases and tends to disadvantage women
- That there are so many ways for the presumption to be rebutted that it is now meaningless
- That the courts' willingness to uphold pre-nuptial contracts means that the courts are more likely to uphold domestic contracts in general

Credit any justified suggestions for reform

Reach any sensible conclusion
Credit any other relevant point(s).

12 Advise whether Albury College is obliged to pay Bodge-IT for any of the laptops, for installing the Wi-Fi and for the printers.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

- **Explain the rules of performance of a contract**
 - That payment cannot be claimed unless performance is both complete, *Cutter v Powell* and exact, *Re Moore and Landauer*
- **Explain relevant exceptions to the rule:**
 - That a contract may be severable (or divisible) into different obligations, each of which may be seen as a different obligation, *Taylor v Webb*
 - That the contract may have been substantially performed, and so a claim may be made for the contract price minus an amount for fixing whatever work needs to be done, *Hoening v Isaacs*
 - That the substantial performance rule will not apply where there is no real benefit from the contract or the work is dangerous, *Bolton v Mahadeva*
- **Explain the rules on time of performance:**
 - That where a time has been made a condition of the contract, late performance will be a repudiatory breach
 - That a party may give reasonable notice that the other has to perform within a certain time
 - That otherwise late performance is breach of an innominate term and repudiation depends on the severity of consequences

Credit any other relevant case(s)

Credit any other relevant point(s)

AO2 Indicative content

Answers may include:

Bodge-IT and the laptops

- Identify that the contract has not been fully or exactly performed and so Bodge-IT will be unable to claim payment
- Identify that if the contract can be seen as severable, Bodge-IT would be able to claim for the laptops which do work
- Identify that each working laptop is useful in itself, which may suggest severability. However, the special price for 50 laptops would suggest that the contract cannot be divided up
- Draw any reasonable conclusion

Bodge-IT and the Wi-Fi

- Identify that the Wi-Fi contract has not been fully performed and so Bodge-IT will be unable to claim payment
- Identify that if the contract has been substantially performed, Bodge-IT would be able to claim the majority of the price, minus an allowance for the work to be completed
- Identify that the amount of college not covered by Wi-Fi is probably more than a trivial amount
- Draw any reasonable conclusion

Bodge-IT and the printers

- Identify that time of performance is not an absolute requirement unless it is made a condition of the contract
- Identify that in this case the college has not given any clear deadline for performance
- Identify that a reasonable deadline can be given by one of the parties and the college has done this when they gave the two-week deadline after the start of term
- Conclude that the late delivery is probably a repudiatory breach by Bodge-IT and that they cannot claim payment for the printers

Reach any sensible conclusion
Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7

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	There will be some reference to statutes and case law.			
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

13 Advise whether Tom's contracts with Sea FM, Sundip and Mia will be frustrated and what financial claims Sundip and Mia may be able to make.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may** include:

Explain the effect of frustration on a contract, that it becomes void

Explain the ways in which a contract may be frustrated

- Where performance has become impossible, *Nichol and Knight v Ashton Eldridge, Taylor v Caldwell*
- Where there has been a radical change of circumstances, where performance of the contract would amount to something very different to what was originally anticipated, *Krell v Henry*

Explain the circumstances where the courts will decide that frustration will not apply

- Where performance would be possible but more difficult or expensive than originally anticipated, *Tsakiroglou v Noble Thorl*
- Where the impossibility of performance was due to the fault of one of the parties, *Maritime National v Ocean Trawlers*

Explain the provisions of the Law Reform (Frustrated Contracts) Act 1943

- s1(2) where money paid in advance of the frustrating event may be reclaimed minus just expenses
- s1(3) where a party has to account for any valuable benefit they would have gained because of the frustrating event

Credit any other relevant point(s)

Credit any other relevant case(s)

AO2 Indicative content

Answers **may** include:

Tom and Sea FM

- Identify that the contract is still possible to perform but has become pointless once the restaurant is no longer functioning and so this could be seen as a radical change
- Identify that the existence of the restaurant is more than background circumstances but is key to the advertising contract and so could be seen as frustrated
- Identify that if the fire can be seen as self-induced, as the fire was due to Tom's own firework event, this may prevent Tom claiming frustration
- Draw any reasonable conclusion on whether the contract has been frustrated

Tom and Sundip

- Identify that the contract will be frustrated through impossibility when the restaurant burns down
- Identify that Sundip can claim for any unjust enrichment that Tom has obtained through her playing, if he does not have to pay her
- Identify that Tom will have benefited by more people coming to the restaurant to hear Sundip play, increasing sales
- Conclude that Sundip will have a claim under s1(3) for the benefit obtained by Tom for the two weeks she played

Tom and Mia

- Identify that the contract will be frustrated through impossibility when the restaurant burns down
- Identify that under s1(2) Mia can claim her advance payment back minus just expenses incurred by Tom
- Identify that Tom will not have suffered any just expenses because the restaurant is no longer there
- Conclude that Mia can claim a full refund

Reach any sensible conclusion
Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	9–10	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	12–15
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	8–11

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Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.	3–5	Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.	1–2	Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

14*

SEE QUESTION 11 (ABOVE) - SAME QUESTION AND MARK SCHEME

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