



GCE

Law

H415/03: Further law

Advanced GCE

Mark Scheme for June 2019

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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
	Citation

SUBJECT–SPECIFIC MARKING INSTRUCTIONS**Introduction**

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with examples of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates might use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles and concepts.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Section A

1* 'The moral values of a society should be reflected in its laws'. Discuss the extent to which the English legal system achieves a balance between law and morality.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.</p> <p>AO3 1b: Analyse and evaluate legal concepts and issues. 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**:

- Describe the distinction between law and morals - define legal rules e.g. John Salmond, John Austin, H. Hart or Karl Llewellyn and definitions of morals e.g. Durkheim or Philip Harris
- Explain how the law enforces moral values e.g. examples of human rights, common law examples, statutory examples
- Explain the diversity of moral views in a pluralist society
- Use examples of controversial laws made by parliament and judges
- Explain how morality changes over time e.g. marital rape was not a crime until 1991
- Describe the main points of the Hart/Devlin debate using examples of laws supporting Devlin and laws which support Hart
- Describe the Fuller v Hart debate
- Refer to the theories of law and morals e.g. Natural Law theorists (Aristotle, Aquinas, Fuller) and Positivists (Bentham), including the overlap between law and morals, the divergence of laws and morals
- A typical answer may well include a definition of morality

Credit any other relevant point(s)

AO3 Indicative content

Answers **may**:

- Discuss the difficulty of protecting moral values in a pluralist society and how the law struggles achieve a balance
- Discuss how politicians avoid passing controversial laws that will divide society
- Discuss how morality usually moves at a faster pace and the law struggles to keep up with the views of society
- Discuss the role of judges making moral decisions. Use examples where the judiciary have been criticised for being 'out of touch'
- Discuss the strengths and weaknesses of the views of Devlin's desire for the law to uphold a common morality to ensure society does not disintegrate. Compare with the utilitarian approach of Hart and his desire for the law to respect personal autonomy
- Discuss the opposing views of Fuller and Hart
- Discuss the strengths and weaknesses of the natural law theorists and the positivists
- Discuss the difficulties of trying to enforce and protect morals using the law and conclude how well the law achieves a balance

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

2* 'The aim of the law should be to achieve justice.' Discuss the extent to which the English legal system achieves justice.

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:

- Include definitions of justice (e.g. Chaim Perelman) and different types of justice: formal justice, substantive justice, distributive justice and corrective justice. Use examples from your full course of study
- Include theories of law and justice e.g. Natural Law theorists (Aristotle, Aquinas, Fuller) and Positivists (Bentham, Hart and Austin), John Rawls, Marxism, Nozick, Rule of Law etc. Credit any other relevant theories
- Explain examples of formal justice – legal institutions such as police, courts, judiciary, juries, and appeals
- Explain 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
- Explain examples of distributive justice - the fair allocation of resources e.g. wealth, power, rights, resources further e.g. anti-discrimination laws, minimum wage and redistribution of wealth through taxation and the welfare state
- Explain examples corrective justice – sentencing in criminal law e.g. retribution; remedies in tort and contract

Credit any other relevant point(s)

AO3 Indicative content

Answers may:

- Discuss how the law tries to create a common definition of justice that is shared by all members of society
- Discuss the varied theories of law and justice and how they aim to achieve justice in a society
- Discuss the different types of justice with examples from the whole course of study:
 - Formal justice –the problems faced by the criminal justice system e.g. examples from the miscarriage of justice cases. The findings of the

Runciman Commission and the creation of 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 e.g. does the current law of self-defence create justice?
- Distributive justice – how the law struggles to create justice for everyone regardless of class, wealth, gender, race and disability. Discuss how this can lead to inequality e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, 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

Section B

- 3 Advise Stefan whether his continued detention in a high security unit amounts to a breach of his rights under Article 5 of the European Convention of 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 ECHR: Right to Liberty and Security:

- Outline scope of the protection: 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, non-compliance with a lawful obligation, on public health grounds or to detain persons of unsound mind – 5(1)(e)
- 5(4) sets out the further right a person has of challenging a deprivation of liberty speedily in a court
- Meaning of deprivation. *Guzzardi v Italy*. Deprivation depends on the circumstances, degree and intensity
 - *Cheshire West and Chester Council v P* UKSC - *person is under continuous supervision and control and is not free to leave.* - Lady Hale.
 - Mentally incapacitated people have same right to liberty as everyone else
 - Deprivation - in accordance with the national law and not arbitrary - *James v UK*
 - There must be a connection between the original conviction and the continued detention - *Stafford v UK*
 - Relative levels of freedom did not mean a person was not deprived of his freedom if he was not 'free to leave' *J E v D E, aka Re D E*
 - Deprivation and mentally disordered patients: *Winterwerp v Netherlands* conditions:
 - Person must be of 'unsound mind', Confinement must be necessary, detention requires the persistence of the mental disorder
 - *Ashingdane v UK* need for a therapeutic environment

Credit any other relevant point(s)

AO2 Indicative content

Answers may include:

Stefan's continued deprivation of liberty:

- Stefan is detained. It is not an arbitrary detention at the outset due to being for one of the reasons set out
- Stefan's detention was on the basis of a criminal conviction, regarded as a danger to society due to the condition of his mental health. He is detained lawfully under article 5(1)(a) and 5(1)(e)
- His detention in a unit for those with mental conditions will be lawful if it was made under medical advice *Winterwerp v Netherlands*.
- This was the case during Stefan's original trial
- His diagnosis has changed and it is now questionable whether he should remain in the high security unit
- Although the authorities have adjusted his living conditions to take account of his new diagnosis he is still not able to leave the unit and therefore his deprivation of liberty is ongoing
- Stefan's condition is continuing although he is much better and does not represent a danger to society
- Stefan is being provided with a therapeutic environment. The courts are likely to be unwilling to rule that the Minister's decision is unlawful

- Credit consistent and logical arguments to the contrary which conclude that Stefan's deprivation is no longer lawful as the original basis for detention no longer exists

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. 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 Esther whether the police have used their stop and search powers lawfully.

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:

- Police power of stop and search contained in ss 1 and 2 of PACE 1984 and Code of Practice A
- Power to search vehicle or a person and to detain them for the search. This is used to look for stolen or prohibited items. They must have reasonable grounds for suspecting they will find such an item. This is an objective test
- Grounds must exist prior to stopping the suspect
- There is no general duty to answer questions prior to arrest. This does not constitute obstruction of the police in the execution of their duty - *Rice v Connolly*
- s2 PACE a search will be unlawful unless the officer gives the following information: name, number, station and reason for the search
- Under s3 a full record should be made of the search
- Also s60 Criminal Justice and Public Order Act 1994 authorises a blanket search order for a particular area where there is reasonable belief that serious violence may occur or offensive weapons may be found
- s44 Terrorism Act 2000 allows a senior officer to make random stops and searches in an area for a specified period
- Credit reference to any relevant case under ECHR involving stop and search - *Gillan & Quinton v UK* random stop and search under s44 TA 2000 was not lawful. Led to a new provision s47A Terrorism Act 2000 trigger was that there was a reasonable belief an act of terrorism will take place

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Esther's stop and search:

- The police must have reasonable suspicion under s1 PACE to stop and search Esther
- She is in the crowd and the police may argue that she appeared to be part of the protest group. Her briefcase may appear to contain suspicious items, although this is not a strong argument
- The police did not give their details to Esther as required by s2 PACE 1984, nor is she told the reason for the search
- This would suggest that the search undertaken is unlawful under PACE
- The police may argue that they were using their powers under s60 CJPOA 1994 in anticipation of serious violence from the crowd
- Under s60 there is no need for them to have grounds for suspecting that Esther herself may have weapons or items of that kind. They can search anyone on general grounds during the specified time
- Under s60 they are much more likely to be seen as acting lawfully
- It is unlikely that any power under s44 is being used. If it were this provision the police would have to have reasonable suspicion that an act of terrorism was likely to occur
- The short period of time that Esther is detained is unlikely to be regarded as a deprivation under Article 5 according to *Gillan*

Reach any sensible conclusion

Credit any appropriate argument.

	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* Evaluate the extent to which the court maintains an effective balance between national legal priorities and those under the Convention.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks.</p> <p>AO3 1a: Analyse and evaluate legal rules and principles. 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:

- ECtHR adjudicates allegations that a member state of the Council of Europe has violated a provision of the ECHR
- If there has been a violation its role is to then decide whether damages need to be paid by the state or not
- HRA 1998 incorporates the ECHR into national law. S.2 sets out that the UK courts 'must take into account' decisions of the ECtHR - *R (Alconbury Developments) v Secretary of State for the Environment, Transport and the Regions*, *R v Secretary of State for the Home Department, ex parte Anderson*
- Thus, the UK is not bound by ECtHR decisions but will not depart from them 'without good reason'
- s3 HRA also says that courts must interpret legislation in a way which is compatible with the Convention
- s4 allows a court to make a declaration of incompatibility where primary legislation is incompatible with a Convention right
- s14 derogation is possible where Parliament decides
- The ECtHR recognises different standards and conditions in different countries though the doctrine of 'margin of appreciation'. This refers to the degree of freedom for each state to apply the convention in a way which fits in with domestic law
- *Handyside v United Kingdom*, *Marper v UK* - sets out the main principles
- Role of ECtHR is subsidiary to nation state. Nation state makes initial assessment. This may be later changed by reference to ECHR
- Where the right is more significant then there is less room for the margin of appreciation, such as Article 3. A wider margin of appreciation is used in cases involving moral issues – *Laskey*, *Jaggard and Brown v UK*, *Otto Preminger v Austria*
- In cases involving abortion and euthanasia a wide margin exists to reflect the particularly sensitive nature of such rights and the multiplicity of approaches adopted

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

- Flexibility within the Convention:
- The 'living instrument' doctrine. Convention is dynamic and interpreted in the light of current situations. Allows for more flexibility than under a rigid system of precedent
- Many of the Convention rights are subject to lawful exceptions which allow for practical solutions to situations where flexibility and compromise is needed
- Credit any example of lawful exceptions contained within the Convention
- Flexibility in the interpretation of the Convention:
 - Decisions of the ECtHR are not regarded as binding precedents but persuasive
 - s3 HRA 1998 allows the UK courts some flexibility in interpreting the law - *R (Alconbury Developments) v Secretary of State for the Environment, Transport and the Regions*
 - These mechanisms allow Parliament to retain supremacy. Courts can act in an advisory capacity only.
 - This situation respects the separation of powers and also allows judges to steer Parliament towards alignment with the Convention
 - Parliament can derogate from the Convention by making a declaration to this effect. This is done under s14 HRA 1998
 - The 'Margin of appreciation' allows some wriggle room for national courts in relation to certain areas, particularly Articles 8-11
 - *Handyside v United Kingdom* shows how the ECtHR developed this doctrine to take account of different national priorities needing different solutions. This is especially important in cases involving morality (such as publishing materials in *Handyside* which may be seen as corrupting morals)
 - Criticism of the doctrine of margin of appreciation is that it dilutes the universal nature of human rights making them less effective
- Credit any other sensible argument as to how the Convention is accommodated into national law

Reach any sensible conclusion

Credit any other relevant point(s).

	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 detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	6–8	Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the 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	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 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 Anton whether his trial would be regarded as fair under common law and Article 6 of the European Convention of 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:

- Meaning of a fair trial under common law and Article 6
- Presumption of innocence – *Woolmington* - burden on prosecution to prove guilty beyond a reasonable doubt
- Elements of a fair trial
- Magna Carta: impartial and speedy legal process
- Judicial independence from political interference – Act of Settlement 1701. Constitutional Reform Act 2005 s.3(1)
- Public process. Secret trials are seen as open to corruption and against natural justice but allowed under Article 6(1) in the interest of national security, such as in *R v Incedal and Rarmoul-Bouhadjar* a trial partially held in secret
- Art 39 of *Magna Carta* refers to the 'lawful judgment of his peers' as a prerequisite for a fair trial
- Burden of proof on prosecution
- Right to legal representation
- Concept of 'Equality of Arms'
- Attendance and the right to participate - *V and T v UK*
- Right against self-incrimination - *Murray v UK*
- Inferences from silence
- Imbalance of resources – prosecution can command the resources of the state through police and CPS
- High stakes of a trial

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

- Innocent until proven guilty
- Anton will argue that the lack of disclosure of evidence has unfairly weighted the trial against him as he would be unable to prepare his defence without proper access to the computer and its files
- Equality of arms: Anton will claim that he did not have sufficient access to the evidence to be able to mount a strong defence. It is not a level playing field
- Recent rape prosecutions have collapsed due to a similar failure to disclose evidence. Anton would claim that his defence is similarly hampered
- The prosecution has access to sophisticated technical expertise in the area of computer technology which Anton cannot match
- Refusal of his right to trial by jury denies him one of the fundamental and ancient legal rights of an accused - trial by his peers
- Anton will argue that a jury might be more sympathetic to his arguments than a judge and that he has a right to be tried by his peers
- He would argue that he is exercising his right against self-incrimination but inferences may be drawn from his refusal to take the witness stand
- The fact that the trial is held in secret would be seen to offend against the basic rules of natural justice, such as a fair trial such as open justice - *'justice must not only be done but be seen to be done'*
- Anton would wish to publicise his case so that he can seek appropriate specialist assistance but he is unable to do so
- His trial contains serious issues of unfairness under both the common law and ECHR but these may be seen as a price worth paying in the interests of national security

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. 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 Anton about the procedures involved in a judicial review hearing and what the potential order and outcomes might be in his case.

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:

- Judicial review: a hearing in the Administrative Court to review the lawfulness of a decision taken by a public body. It should only be undertaken where there is no other way of challenging the decision
- It looks at whether the decision was lawfully made and followed the correct legal procedures
- Hearing decides whether the public body is refusing to do something it should or whether the decision was made outside of its powers - *ultra vires*
- Scope: decisions made by local authorities, health authorities and ministers. Public body must be exercising its function as a public body
- Principles: Was the power exercised in good faith? Was it fair? Did it follow the rules of natural justice? Did the person have a right to be heard?
- The person must have sufficient interest in the case - legal 'standing' for their case to be heard
- Time limits: – 3 months
- Grounds: Illegality, fairness, irrationality and proportionality
- Cases include *A-G v Fullham Corpn* – substantive *ultra vires*, *Agricultural, Horticultural and Forestry Training Board v Aylesbury Mushrooms* - procedural *ultra vires*, *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* – substantive *ultra vires* for reasonableness
- Orders available in judicial review cases: Quashing Order, Prohibition Order, Injunction, Mandatory Order, Declaration and Damages

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

- Anton has sufficient legal 'standing' in this case as he is directly affected by the decisions not to allow an appeal and to run his trial in secret
- Anton must bring his claim within the three month period
- Grounds for the review:
 - Anton could argue that the procedure lacked fairness as he was unable to access evidence which would assist his case and that no jury was allowed to adjudicate
 - The proportionality test would also apply in such a case involving Anton's human rights. Anton's right to a fair trial would be balanced against the legitimate aims of the state. The right to a fair trial is seen as a fundamental right and should be given serious weight in a review hearing
 - Issues involving national security would be taken very seriously by the court and Anton would struggle to win his case on these grounds. It will be claimed that allowing the details into the public domain could compromise public safety
 - However Anton's deprivation of liberty is also a right which is taken very seriously
- Outcomes:
 - He will ask for an order quashing the decision of the court not to allow him an appeal and of the prosecution to hold the trial in secret
 - He will also seek to claim damages
 - The likely outcome is that Anton will fail with his judicial review as national security grounds are viewed as very serious grounds

Reach any reasonable 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. 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
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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 any of the statements made by Seth to Theo or Vanya could give rise to a successful claim in misrepresentation under the Misrepresentation Act 1967. Do not discuss remedies.

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:

Explain what is required for a misrepresentation: a false statement of fact that induces entry to the contract

Explain the operation of the Misrepresentation Act 1967 s2

- That a claim will be successful if all the elements of a misrepresentation are proven
- That the burden of proof is shifted to the maker of the statement to prove reasonable grounds for making the statement. If reasonable grounds can't be shown the statement will be a negligent misrepresentation under the act.
- That if the maker of the statement had a reasonable and genuine belief in the truth of the statement it will be an innocent Misrepresentation
- That it is difficult to show reasonable grounds to believe the statement, *Howard Marine v Ogden*

Explain what is meant by a false statement of fact that induces entry to the contract

- That a false statement may be made by words or conduct, *Spice Girls v Aprilia*
- That silence is not normally considered a statement, *Fletcher v Krell*
- That partial truths can amount to misrepresentations, *Dimmock v Hallett*
- That the false statement does not have to be the only reason for entering the contract, *Edgington v Fitzmaurice*

Credit reference to the Consumer Protection (Amendment) Regulations 2014 applying where a trader omits material information to produce a misleading impression

Credit any other relevant case(s)

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Seth and Theo

- Identify that Seth has made a false statement when he said the car would use 1.5 litres of fuel
- Identify that this induced Theo to enter the contract (even if there were other reasons he liked the model A)
- Identify that a false statement is a misrepresentation even if the maker had good grounds for believing it to be true
- Discuss whether Seth had reasonable grounds to make the statement based on the website of the car company
- Draw a reasonable conclusion on the facts, either that Seth has made an innocent misrepresentation to Theo if it was reasonable to rely on the website, or that it was a statutory misrepresentation of this was not a reasonable course of action

Seth and Vanya

- Identify that Seth made a statement about reliability implying that the car would therefore be cheap to run
 - Identify that, having created the impression that the car would be cheap to run, not mentioning the cost of insurance could be seen as a statement of fact
 - Identify that Seth's statement induced Vanya to enter the contract (even if she had other reasons for liking the model B)
 - Identify that Seth did not have reasonable and genuine belief in the implication that the car was cheap to run
 - Conclude that Seth has made a misrepresentation to Vanya under the Misrepresentation Act
- * Credit any statement that this might be a breach of the implied term, under the Consumer Rights Act, that the goods are fit for purpose
- * Credit any statement that Vanya would have a remedy under the Consumer Protection (Amendment) Regulations 2014 for a misleading omission

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. 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 remedies Seth might have against Bitza for the lost sales and the anxiety, and against Zephyr for the loss of the particularly large profits, including any limitations on his ability to claim damages.

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:

- Explain that damages can be claimed for financial losses that result from non-performance and this can include loss of profits and any physical damage or harm
- Explain that the parties should take reasonable steps to mitigate losses, *Pilkington v Wood*
- Explain that if mitigation removes or could have removed any actual loss suffered, there can be no claim for damages, *British Westinghouse Electric v Underground Electric*
- Explain that damages can't usually be claimed for mental distress in a commercial contract, *Addis v Gramophone Co Ltd*, although they can if the main point of the contract is pleasure, *Farley v Skinner*
- Explain that the losses suffered must have been those which would arise naturally or would have been within the contemplation of the parties, *Hadley v Baxendale*
- Explain that any unusual losses must have been within the contemplation of the parties, *Victoria Laundry v Newman*, but that the parties are expected to contemplate the normal losses that would have been suffered by a business *The Heron II*

Credit any other relevant case(s)

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Seth and the car parts

- Identify the basis for the claim of damages being the expectation of profits from the car sales
- Identify that Seth must mitigate his losses, that he didn't make any attempt to buy the parts from Speedie and therefore didn't fulfil this requirement
- Conclude that the failure to mitigate means Seth will not have a claim for damages

Seth and the distress

- Identify that in some cases it is possible to claim damages for distress and anxiety
- Identify that this is a commercial contract and the main point is not for pleasure
- Conclude that Seth will not be able to make a claim for the anxiety

Seth and the tent

- Identify that the basis for the claim of damages is the expectation of special profits from the festival
- Identify that the losses must not have been too remote, and the loss of profits from the sales must have been in Zephyr's mind
- Identify that Seth didn't make it clear that he needed the tent in order to make special sales, however in his line of business and given the track record of him hiring it from them every year this would have been reasonably foreseeable
- Conclude that Zephyr will be liable for the loss of sales

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 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 the extent to which the Contracts (Rights of Third Parties) Act 1999 has removed the problems that were previously caused by the doctrine of privity of contract.

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 the rules of privity

- That a contract can only be enforced by and against the parties to the contract, *Dunlop v Selfridge*, *Beswick v Beswick*
- Candidates may explain that the rule comes from the need for the parties to have given consideration to the agreement in order to enforce it, *Tweddle v Atkinson*

Explain statutory exceptions

- Contracts (Rights of Third Parties) Act 1999: allowing a party who was intended to benefit from a contract, which they were not a party to, to enforce the contract in their own right
- Explain when the statute will apply, s.1(1)(a) where the contract expressly states that the third party shall have such a right, or s.1(1)(b) where the contract purports to confer a benefit on them
- Explain when the statute will not apply, s.1(2) where it appears that the parties did not intend the term to be enforceable by a third party, *Nisshin Shipping v Cleaves*, and that the rights of a third party may be expressly excluded

Explain exceptions developed by the courts:

- Credit can also be given for any other ways that the rule of privity may be avoided at common law: collateral contracts, special cases, assignment, agency, the trust device - provided that these are linked to the question

Credit any other relevant case(s)

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

Discuss problems that existed before the 1999 Act

- That the doctrine of privity prevented a third party from enforcing a right that the contracting parties had intended for them
- That third parties who relied upon promises could be left without justice where promises were not honoured
- That the law lacked clarity as third parties wishing to enforce a contract had to rely on fitting into one of the exceptions that had been developed by Parliament or the courts and this depended on the willingness of the judge to be creative with common law exceptions
- That the numerous exceptions led to a piecemeal approach rather than a structured and principled approach to the law
- However privity may be justified on the basis that contract law requires each party to a contract to provide good consideration and third parties will not have provided consideration

Discuss the extent to which the 1999 Act has removed these problems

- The Act was prospective and therefore the law was clearer and received more publicity than changes brought about through case law
- The general rights given under the Act are well structured and easier to understand than a series of common law exceptions
- The Act means that original parties' intentions are now respected – if they want the third party to have rights, they can
- The Act provides a sensible balance between protecting the interests of the third parties but still ultimately allowing the original parties to be clear about exactly what, if any, rights the third party can have
- However there is still potential for uncertainty in identifying when a contract purports to give an enforceable right to a third party (although the courts have helped with the judgement in *Nisshin Shipping*)

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

12 Advise whether any of Floaters' contracts with Drillerz, Choppers or Boatease will be made void for frustration.

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**:

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*
- Where performance would be illegal, *Fibrosa v Fairbairn Lawson*

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 change of circumstances is not sufficiently radical, *Herne Bay v Hutton*
- Where the impossibility of performance was due to the fault of one of the parties
- Where the impossibility of performance was self-induced due to their choice to use other means to perform a contract, *The Super Servant 2, Maritime National v Ocean Trawlers*

Credit any other relevant case(s)

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Floaters and Drillerz

- Identify that it is no longer possible for floaters to supply Supership A
- Identify that Floaters' contract with Drillerz does not specify which ship should be used
- Identify that as Floaters choose to use ship B for a different contract this will amount to self-induced frustration with Drillerz
- Conclude that the contract with Drillerz will not be frustrated

Floaters and Choppers

- Identify that Floaters' contract with Choppers is still possible but no longer has any commercial point
- Identify that the contract will not be made void unless the contract is wholly devoid of purpose for both parties
- Identify that in this case only Choppers have lost benefit from the contract
- Conclude that the contract with Choppers will not be frustrated

Floaters and Boatease

- Identify that a contract can be frustrated for illegality
- Identify that it will be illegal to trade with country now they have been placed on the embargo list
- Conclude that the contract with Boatease will be frustrated

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. 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

13 Advise whether Lewis can claim any money from Gill, Sanjit and Cynthia.

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:

- 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 tender of performance: that where a party has offered to perform a contract within the time specified for performance this will discharge their contractual obligations, *Startup v Macdonald*
- Explain the law on anticipatory breach: that at any time before performance is due, if one party makes it clear that they are unable or unwilling to perform the contract the other party may terminate the contract without having to wait for the expected time of performance, *Hochster v De La Tour*

Credit any other relevant point(s)

Credit any other relevant case(s)

AO2 Indicative content

Answers **may** include:

Lewis and Gill

- Identify that the garage should be built entirely to be able to claim payment
- Discuss whether this is a severable contract:
 - the walls and roof do provide a degree of shelter and are useful to an extent
 - different prices were given for the walls, roof and windows so each could be a separate obligation
- Draw any reasonable conclusion

Lewis and Sanjit

- Identify that the kitchen should be completed as per specification to claim payment
- Identify that the handles are a minor part of the contract and are not required to use the kitchen
- Identify that the contract has been substantially performed and Sanjit can claim compensation for having to get someone else to fit the handles
- Conclude that Sanjit does have to pay some money to Lewis

Lewis and Cynthia

- Identify that Lewis has until the 11th to perform and Cynthia is turning him away before then
- Identify that once Lewis has offered performance he has discharged his obligations under the contract
- Identify that he would not have been able to complete the contract in time and so arriving so late was an anticipatory breach
- Conclude that Lewis is not entitled to claim any payment from Cynthia

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
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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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