

## AS LEVEL

*Exemplar Candidate Work*

# LAW

**H015**

For first teaching in 2017

## **H015/01 Summer 2018 examination series**

Version 1

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# Introduction

These exemplar answers have been chosen from the summer 2018 examination series.

OCR is open to a wide variety of approaches and all answers are considered on their merits. These exemplars, therefore, should not be seen as the only way to answer questions but do illustrate how the mark scheme has been applied.

Please always refer to the specification <https://www.ocr.org.uk/Images/315216-specification-accredited-a-level-gce-law-h415.pdf> for full details of the assessment for this qualification. These exemplar answers should also be read in conjunction with the sample assessment materials and the June 2018 Examiners' report or Report to Centres available from Interchange <https://interchange.ocr.org.uk/Home.mvc/Index>

The question paper, mark scheme and any resource booklet(s) will be available on the OCR website from summer 2019. Until then, they are available on OCR Interchange (school exams officers will have a login for this and are able to set up teachers with specific logins – see the following link for further information <http://www.ocr.org.uk/administration/support-and-tools/interchange/managing-user-accounts/>).

It is important to note that approaches to question setting and marking will remain consistent. At the same time OCR reviews all its qualifications annually and may make small adjustments to improve the performance of its assessments. We will let you know of any substantive changes.

## Information on the exemplars in this resource

This resource is styled in question number order and contains exemplars from 6 candidates. The exemplars and commentaries for each question are displayed in the order of marks credited. The overall question paper marks for these candidates are:

Exemplar A - 56 marks

Exemplar B - 62 marks

Exemplar C - 48 marks

Exemplar D - 63 marks

Exemplar E - 29 marks

Exemplar F - 37 marks

# Question 1

1 Explain how civil cases are allocated to the three tracks.

[10]

## Exemplar A Level 4

10 marks

1		<p>Where a person wants to take a civil case to court, they must first complete an allocation questionnaire. The master will then allocate the claimant into one of three tracks.</p> <p>The first track is the small claims track for non-serious claims that are under £5,000. These will be heard in the county court by a district judge. Often the claimant will have to represent themselves as the loser will not have to pay the legal expenses of the winner. The judge, however will attempt to guide them through the procedure.</p> <p>The fast track is for claims that amount to £10,000 - £25,000. These are heard by a circuit judge in the county court or a high court judge. Claims in this track are aimed to be <del>comp</del> resolved within thirty weeks, but often this increases to fifty. Those in the fast track will have to follow a strict pre-trial procedure.</p> <p>Finally, the multi-track is for claims over £50,000. These will be heard by either courts depending on the High Court and also follow a strict pre-trial procedure. The judge in this track will have an active role to cement the understanding and smoothness of the procedure. Claims in this track may take several years.</p>
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## Examiner commentary

This response is succinct, accurate and detailed, for that reason it is credited full marks. The response demonstrates excellent knowledge and understanding of how a case is allocated and is fully developed throughout. All key elements are stated.

The candidate addresses allocation, each of the three tracks and the court process. The candidate provided additional explanation as to the role of the judge and the procedure. This response meets the Level 4 criteria.

## Exemplar B Level 4

9 marks

1		<p>Civil cases are allocated to a claims track based on value and complexity of a claim. The claimant will complete the online pre-trial details or fill out an N1 form which sets out basic details and value of a claim. The smallest cases are allocated to the small claims track with them having a value of under £10,000 for all cases except personal injury where the maximum claim is £100,000. These cases are often simple and straightforward so will be heard in County Court by a district judge. For claims that are between £10,000 and £25,000 in value the Fast track will be allocated. Personal injury claims over £1000 are also given this track. These civil cases are of higher value but are often still fairly straightforward to <del>negotiate</del> resolve so are heard in the County Court by a circuit judge. The most valuable claims are allocated to the Multi-track. These cases are worth more than £25,000 and are heard in the County Court by a circuit judge, unless they are over £100,000 in value or involve particularly complex points.</p>
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## Examiner commentary

Excellent knowledge and understanding is shown by the candidate in this response. The candidate explains how civil cases are allocated, starting with the N1 form, and how it is decided which track will be used. All required elements are included in the response, from the financial limit to correct court and the judge presiding. Additional factual information would have allowed full marks to be credited; for example, by adding that at the end adding that these high value/complex cases will be sent to the High Court. The response is accurate and detailed, it illustrates a succinct and to the point response that can achieve Level 4.



## Exemplar C Level 3

8 marks

1		<p>The three track system is done in civil court to classify which type of case it is and how formal it should be. The three are the small-track, the fast-track and the multi-track.</p> <p>The small track system is for compensation lower than £10,000. It is done informally by a district judge which has to be trained. It is for smaller less serious claims. There is no timetable to <del>each</del> it and the time of hearing is mutually arranged by the two parties. The decision is made by the judge and that is the final say. It is done in county court. The parties represent themselves.</p> <p>The fast track system is for a claim higher than £10,000 but lower than £25,000. It is done more formal than the small-claim track. It has a strict timetable set by the circuit judge which has to be strictly kept to. The judge has to be trained in that certain claim. The client will be represented with a lawyer so has legal fees. It is done in <del>district</del> court. <del>High to district court</del></p> <p>Lastly, the multi-track system is for claims more than £25,000. These are for very serious claims which are in high court by circuit judge. The parties have to have a lawyer and the decision of the judge is only decision. There is a very strict timetable to the hearing.</p>
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## Examiner commentary

This response includes an explanation of the three tracks. There is some detail, including the financial limits for each track, but the response is not fully developed in places. Further development might have been illustrated, for example, by showing the limits on personal injury and/or land lord and tenant matters in the small claims court. Whilst the response contains some inaccuracies, these do not detract from the accurate information and the response is considered to demonstrate enough understanding and knowledge for Level 3.

## Exemplar D Level 3

7 marks

1	When a claim has been heard by the County Court and the defence of a civil claim has made a statement, an allocation of which track should be used <del>will be</del> told them with the case is made by the Circuit judge. There are three tracks.
	The first track is the small claims track in which the damages dealt with in the case are under £10,000. This will <del>also be</del> unless it is a personal injury claim in which the maximum is £1,000. If this track is chosen, the case is usually dealt with in one hearing. Cases which suit this track are ones in which the facts are simple and no expert witnesses need to be called.
	The second track is for claims between £10,000 and £25,000 and is labelled the fast-track. Similarly to the above, it is usually considering simple cases such as negligence on the behalf of an employer and is usually dealt with in a few weeks time.
	Finally, the multi-track cases is for complex cases that may be of national importance with the claims going above
	£25,000. These will be heard in either the County Court or the High Court and will usually take more than 50 weeks although 30 is stated as the standard.



		Unlike the other tracks there can be dealt with by District judges, multi-track cases usually require some senior judges to sit at the hearing such as a High Court judge.
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## Examiner commentary

This answer demonstrates a good range of knowledge and understanding. All three tracks are included as are the financial limits for each. Higher marks would have been achieved had additional information, for example, reference to the specific judges used and a reference to the High Court and County Court Jurisdiction (Amendment) Order 2014 been included. The script is a useful guide to illustrate the detail required for Section A questions.

## Exemplar E Level 3

7 marks

1	civil cases are allocated to three tracks using the three track system. The first track is the small claims track. This hears cases that are under £10,000, and it also hears <del>more</del> personal injury cases under £1000.
	The next track is the fast track. This hears cases that are from £10,000 to £25,000, and it usually takes a maximum of 30 weeks for a case to go through this system.
	The third track is the multi-claims track. This track hears cases that are over £25,000. But a case can also go through this track if it is lower than £25,000 but it is <sup>much</sup> more complex, eg, family disputes.

## Examiner commentary

This is a short response with the candidate addressing the three tracks and making two points for each. There is some detail but a lack of development. What is written for each track indicates good knowledge and understanding resulting in a Level 3 mark. The candidate would have achieved more marks by giving detail, for example, mentioning the allocation questionnaire and/or the case management elements.



## Exemplar F Level 3

6 marks

1		<p>Civil cases are allocated into three separate tracks. This can be dependent on how complex the case is. Lord Woolf created the three track system for civil cases. The first track is small claims, this is done by the district judge and is for claims only wanting a small amount of money. Parties are encouraged to represent themselves and are usually completed quickly and with ease. The next track is fast track where the Circuit judge has jurisdiction, they are ideally heard in court within 30 weeks but usually 30 days but usually it's longer and nearer 30. They only have a maximum of one day in court. The final track a civil case can be placed into is multi-track which is where the case will get a judge to follow the case and try and try to suggest other ways of resolving the dispute such as ADR expert. They are only allowed to call one expert.</p>
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## Examiner commentary

The candidate knows the names of the tracks which indicates understanding. Whilst the response does not include the financial limits for each track there is enough detail on the procedure in each track to be considered good understanding. A Lower Level 3 mark is credited. If the financial limits were included the script would have achieved Level 3 or low Level 4.

## Question 2

2 Describe the procedure for deciding where a triable either way offence should be tried. [10]

### Exemplar A Level 3

7 marks

2		Triable either way offences are those with a moderate level of seriousness. Depending on the facts of the case, the trial will be heard in either the Crown Court or Magistrates Court. The mode of trial is decided by the Magistrates judge where the defendant pleads guilty. This means if they believe that they have the jurisdiction to be able to sentence them, they will do so. Where the judge doesn't have enough power, the trial will be held in the Crown Court.
		If the defendant pleads not guilty, they will also first be heard in the Magistrates court first. If the judge decides that they do not have the jurisdiction, the case will be heard in the Crown Court. However, if they do have enough power, the defendant is allowed to choose whether or not he is sentenced in the Magistrates Court or Crown Court.

### Examiner commentary

This response is also succinct, as per Question 1, is succinct, accurate and has some detail. The candidate describes the two courts available to hear the trial and demonstrates a good understanding of the procedure for deciding where a triable either way offence should be tried. The response would have achieved more marks had there been a greater use of the key legal terminology; for example, a reference to 'plea before venue' and greater accuracy in describing defendant's choice.

### Exemplar B Level 3

6 marks

2		A triable either way offence is the middle category of offence - not the most or least serious and include offences such as theft or ABH. They can be heard in either the Magistrates' Court or the <del>Residing</del> Crown Court. The first pre-trial stage is the 'plea before venue' where the defendant is asked if they are pleading guilty.
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	or not guilty. If the defendant pleads guilty, the case is put to the Magistrates' for sentencing. However, as they have limited sentencing powers of £ a £5000 fine or six months imprisonment, the Magistrates' can decide to send the case to the Crown Court for sentencing if they believe a harsher punishment is warranted. If the defendant pleads not guilty there will be a mode of trial hearing where the defendant is allowed the choice of trial venue - Magistrates' Court or Crown Court. Their decision will depend on varying factors such as waiting time, how fair they consider each trial to be and sentencing powers as well as acquittal rates 60% for the Crown Court and 40% for Magistrates' Court. If they choose the Magistrates the Magistrates Court must then accept or decline jurisdiction considering the complexity and seriousness of the case. If they accept jurisdiction the trial takes place and if they are sentencing they still have the option to pass it up to the higher court with higher sentencing power. If they decline jurisdiction the trial takes place at the crown court. If the defendant chooses that their case is heard in the crown court the trial and possible sentencing will take place there.
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## Examiner commentary

The candidate demonstrates good understanding of the pre-trial procedure for triable either way offences. The response is concise and uses correct legal terminology. Both 'plea before venue' and 'mode of trial' are referred to. The response would have achieved higher marks had the pre-trial procedure been stated in greater detail.



## Exemplar C Level 2

4 marks

2	2	<p>Triable either way (TEWO) offences are middle of the seriousness of crimes. It can be a serious TEWO or a less serious one. For example ABH.</p> <p>First the case has a preliminary hearing at the Magistrates court. The defendant (D) will plead guilty or not guilty. If D pleads not guilty, then the case will go straight to Crown court. If the D pleads guilty then it will stay in Magistrates court and then they will give them their sentence.</p> <p>However, if the case stays in Magistrates then and the magistrate believe the case is too serious for them and is beyond their powers then they can send the case to the Crown court.</p> <p>If it stays in a Magistrates they will decide sentence. If the case goes to the Crown court, either if being too serious or them pleading guilty, then they can decide the conviction with a jury. If they plead not guilty and then the sentence. But if they plead guilty they will only give the sentence.</p>
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## Examiner commentary

The response demonstrates basic knowledge and understanding of the procedure for deciding where a triable either way offence should be tried with minimal detail. There is confusion with regards to the procedure; however, there is some accurate information for which credit was given. The inaccuracies and misunderstandings result in this script being placed in Level 2.

## Exemplar D Level 3

6 marks

2	2	<p>A triable-either-way offence can comprise such crimes as ABH and theft and will all begin in the Magistrates court. There, a preliminary hearing will be heard to establish the facts of the case.</p>
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and any issues regarding being able to verdict the outrage such as some aggravating and mitigating factors. The CPS will usually report to the magistrates on whether enough evidence has been gathered to continue with the case.

The defendant will then be able to plea their guilt or not guilty. If they plea guilty, then the decision on where the case should be heard and tried is in the Magistrates' hands. If they believe the sentencing powers of 5 years in prison or a fine of £5,000 or a community sentence is not enough, then they will send the case to the Crown Court to be tried by a judge.

If the defendant pleads not guilty, then they are given a choice of where they would like their trial venue. The Magistrates' Court or the Crown Court. If they choose the Crown Court, they will be heard by a judge and

a jury who will verdict on whether the defendant is guilty with the possibility of a harsher sentence such as life in prison.

## Examiner commentary

Good understanding of the pre-trial procedure is demonstrated in this response. The first paragraph contains very little relevant information. However, as the candidate progresses with their response there is some detail but, this detail is not fully developed in places; for example, there is only limited accurate reference to legal terminology and the defendant's choice. The factual knowledge stated in the response is accurate and sufficient to be considered good, allowing it to be placed in Level 3.



## Exemplar E Level 0

0 marks

2		<del>convict</del> TO decide whether an either way offence is triable, the judge must first decide whether there will be any major benefits to <del>the</del> the outcome of the case that is going to be tried. They then must make sure that both defendants are happy to go through with the case, knowing that the case could easily go either way. If they are happy, then the case can proceed, usually with a magistrate hearing the trial.
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## Examiner commentary

Whilst the candidate responds to the question, the response contains no relevant creditworthy information. There are many inaccuracies, including a reference to 'both defendants'. The candidate does not appear to understand the category 'triable either way'.

## Exemplar F Level 3

7 marks

2		The procedure for deciding where triable either way should be tried starts in the magistrates, the defendant will have a plea before venue where they are asked how they plea, guilty or not guilty. If they plead guilty the magistrates will decide if they want to take jurisdiction
2		for the case if they do then they will try the case but if the magistrates find them guilty but don't feel as though they have the sentencing power then the case is sent to the crown court for sentencing. If at the plea before venue the defendant plead not guilty then they will be <del>considered for</del> bail either decide where they want to be tried. If tried at magistrates can still be sent to crown court. If they feel sentencing powers aren't enough before the defendants time in court they may be offered bail either conditional or unconditional but if not offered bail then they will have to



		wait in prison
		the sentencing power is only 6 months for one
		offence and 12 months for two offences maximum, whereas
		the crown court can sentence a maximum of 5
		years.

## Examiner commentary

This response demonstrates good knowledge and understanding of the procedure for deciding where a triable either way offence should be tried. When referring to the mark scheme the candidate includes most of the suggested information. A limited amount of key terminology is used, for example, 'plea before venue'. The response would have gained higher marks had there been greater development of the process and greater use of terminology.

## Question 3

3 Describe the types of work undertaken by a barrister.

[10]

### Exemplar A Level 3

4 marks

3		Barristers work in chambers. Their most common work is advocacy. This is where they represent people in court. They also interview witnesses for their case, including the witnesses of their opposition. Barristers also write opinions for cases; they will read the facts and give their opinion on the outcome of criminal cases and likelihood of claiming damages in civil cases.
		Before, a solicitor's job could not be carried out by a barrister. Now, however, they may have direct access to clients to see their case from start to finish.
		Barristers can also work for the Crown Prosecution Service where they will typically do a lot of advocacy. If self-employed, they may also choose to specialise in one area of law e.g. Immigration.

### Examiner commentary

This candidate sets out a range of different types of work. Four areas of work are addressed; advocacy, opinions, interviewing and direct access. There is a lack of detail in the descriptions and as such the candidate demonstrates basic knowledge and understanding. Unfortunately, the last paragraph explains 'where' a barrister might work. This information is not relevant to the question asked and therefore no credit is available. It is important that candidates take time to read the questions carefully.

### Exemplar B Level 3

6 marks

3.		Foremost barristers are advocates. They are employed privately by defendants, victims and claimants or by governmental legal departments or the Crown Prosecution Service to speak on behalf of and represent people in the courtroom. They are experts in cross-examination and addressing the courtroom so parties have a
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much better chance of success with an experienced barrister than if they represent themselves - litigation by the person.

Barristers take up both civil and criminal cases although often specialise in certain areas of law. They have the right to advocate anywhere in England or Wales, unlike solicitors.

Much of their work overlaps with that of solicitors as they advise clients, complete paperwork and research cases all behind the scenes - mostly in preparation for a trial. They will meet with clients at Case Management Hearings to discuss and prepare the case,

any defences or any witnesses. Sometimes a more junior barrister or solicitor will undertake these roles.

At a certain stage in their career, after a minimum 10 years' experience as a barrister, they may apply to be a member of the Queen's Counsel. This means they take on the most serious and complex cases across the country - the most high profile.

They also may be a barrister that takes on a pupil for their pupillage where they will be shadowed by a junior barrister.

## Examiner commentary

The response contains a good description of four types of work, namely: advocacy, specialist, advice to clients and paperwork/research. There is development of the descriptions and this is seen clearly where the candidate describes advocacy in detail. The last paragraph does not contain relevant information and therefore no credit can be awarded. A greater range of types of work would have moved the response from Level 3 to Level 4.



## Exemplar C Level 3

4 marks

3		A Barrister was met the bar and has become a qualified barrister help with clients on legal points. The main role of a barrister is to be an advocate for their clients. They will represent on behalf of their client to help with the case. The client may choose to be in court or out of court. Barristers will have to research and gather legal documents to help with the case.
		Barristers, once past the bar, will do a pupillage. This is where they shadow a barrister who has been working for a while. They may also help by running phones for them and doing paperwork for example drafted documents. This is to gain experience.
		If a barrister isn't in court they help give advice to clients, similar to solicitors. This can be done in chambers or through a firm. This gives them advice on how to plead and what type of situation they are in. They can then go on to represent them.
		A Barrister, once they've done 10 years of experience, can go on to join the Queen's Council. This means they can do harder cases and more of them. It also means they represent high profile cases which will be in the media.

## Examiner commentary

The candidate addresses three main areas of work: advocacy, gathering documents and the giving of advice. Whilst there is some detail in the description it is basic and is only partially developed. This candidate does not give a detailed description of the types of work. They would have achieved higher marks had they, for example, described what advocacy entails in greater detail. Much of the response was not relevant to the question and therefore not considered creditworthy; for example, the description of pupillage. Candidates are advised to read the question carefully so that they only include relevant information.

**6 marks**

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		and the Crown Court in trial - either-way offences.
		Finally a barrister may <del>be</del> produce documents for solicitors regarding a CP3 report of the client in question and make the solicitor aware of any issues regarding the client's trial which the barrister may then consolidate with the solicitor as how to take care of such issues. Furthermore, they may take <del>the</del> a graduate pupillage under their wing as a solicitor alongside their other roles.

## Examiner commentary

The response contains some detail of the work undertaken by a barrister. The candidate starts by stating the number of barristers and describing, inaccurately, where they work from; unfortunately, this information is not relevant and therefore no credit can be awarded for it. From there the candidate acknowledges four main types of work, namely: advocacy, drafting documents, writing opinions and other issues around documents. The types of work are accurately stated and credit is awarded accordingly. A greater range of types of work, as would more detail, would have allowed this response to move from Level 3 to Level 4.

## Exemplar E Level 2

3 marks

3		barristers can sit in court and <b>hear</b> cases.
		They can give advice to their clients on what they should do in court. Barristers also do a lot of paperwork outside of the court room.
		A big thing that barristers do is <del>advocacy</del> <b>advocacy</b> . Barristers sit in chambers and they work for the bar standards board and so they do a lot of work on computers such as emails and faxing. As well as giving advice, barristers have to <del>represent</del> <b>represent</b> their clients in court, and <del>defend</del> <b>defend</b> them / prove their case.

## Examiner commentary

This candidate achieves all their marks in just five lines of writing - lines 2-6. The response addresses the giving of advice, paperwork and advocacy. The candidate ends by repeating what they have said previously. The 'Levels of Response criteria' state that where the information demonstrates basic knowledge and understanding, the correct level is Level 2. This candidate attempts to give some detail but it is basic and is only partially developed. This candidate would have achieved a greater number of marks had they explained in greater detail, for example, what all the paperwork was and what advocacy entailed.



## Exemplar F Level 2

3 marks

3.	A barrister can take on many varying types of work. There main type of work is advocacy this is them speaking in court on behalf of the defendant in criminal <del>or civil</del> cases. They have the right of advocacy and can voice a defendants opinion in the courts of law. Also another type of work is deciding whether or not a case should be taken to court, they will work with the solicitor to <del>over</del> determine whether the case will uphold in court but also in civil <del>work</del> advising the defendant whether it is worth pursuing the case, as if the
3	cost is greater than the compensation being received it would make more sense not to go to court

## Examiner commentary

The candidate addresses two types of work, advocacy and 'Counsel's Opinion' albeit without the use of such terminology. Both types of work are described, with advocacy being covered in greater detail. The limited number of types of work demonstrates basic knowledge and understanding.

# Question 4

4 Discuss the challenges facing a graduate wanting to become a barrister.

[10]

## Exemplar A Level 3

8 marks

4		One challenge that barristers face is the cost of becoming one. When the cost of a law degree, the BPTC and 12 dining sessions are added it can reach £50,000. For those in working class families, this will be a barrier and deterrent to the profession. This means that the profession seems to be exclusive to middle-class and wealthy graduates.
	P	
	DEV	
	P	Another challenge is the competition. While a graduate may pass the BPTC, it is difficult to find a pupillage <del>stat</del> placement. With the minimum wage trainees must be set paid set at £10,000, & too many chambers have reduced the numbers of placements being offered. This means that they
	DEV	
+		While the academics may be straightforward, a graduate will struggle qualifying as a barrister.
		Furthermore, those who completed a 3-year law degree <del>wh</del> have to compete against those who only spent a <del>4</del> year doing a General Diploma in Law. Some have argued that these people are less qualified to be a barrister because they don't know the law in as much detail. Not only does this increase competition, it also reduces the quality of the work of barristers.
	P	
	DEV	

## Examiner commentary

This responses illustrates a range of developed points which are focused on the question. The first point addresses the issue of cost. The candidate develops the discussion by explaining exactly what needs to be paid for and the problems such costs have. The issue of competition is also evaluated and the reasons why there are less places available. This is further developed by mention of the need to complete all stages of the training to qualify. The issue of the GDL/CPE is also addressed. This response would have achieved Level 4 marks had the final discussion point been fully developed.

## Exemplar B Level 4

9 marks

4	<p>Graduates wanting to become barristers have a long and <sup>P</sup>costly process to reach their goals. Having taken on the debt of university of a minimum <del>£9000</del> £9000 per annum for only teaching they must then do the Bar Professional Training Course - a two year process which costs around £4000 <sup>£</sup>. Then they must undertake a pupillage where they are paid a <sup>DEV</sup>very small salary and have usually accumulated debt of over £50,000. This prices out a lot of people, even if they have</p> <p>completed the law degree which means most barristers end up being the most wealth <sup>+</sup>members of society as they can afford the training costs. This also means <del>the</del> the best people do not <del>become</del> necessarily become barristers.</p> <p>Furthermore there is still evidence of discrimination in the profession particularly as you get to the more experienced and senior barristers. Currently only 1/3 of barristers are female with reports citing long hours and wanting a family as reasons women tend to not choose this profession, however 60% of law graduates are female. The problem <sup>DEV</sup>worsens at A level with only 22% of <sup>NAQ</sup>A-levels being female showing a culture struggling to move with the times. On the other hand there are so positives with ethnic minorities making up around 14% of the population <sup>+</sup>and 13% of barristers being of this origin.</p> <p>After completing the BPTC <del>to</del> graduates must complete a pupillage. It is fiercely competitive with very limited <sup>P</sup>positions available</p>
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		- around 4 applicants for every pupillage. This
		forces out around 75% of people leaving
		them with the qualification, £50000 debt
		and no job.

## Examiner commentary

This response demonstrates excellent analysis and evaluation of a wide range of challenges facing a graduate wanting to become a barrister. Starting with the cost of the process the candidate continues to develop the point by addressing the cost of the courses required and the inequality this may cause. The issue of discrimination is discussed in detail showing good use of statistical evidence to support the discussion. The issue of pupillage and competition is addressed. This candidate would have achieved full marks had they, for example, developed more fully the discussion of pupillage.

## Exemplar C Level 3

6 marks

4		The first challenge is the cost. First they will have to get a degree, doesn't have to be law though, this cost £9,000 a year meaning that people who come from not so well off families will not be able to do this or at least will struggle.
	P	
		Another challenge, is once passed the degree or GDL course and have reached the bar qualifying as a solicitor, they have to get pupillage. This is where they shadowing a barrister. There are few places offering spaces for pupillage and when these are they are posted on pupillage advert and a lot gone very quickly due to a lot wanting one.
	P	
	DEV	
		If people did a law degree, a lot find it a challenge and unfair that people without a law degree and some other degree but have passed the GDL course can a pupillage whereas people who did the law degree don't.
	+	
		Once done the pupillage, another challenge is finding a job. After all: these few places like newly qualified barrister or my partner
	NAQ	

		11? Don't for their firm. This means few, after debt and paying for it all, end up not getting a job.
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## Examiner commentary

The candidate focuses on the question and starts by discussing a challenge facing a graduate wanting to become a barrister, namely cost. The response continues in the second paragraph by addressing the problems surrounding pupillage - the fact it is necessary, that there are fewer places and that those places are taken quickly due to the number applying. The continued discussion of pupillage in the third paragraph and issues surrounding the GDL fully developed the point. To achieve higher marks candidates are advised to address a range of key issues and to discuss these in detail.

## Exemplar D Level 3

7 marks

4.	<p>When a graduate leaves university, a huge debt of £9,000 per year they attended has already been built up. After they have completed that degree, they then have to take part in the BPTC which costs around £5,000 further building toward the debt. Furthermore, as most Inns of Court are situated in London, the cost of either living there or commuting there will build up which adds to the costs. Thus, many graduates from lower income families may be deterred from even trying to apply for a BPTC or a money to an Inn. Thus, the Bar may lack diversity and be seen as a possibility for only white, rich graduates. However, graduates may be deterred from the BPTC but they can still become a solicitor or a paralegal or even use their degree for other types of work.</p> <p>A second huge challenge that faces a graduate when they want to become a barrister is the issue of getting a 6 month Pupillage. In 2016, there were</p>
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		176,000 graduates who undertake the BPTC and yet there were only 422 pupillages. Therefore, the requirements
		to be undertaken for a pupillage are very high thus perhaps missing out some potentially good candidates. Furthermore, it promotes a system in which only the people with connections may become a barrister which can be seen as being discriminatory.
		However, this also means that the graduates that are chosen are the best of the best allowing a high quality BPTC to be created that are less likely to cause issues for clients and furthermore, the graduate has already undertaken the level BPTC so shouldn't be at a disadvantage against others.
		On the other hand, there are many graduates that took non-law degrees and then had to take the GDL which only covers the basics of law meaning that graduates who want to become a barrister are forced to take law at university to even have a chance at gaining a pupillage thus, the issue of discrimination and stress on the graduate still exists.

## Examiner commentary

From the outset the candidate demonstrates good analysis and evaluation. They start by addressing the issue of debt and the challenges that flow from this. The question is further addressed in terms of diversity with some development of this issue. The next challenge addressed is obtaining pupillage. Whilst this focuses on the question the response would have moved to Level 4 had there been a more detailed developed discussion or evaluation of the challenges of obtaining pupillage.



## Exemplar E Level 1

1 mark

4		<p>A graduate becoming a Barrister can be very difficult. One big issue for graduates is money. Because they have just graduated, they may already owe the university money or they may just have little money in general. This can be a problem because to go down the route to train as a Barrister it costs a lot of money that a graduate may not be able to afford. Another problem may be qualifications. Although becoming a Barrister takes less qualifications than a solicitor, it still takes around 4 years training therefore during this 4 years it may again be hard for a graduate financially as they cannot get a full-time job. This is a disadvantage because the training is very time-consuming.</p>
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		<p>Also, because a graduate is young they will have less knowledge of the law and so it may be harder for them to become a Barrister. Another thing is that before becoming a Barrister the graduates need to have the correct qualifications to allow them to become one. eg. GCSE's, A-levels, Diploma, and so this may hold them back.</p>
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## Examiner commentary

This response is limited in its analysis as there is just one issue addressed, namely; money. There is no detailed development of a discussion. Unfortunately, the response lacks focus and much of the response does not attract credit as it is not related to the question. The cost of university, the age, levels of knowledge and the correct qualifications are not specific to a graduate wanting to become a barrister - they are general undergraduate issues. As a result, there is only one creditworthy point.

## Exemplar F Level 2

3 marks

4		Some of the challenges facing a graduate wanting to become a barrister are the costs on top of the cost of a degree. <span>P</span> you have to pay to go on the different courses needed to become a barrister usually about £9,000 for each course.
		After going through the courses there is no guarantee of getting pupillage or tenancy this can mean money spent on the education without officially becoming a barrister as tenancy and pupillage essential for qualifying. <span>DEV</span> After getting tenancy there is still no guarantee of work as you are self-employed meaning they will have to find the work themselves and build up a reputation. When finding jobs it is competitive as there are many barristers that are more experienced and highly trusted meaning clients may not want to take a gamble on a new barrister. If enough money isn't made to pay their tenancy then this can mean the chamber get rid of them.

## Examiner commentary

The candidate attempts to answer the question asked. However, there is only basic analysis and only partial focus on the question. The first statement made regarding the cost on top of a degree is creditworthy. The candidate is not correct in stating that there are fees in respect of 'different' courses - there is one course. Therefore, no development marks for this issue can be credited. The issue of pupillage was considered a valid point and there was additional development. The candidate lost focus as they continued and the problems of tenancy and getting a job attracted no credit as they did not relate to the question. There were two creditworthy discussion points with partial development and as such this is a Level 2 response.



## Question 5

Charlotte and Dexter are at their local supermarket. While shopping, Dexter throws a tin of beans towards Charlotte to catch. The tin hits Charlotte in the face, causing a deep cut to her cheek. When Charlotte shouts out in pain, Dexter whispers menacingly in her ear 'Keep your voice down, or I'll break your nose!'

Eric, the store's security guard, is passing and hears Charlotte shouting. He asks her to calm down. Charlotte ignores him and walks off. Angered by this, Eric pushes Dexter out of the way and then violently grabs Charlotte by her arm, dislocating it.

5 Explain what is meant by causation in criminal law.

[10]

### Exemplar A Level 3

7 marks

5		In order for a defendant to be liable for an
		'offence, they must have been the factual and legal
		cause of a crime.
		Factual causation assesses whether the defendant's
		actions resulted in an unlawful consequence. To
		assess this, the 'but for' test is used. For example,
		in the case of Pagett, but for the man using his
		girlfriend as a shield, the policeman would not have
		shot her. This first test looks for the cause, but is
		in R v Hughes it was concluded that factual causation
		is not enough.
		Legal causation uses the idea of 'diminution'
		a person's actions must be more than minimal and
		a substantial cause of the crime. This was demon-
		strated in the case of Kimsey where the defendant
		had gotten involved in a car accident where the facts
		were unclear. The judge ruled that the defendant
		didn't need to be the only cause, as long as she
		was a substantial cause.
		Where there was a separate act that was
		substantially separate from the crime, then the
		chain of causation may be broken and the defen-
		dant will not be found liable for the crime.
		Otherwise, criminal liability is found.



## Examiner commentary

A Level 3 response requires the candidate to demonstrate good knowledge and understanding. This candidate, whilst concise, explains in detail both factual and legal causation demonstrating good knowledge and understanding of the two. Both types of causation are accompanied by relevant authority. The detail in **R v Kimsey** is added development. There is an implied mention of intervening acts, but this is not fully developed. Had there been development of this aspect the script would have been credited higher marks.

### Exemplar B Level 3

7 marks

5.	<p>Causation in criminal law is proving the defendant was the cause of the harm or damage done. There are two parts to causation factual and legal.</p> <p>Factual causation proves that without the defendant's actions the victim would not have suffered in that way. It is proved using the 'But for' test. An example of this in law is in White. A man tried to poison his mother and she died of a heart attack as opposed to the poisoning so 'but for' him poisoning her she would still have died so factual causation would not be satisfied. In Pagett, 'but for' the boyfriend using her as a shield she would not have been shot so he was criminally liable for her death even though he didn't fire the gun.</p> <p>Legal causation proves the defendant's actions were are more than minimal cause of the consequence using the 'de minimus' test. An example of this is in <del>Anderson</del> <sup>Chatter</sup> where he shot a man who later died due to complications with his tracheostomy. The chain of causation was not broken as the wounds were substantive to the cause of death as without them the course of treatment wouldn't have happened, even though they were infected and not operating. Contrastingly in Jordan the</p>
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		chain of causation was broken by medical intervention. In this case the victim was given medication they were allergic to which killed them and whilst the wounds were still operating they were not a substantive cause of death so the defendant was not liable for their death.
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## Examiner commentary

This candidate starts with an introduction briefly defining causation and stating that there are two types. Factual causation is explained in detail demonstrating a good understanding of this aspect. Two cases are accurately cited to illustrate the 'but for' test. In the explanation of legal causation, the candidate explains the 'de minimis rule'. There is no direct reference to 'intervening acts' but the issue of medical treatment and the chain of causation is explained using contrasting authority. This script would have moved to Level 4 had there been a more detailed explanation of intervening acts.

## Exemplar C Level 3

8 marks

5		causation is when there is a chain of causation and if it's broken defendant (D) isn't guilty. It is split into legal and factual causation.
		Factual causation is asking "but for the D action who the victim (V) have suffered?". This was established in <u>White</u> where the answer was yes, this meant he factually wasn't guilty. If the answer is yes then the D is guilty.
		Once establishing factual, need to look at legal. This is looking to see if there is a broken actual intervention (NAI) which breaks the chain. There are five NAI in total.
		Firstly, if a third party is involved, the D must be the only and main cause the V is injured by the V. If someone else exploits the injury they are the cause breaking chain. Case happened in <u>Parker</u> - the chain didn't break.
		Secondly, the victim's actions themselves. If the V does something which isn't foreseeable then there is a break in the chain. A case



	example is <u>Robert</u> - it was foreseeable, so D guilty.
	Next, <u>negligence</u> of medical treatment. If medical treatment overweighs the original injuries then are probably wrong it breaks the chain. This happened in <u>Jordan</u> . Where the D was guilty.
	If the victim is negligent themselves, that's another NAI. This happened in <u>Holliday</u> .
	Lastly, the thin skull rule. The D must take the victim as they find them. <del>If they</del> Even if they are not aware of the already condition. This occurred in the case of <u>Blair</u> .

## Examiner commentary

The candidate starts by introducing causation. In the second paragraph they demonstrate a good understanding of factual causation, using case authority as illustration. The candidate merely mentions legal causation – greater explanation of this would have placed this response in Level 4. The candidate demonstrates a good understanding of intervening acts including mention of: third parties, the victim's own actions, medical treatment and the victim's negligence. The thin-skull rule is also mentioned. The explanations were considered good and for that reasons the response was placed in Level 3.

## Exemplar D Level 5

9 marks

5	When establishing the actus reus in a crime, both <u>factual</u> and <u>legal</u> causation must be established.
	Factual causation refers to whether the actions of the defendant were the cause of the crime. This requires the use of the 'but for' test: but for the defendant's actions, would the result have occurred? A case in which the answer was no and factual causation was established is in the case of <u>Paggett</u> in which but for Paggett holding the girl in front of him, she would not have died. A case in which there was no factual causation is in <u>White</u> where but for White putting poison in his



possibly drunk, she would have still died from a heart attack. ✓

Next, legal causation must be established. This is where the chain of causation must not have been broken by one of the five novus actus interveniens.

The first novus actus interveniens ✓ possible is the actions of a third party. This is where the actions of the defendant were not the cause of the outcome but rather that

of someone else. This was proven to not have happened in Paggett. ✓

The second novus actus interveniens is the negligent medical treatment. This treatment must have been the governing and substantial ✓ cause of the result and must have been truly incorrect and serious such as in Jordan in which the antibiotic given was the true reason for the victim's death. ✓

Thirdly, the neglect of the victim by the victim. This does not always apply and will not always break the chain as it did not in Holland regarding the refusal to amputate a finger. ✓

Fourthly, the actions of the victim may break the chain as it did in Williams as the apprehension of rape was not sufficiently proven to have reasoned the victim's actions to jump out of the window. This causes the victim to have caused the result. ✓

		heavily, the defendant must be the victim as they find them under the thin skull rule. This means that if the
		defendant was not even aware of the
		larger vulnerability of the victim, then the chain is still not broken and they are
		the cause of the result such as
		Blane where the victim refused a
		blood transfusion due to religious
		beliefs.

## Examiner commentary

The candidate starts with a brief introduction to causation and in paragraph two explains, in detail, factual causation. They include the 'but for' test and two contrasting cases used as illustration. The candidate then moves on to a brief mention of legal causation; had there been more detail at this point this response would have achieved full marks. A range of intervening acts are explained including: acts of a third party, medical treatment, the victim's own negligence and a victim's unreasonable response, with each aspect explained with a case illustration. Finally, the candidate deals with the thin-skull rule, supported with a case illustration. This response demonstrates excellent knowledge and understanding of causation, with the proviso above.

## Exemplar E Level 3

6 marks

5	causation in criminal law has two tests. The first test is factual causation. (the 'But for' test) this means that 'but for' D's actions, would V have suffered harm?' is the answer is no, then D is liable. In the case of R v White, D attempted to poison his mother, but instead she died of a heart attack. The courts held that D was not liable, because 'but for' his actions, she still would have died.
	The second test for causation is legal causation. This means that for D to be liable, his actions must be the 'operating and substantive cause' of V's injury. In the case of R v Jordan, D was stabbed and rushed to hospital. When he got to hospital he also suffered some medical negligence. He died from loss of blood.



The courts held that the doctor was not liable because the medical negligence was not the 'operating and substantial cause' of V's death, the stab wound was.

However, to decide if someone is liable we need to make sure that there is no intervening act that breaks the chain of causation. The intervening act can be from the victim themselves, a third party or a personal belief. A case example is R v Blaue. In this case V was a Jehovah's Witness and refused a blood transfusion. V died. The courts held that this broke the chain of causation because 'a doctor must take a patient as they find them, beliefs and all' and so this was an intervening act from the victim.

## Examiner commentary

This candidate neatly sets out the two types of causation accompanied by some authority to illustrate. This script illustrates the need for citation to be correct as R v Jordan is not accurately stated. The issue of an intervening act is addressed but, again, the citation is inaccurate. However the inaccuracies do not detract from the accurate information. This candidate explains three key elements of causation accurately showing good rather than just basic knowledge of the topic.

## Exemplar F Level 2

5 marks

5 Prima facie causation is the chain of events from the crime itself to the trial. There are two types of causes legal cause and factual cause. The factual cause is defined in R v White where factually White didn't kill his mother but he did still put poison in her milk. Another case for factual cause is R v Pagett. The thin skull rule is another element in causation, outlined in the case of R v Blaue where factually she caused her own death but legally you take your victim as you find them. The person's own actions can also break the chain of causation as seen in R v Williams.



		where were it was deemed as unreasonable to
		jump out of a <sup>moving</sup> car if the driver is trying
		to rob your <sup>wallet</sup> <del>wallet</del> . However, in R v Roberts
		it was deemed as reasonable to jump out
		of a <sup>moving</sup> car if the driver is trying to rape
		you. Medical reasons <del>reasons</del> mishaps can intervene in
		the chain of causation if victim has healed
		before <del>hand</del> as outlined in the case of R
		v Jordan. Also in R v Malchereck the life
		support machine was switched off but this was
		not the legal cause of death. Novus Actus
		intervens meaning any wholly independent unforeseeable
		act intervene then this will break the chain
		of causation. Finally there can be operating
		and <del>substantive</del> <sup>substantive</sup> causes as outlined in
		R v Smith.

## Examiner commentary

The candidate begins by stating that there are two tests. There is an overview of the 'thin-skull' rule with basic explanation. This script illustrates the need for accurate use of cases and case facts as there can be no credit awarded if these incorrect. Candidates should also be aware that there is minimal credit available for simply naming a case within the response. This response illustrates this point. This response is an example of basic knowledge being demonstrated due to lack of accurate explanation in places.

## Question 6

Charlotte and Dexter are at their local supermarket. While shopping, Dexter throws a tin of beans towards Charlotte to catch. The tin hits Charlotte in the face, causing a deep cut to her cheek. When Charlotte shouts out in pain, Dexter whispers menacingly in her ear 'Keep your voice down, or I'll break your nose!'

Eric, the store's security guard, is passing and hears Charlotte shouting. He asks her to calm down. Charlotte ignores him and walks off. Angered by this, Eric pushes Dexter out of the way and then violently grabs Charlotte by her arm, dislocating it.

6 Advise how the law relating to non-fatal offences against the person will apply to Dexter. [10]

### Exemplar A Level 3

8 marks

6	Dexter has committed an act that will fall under s20 of the Offences Against the Person Act. He caused wounding, defined as penetrating the skin in Eisenhower, by causing a deep cut to Charlotte. While, he doesn't seem to have the intention to harm Charlotte, he was reckless in his actions. Therefore he is liable for causing malicious wounding on Charlotte.
	Furthermore, he also threatens Charlotte who <sup>may have been</sup> in fear of unlawful immediate violence. This was also shown in the case of Light where a husband threatens his wife within close proximity of her and was found guilty of assault. Therefore Dexter <sup>may</sup> also be liable of <sup>the</sup> s39 Criminal Justice Act offence of common assault.

### Examiner commentary

This response might appear brief but the content is concise and detailed, showing good application of offences against the person to the given scenario. The candidate separates the two issues and begins with Dexter throwing the tin and cutting Charlotte's cheek. They address, impliedly, both the *actus reus* and the *mens rea* and then apply the law to reach a conclusion. The same approach is taken to Dexter whispering menacingly at Charlotte. This candidate undoubtedly understands offences against the person and the application of law to the scenario is good. This response would have benefited from greater use of legal terminology and development in places.

## Exemplar B Level 4

9 marks

6.	<p>The actus reus for Section 20 of the Offences Against the Person Act 1861 - GBH is <sup>wounding</sup> <del>or</del> wounding or inflicting GBH. <del>GBH</del> is defined in <i>Eisenhower</i> as breaking two layers of skin which appears Dexter has done to Charlotte by causing a 'deep cut to her cheek'. The mens rea for this offence is intention or recklessness. <del>Dexter</del> <sup>Dexter</sup> appears reckless to the harm he has caused as he throws the tin to her 'to catch'. This is a subjective test but it appears he would be able to foresee the risk of it causing her some harm. <sup>(wounding)</sup> it seems <del>Dexter</del> <sup>Dexter</sup> has both the actus reus and the mens rea of S.20 GBH and could be charged. <del>However, it could be argued that the charge should be ABH if this were</del></p> <p>As for him threatening her he appears to have the actus reus for assault under section 39 of the Criminal Justice Act 1988 as he threatens her which <del>is</del> <sup>is</sup> act or words that put the victim in fear of immediate unlawful force. <sup>(Ireland)</sup> <del>However, it was ruled</del>. The mens rea for this charge is intentionally or recklessly causing the victim to apprehend immediate unlawful force. <del>Dexter</del> <sup>Dexter</sup> does this seemingly intentionally as he whispers 'menacing' to Charlotte. It seems he could be charged with assault here however there is a possibility his words negate the assault as he says: 'keep your voice down or I'll...'. This suggests she can get out of the situation and <del>could</del> <sup>could</sup> escape charges as it was ruled that words can negate an assault in <i>Tuberville v Jarage</i>.</p>
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## Examiner commentary

In the first paragraph the candidate addresses Dexter throwing the tin and cutting Charlotte's cheek. There is an explanation of the requirements of s.20 OAPA and these are applied. The candidate addresses the breaking of two layers of skin and the fact that Dexter appears reckless. Had the candidate addressed the level of harm in slightly more detail full marks would have been credited. The paragraph ends with a conclusion as to why Dexter will be charged. This candidate then repeats the process in respect of Dexter whispering menacingly at Charlotte. Firstly, the candidate identifies an assault and then applies both the *actus reus* and *mens rea* to Dexter's actions. This script illustrates excellent accurate application of the relevant law to the given scenario and legal terminology used accurately throughout.

## Exemplar C Level 2

2 marks

6	Dexter, the D, has caused <del>an</del> ABH towards Charlotte, the V. This is found in s.47 Offences against a person. ABH is defined in Miller as 'harm which will affect D health'. He also by threatening her committed assault in defined in Collyer v Wilson as 'apprehension of unlawful force'. He didn't negate it, which we know from Savage. The Actus reus is satisfied by causing a break in the continuity of skin, known from Edenhouse. Also we know from Haystead that it can be done indirectly. The mens rea can be either intention from Mohan or recklessness from Cunningham. In this case it will be <del>direct intention</del> as it was his main 'aim, want, wish' recklessness as <del>no</del> <del>intention</del> was for her to catch the tin. * Assault is known from Ireland that words constitute an assault.
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## Examiner commentary

The candidate starts by identifying the case of Dexter throwing the tin and cutting Charlotte's cheek as s.47 OAPA, assault occasioning actual bodily harm. The harm suffered by Charlotte, a cut, should indicate to the candidate that this is grievous bodily harm/wounding under s.20 OAPA. The candidate does however correctly identify the *actus reus* of s.20 and credit is given for this. The candidate also identifies the *mens rea* of s.20 and says that there was recklessness. The candidate does not address Dexter whispering menacingly at Charlotte, resulting in the response demonstrating limited application as only 50% of the question was answered. Note that the use of cases is not a requirement for this type of question.

## Exemplar D Level 4

10 marks

6.	Dexter may be charged with <sup>assault under</sup> Section 39 under the Criminal Justice Act 1988 against Charlotte alongside a charge of GBH under s20 of the Offences Against the Persons Act 1861.
	The Actus reus required for assault is to prove that the defendant caused the victim to apprehend the <sup>immediate</sup> infliction of <del>serious harm</del> & harm. * As <sup>precedent</sup> in <i>Tuberville v Savage</i> , words alone amount to this as which <del>Ray</del> Dexter used in order to threaten Charlotte. Charlotte was also able to apprehend the immediacy of the potential harm as proved in <i>Smith</i> as as if she had not been quiet, she would be quickly hit in the nose by Dexter. <sup>Tortious, factual and legal</sup> causation applies as there is no break in

6	the chain.
	The mens rea for assault is the intent or recklessness as to cause the victim to apprehend the immediate infliction as was established in <i>Savage</i> and as Dexter was trying to get Charlotte to be quiet, he had intent.
	The Actus reus for GBH is the infliction of serious <sup>gross</sup> & serious harm. As <sup>precedent</sup> in <i>IRC v Eisenberg</i> , this requires a cut in the epidermis and damage of the skin as the <sup>deep</sup> & deep cut in Charlotte's skin <sup>may</sup> <sup>suppose</sup> .



		But <del>the</del> <del>man</del> , but for Dexter throwing the can,
		no infliction of harm would have occurred thus causation applies.
		The mens rea for s.20 is the intent or recklessness as to causing some harm as was proven at Savage regarding a beer glass cutting the victim's cheek. As the harm of a tin can as someone's person is foreseeable as a result of Dexter throwing the can, then he <del>consciously</del> <del>consciously</del> consciously took that risk as was reckless as to causing some harm.
		As both the actus reus and mens rea for assault and GBH is present, Dexter would be guilty of both against Charlotte.
		*As is contained in the case of Collins v Wilcock.

## Examiner commentary

From the beginning of this response the candidate demonstrates excellent application of the relevant offences against the person to the given scenario. In the first paragraph the candidate state what crimes 'may' have been committed by the defendant. In the second paragraph the candidate addresses Dexter whispering menacingly at Charlotte and begins to apply the elements of assault to the given facts, starting with *actus reus*. The next paragraph states the *mens rea* and applies it accurately. This candidate continues in the same manner when addressing Dexter throwing the tin and cutting Charlotte's cheek. There is application when the candidate identifies that GBH can be satisfied by a 'cut' and that this is the type of injury Charlotte has suffered. The *mens rea* is stated and applied accurately and the response ends with a concise and accurate conclusion. This script is a useful in demonstrating how a candidate can approach an application question. This candidate applies legal rules and principles to the given scenario and present legal argument using appropriate legal terminology throughout. A perfect response!

## Exemplar E Level 2

4 marks

6.		Non-fatal offences against the person
		can consist of assault, battery, s.47,
		s.20 and s.18. s.20 can be defined
		as grievous bodily harm <sup>(without intent)</sup> . Also, assault
		can be defined as 'causing someone to



		apprehend immediate or unlawful violence.
		In this scenario, Dexter could be liable for section 20 when he 'caused a deep cut to her cheek.' This is because she has cut through all the layers of skin in her cheek, which is what grievous bodily harm is defined as. The reason that this offence may not be section 18, is because he never had intention of causing any harm to Charlotte. (for s.18 there must be intention.) However, because he is
		liable for s.20, he could face up to 5 years imprisonment. Also, Dexter may be liable for assault because he shouts 'keep your voice down or I'll break your nose' this is an assault because he causes Charlotte to apprehend immediate and unlawful violence. (R v Ireland)
	⚡	Because he has assaulted Charlotte, he can face up to 6 months imprisonment.

## Examiner commentary

There is no requirement to start with an introduction with an overview of offences against the person. This candidate identifies that the cut to the cheek will be s.20 and then explains why the offence will not be s.18. Unfortunately, in doing so the mens rea of s.20 has been omitted from the application. Candidates are not required or expected to explain why one or more offences will not apply. They are only required to apply the law to the given scenario. As with the cut to the cheek, this candidate identifies the *actus reus* of assault but there is no mention of *mens rea*. The omissions regarding mens rea results in the response considered Level 2, as the application was basic and lacking in detail.

## Exemplar F Level 2

3 marks

6		Dexter could be done under s.47 offences against the person act 1861 because he threw it <sup>recklessness</sup> <del>without</del> because he 'threw' the tin of beans for 'Charlotte to catch' meaning his mens rea wasn't present as he didn't mean any harm, but by the tin of beans 'causing a deep cut' this can be seen as aided by the judge in Chan Fook as 'more than

		transient and trifling' as a 'deep <sup>cut</sup> cut' suggests
		a significant injury. <del>It is a case of</del> <del>the</del> <del>injury</del> <del>being</del> <del>significant</del>
		<del>Therefore</del> Dexter also could be tried for
		assault <sup>✓</sup> towards Charlotte as after this incident
		he "whispers menacingly" <sup>✓</sup> we highlighting that he
		wanted to create fear for Charlotte. <sup>✓</sup> Dexter also
	⌋	threatens her <del>with</del> by saying "keep your voice
	⌋	down, or I'll break your nose!" furthermore trying
	⌋	to cause Charlotte to become fearful. <del>and that</del> and
	⌋	if she did feel scared or fear then that
		would mean it was an assault.

## Examiner commentary

The response begins by stating that Dexter throwing the tin and cutting Charlotte's cheek will be a s47OAPA offence and explaining that he was reckless - the *mens rea* for s.20. The fact that Charlotte's cheek is 'cut' should indicate to the candidate that s.47 would not be appropriate. This candidate does recognise that the harm suffered by Charlotte was more than trifling and a significant injury. The candidate says, because of this, the *actus reus* is satisfied but sadly they do not use this to conclude that the correct offence would therefore be s.20 and not s.47. With regards to Dexter whispering menacingly at Charlotte, assault is correctly identified. However incorrect terminology is used, for example, 'wanted' rather than 'intended'. The application of offences against the person is basic and there is a lack of accurate detail.



## Question 7

Charlotte and Dexter are at their local supermarket. While shopping, Dexter throws a tin of beans towards Charlotte to catch. The tin hits Charlotte in the face, causing a deep cut to her cheek. When Charlotte shouts out in pain, Dexter whispers menacingly in her ear 'Keep your voice down, or I'll break your nose!'

Eric, the store's security guard, is passing and hears Charlotte shouting. He asks her to calm down. Charlotte ignores him and walks off. Angered by this, Eric pushes Dexter out of the way and then violently grabs Charlotte by her arm, dislocating it.

7 Advise how the law relating to non-fatal offences against the person will apply to Eric. [10]

### Exemplar A Level 3

7 marks

7		By pushing Dexter, <del>Dexter</del> <sup>Eric</sup> , unlawfully applies onto him. While he doesn't have the intention to do so, he is reckless in his application. Therefore, he has committed an offence of <del>assault</del> battery under s39 of the Criminal Justice Act. This was also demonstrated in the case of Collins who described the term <del>force</del> 'force' as 'the slightest of touches'. Furthermore, Eric performs the actus reus of actual bodily harm by dislocating Charlotte's arm. He also was angry which suggests an intention to harm her as the <del>d</del> . Therefore by applying unlawful force and causing an injury, Dexter is liable of a s47 Offences Against the Persons Act offence.

### Examiner commentary

The candidate wastes no time and immediately begins answering the question by addressing the first part of the scenario - Eric pushing Dexter out of the way. This candidate concentrates on the *mens rea* and correctly identifies Dexter as being reckless in his actions. With regards to Eric dislocating Charlotte's arm, this candidate states that Eric 'performs' the actus reus of actual bodily harm. An explanation of the *actus reus* requirement e.g. the need for an assault or battery and in this situation, battery, would have attracted more marks. The *mens rea* is correctly identified and applied. This response was brief but to the point and demonstrated good application of legal rules to Dexter's actions. Had the detail been developed more fully, Level 4 would have been achieved.

### Exemplar B Level 4

9 marks

7.		Firstly Eric's offences against Dexter seem to be battery. The actus reus for this is application of unlawful force which in Collins v Wilcock
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was ruled to mean any form of touching. Eric has the *actus reus* as he 'punches' Dexter. The *mens rea* for this is intention or recklessness (Venna). Eric appears to have intention but has at least *recklessness* as to the battery as it is a reaction to being 'angered'. He could be charged with battery under s.39 Criminal Justice Act 1988 against Dexter.

For his offences against Charlotte he could be looking at an ABH charge. The *actus reus* for s.47 Offence Against the Person Act 1861 is assault occasioning actual bodily harm. Assault means assault or battery. He has the *actus reus* of an ABH as he commits battery by grabbing her and she dislocates her arm meaning she suffers actual bodily harm - defined in Miller as disturbing the ~~health~~ health or comfort of a victim. The *mens rea* is intention or recklessness as to the assault or battery but not for the injury (harm) and he has at least recklessness, more likely intention by 'violently' grabbing her. He could be facing an ABH charge although perhaps GBH due to the severity of the

injury - defined in Smith as really serious harm such as broken bones. However he could argue he didn't have the *actus reus* as he didn't foresee grabbing her would cause an injury.

## Examiner commentary

The response begins by making a judgement regarding the first offence Eric has committed. The candidate then proceeds to explain their reasoning using correct legal terminology. For each offence the candidate starts by addressing the *actus reus* and applying this to Eric's actions. The *mens rea* is then applied accurately. In the second paragraph the candidate repeats the process in respect of Eric dislocating Charlotte's arm. This response would have achieved full marks had the candidate clearly decided which offence Eric would have been charged with. The response fulfils the Level 4 criteria.



## Exemplar C Level 3

8 marks

7		Eric has caused two offences, the D, has caused Battery the Dexter, an V, and GBH to Charlotte, the other V.
		The first offence of Battery towards Dexter (V1) is <del>s.40</del> Criminal Justice Act. It is defined by <u>Collins v Wilcock</u> as 'the application of unlawful force immediate unlawful force'. The application would be the direct force applied to punch Dexter. We know from <u>Collins v Wilcock</u> what would be classed as unlawful force as Lord Goff gave examples as to when it would be lawful, for example shaking hands. In this case Dexter has satisfied the <del>mens rea</del> <sup>mens rea</sup> for battery is intention or recklessness, in this case it is direct intention which is defined in <u>Mohan</u> as 'a main aim, want, wish and desire'. This means D has satisfied the <del>mens rea</del> <sup>mens rea</sup> .
		The second offence of GBH against Charlotte can be GBH wounding or <del>GBH</del> , we know for it to be wounding from <u>Enderby</u> it will be a 'break in the continuity of the skin'. That means it must be GBH 'serious harm' which is defined in <u>Savage</u> and <u>Parmenter</u> . Dislocated arm is serious harm. The <del>Mens rea</del> (MR) can be from s.18 or s.20 <u>Offences Against a Person Act</u> . In this case as it is direct intention, know from <u>Mohan</u> it is 'a main aim, want, wish, desire with' to grab her the
		means it will be s.18.
		In conclusion <del>Dexter</del> <sup>Eric</sup> , the D, is guilty for both offences of GBH and Battery to the V of Charlotte and Dexter.



## Examiner commentary

The candidate starts with a conclusion. This is perfectly acceptable. In the second paragraph the candidate addresses battery. A definition of battery is given. A range of cases and examples are given. These add little to the response and are not required as this is an application question and the candidate is only required to apply legal rules to the given scenario. The candidate demonstrates a good understanding of the required *mens rea* for battery. The third paragraph addresses the dislocation of Charlotte's arm. The candidate spends precious time giving a range of examples and authority on what would be considered wounding. The candidate does state, near the end, that the dislocation is serious. As with the battery, the *mens rea* requirement is applied in detail. This script indicates how a candidate can reach Level 3, and more, with concise application. This is shown by the brief but accurate application of *mens rea* to both issues but the cases and examples are superfluous and are not required in this question.

## Exemplar D Level 4

9 marks

7	<p>Eric may be charged with battery under s. 39 of the Criminal Justice Act 1988 against Dexter and GBH under s. 20 of the Offences Against the Persons Act 1861.</p> <p>The Actus reus of battery is contained in the case of <i>Collins v Wilcock</i> and requires the infliction of <del>unlawful</del> <sup>unlawful</sup> force upon the victim by the defendant. No harm must be proven as a result as in the case of <i>Thomas</i>, even touching someone's clothes may be battery. The force must be unlawful meaning that it could not have been expected by the victim unlike if it was jostling in a public place or a contact sport. As <del>Dexter</del> <sup>Eric</sup> is pushing of <del>Dexter</del> <sup>Dexter</sup> was unsolicited, it can not be regarded as <del>lawful</del> <sup>lawful</sup> public jostling and therefore is unlawful.</p> <p>The mens rea required for battery is the intent or recklessness as to inflicting the force as was determined in <i>Venna</i> and as Eric wanted Dexter out of the way, he had intent to push him.</p> <p>The Actus reus required for GBH is for the defendant to inflict serious grievous</p>
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"bodily harm upon the victim. This may  
 mean a dislocation or a break of the  
 bone as this would require hospitalisation  
 and as was proven by Smith, a broken  
 nose may even amount to this. Thus,  
 Charlotte's ~~brother's~~ arm dislocated arm  
 may require hospitalisation if not, a  
 potential of a reduction to s47 of ABH  
 may be considered.

The mens rea for GBH under s20 is the  
 intent or recklessness as to causing some  
 harm as in Savage and as Eric would  
 have been able to foresee that violently  
 grabbing someone may cause harm, then  
 he was reckless as to doing so. If ABH  
 needs to be achieved then the mens rea  
 requires battery or assault and as  
 grabbing someone is battery, ABH can be  
 achieved.

Therefore, Eric can be charged with  
 battery against Eric and possibly  
 ABH or GBH under s.20 against  
 Charlotte which would carry the  
 same sentence.

## Examiner commentary

The candidate demonstrates excellent application of legal rules to both parts of the given scenario. In the first paragraph they begin by stating which offences Eric 'may' be charged with. The candidate then takes each of the two suggested offences and applies them to Eric. Starting with Eric pushing Dexter out of the way this candidate addresses the *actus reus* of battery and applies this to the pushing. A point to note is that the candidate uses precious time unnecessarily citing cases and giving examples; this questions only requires application of relevant legal rules to the given scenario. Next, the candidate moves to the *mens rea* and after stating what is required they apply this to Eric, stating that he had intention. The candidate then moves to the next issue, Eric dislocating Charlotte's arm. Again, the candidate starts by addressing the *actus reus*; they state what is needed and then apply it to the scenario, although it is a little unclear which non-fatal offence would be best. They then move on to the *mens rea*, which is skilfully stated and applied. The application was accurate and, in most places, fully developed.

## Exemplar E Level 2

5 marks

7.	Non-fatal offences can include s.47 and battery. Section 47 can be defined as 'assault occasioning actual bodily harm' - assault meaning assault or battery. Also, battery can be defined as 'inflicting unlawful force either intentionally or recklessly'.
	In this scenario, Eric could be liable for battery when he 'pushes Dexter out of the way' this could be a battery because even <del>the slightest of touches</del> slightly touching someone unlawfully can be battery. (R v Thomas) He also applied the force intentionally which makes him liable. On the other hand, Eric is also liable for <del>or</del> section. 47 when he 'violently grabs Charlotte by her arm, dislocating it' this is s.47 because he assaulted Charlotte and he dislocated her arm - which <del>is</del> <sup>assault</sup> 'occasioning actual bodily harm'. (Chan Fook)
	Because Eric is liable for s.47, he could face up to 6 months imprisonment. He could also face up to 6 months imprisonment for the assault on Charlotte as well.

## Examiner commentary

The candidate starts by explaining that the offence of s.47 is assault occasioning actual bodily harm and what it includes; in addition they give a definition of battery. In the second paragraph the candidate begins to apply the law. They explain why Eric 'could' be guilty of battery but fail to fully address the key elements i.e. *actus reus* and *mens rea*. The application to the dislocation of Charlotte's arm lacks detail and is only partially developed. The response demonstrates basic application of offences against the person to the given scenario. This candidate needed to apply legal rules in a more structured and detailed way to move up through the Levels.



## Exemplar F Level 2

5 marks

7		Eric prima facie has a contractual duty with the local supermarket to protect customers inside and to protect the supermarket from robbery.
		Eric can be seen to <del>truly</del> commit a battery against Eric by <del>or</del> pushing him. After following this Eric "vidently grab Charlotte" which then results in a dislocation. He could be tried for an s47 ABH or some may argue a s20 GBH.
↓		By Eric "vidently" grabbing her arm he commits a battery but then because it was such a hard tug her arm dislocated this suggests that it would be an ABH as in the statute it states any assault or battery occasioning any actual bodily harm this fits what Eric has done to Charlotte. Although it could be argued as a s20 GBH as in the statute it states whomever shall unlawfully or maliciously inflict or wound any grievous bodily harm upon another person either with or without a weapon. A dislocated arm could be seen as grievous as it does take a while to heal. But it seems Eric has more likely to <del>not</del> committed an ABH against Charlotte.

## Examiner commentary

Whilst this response appears, to begin with, to be on the wrong track the candidate concludes that Eric has committed battery. They also state that the dislocation may be one of two offences, s47 or s20 OAPA. In paragraph two the candidate gives the statutory definition of the two offences but there is very limited application of the key elements. The assessment objective for this question states that the candidate is to apply legal rules and principles to the given scenario in order to present a legal argument using appropriate legal terminology. There is no mention of *actus reus* and *mens rea* and as a result only basic application of legal rules is demonstrated. The use of appropriate legal terminology would have seen this script placed in Level 3.

## Question 8

Charlotte and Dexter are at their local supermarket. While shopping, Dexter throws a tin of beans towards Charlotte to catch. The tin hits Charlotte in the face, causing a deep cut to her cheek. When Charlotte shouts out in pain, Dexter whispers menacingly in her ear 'Keep your voice down, or I'll break your nose!'

Eric, the store's security guard, is passing and hears Charlotte shouting. He asks her to calm down. Charlotte ignores him and walks off. Angered by this, Eric pushes Dexter out of the way and then violently grabs Charlotte by her arm, dislocating it.

- 8\* Discuss the problems with the offence of s47 Offences Against the Person Act 1861, and the extent to which reform of the law would make it more morally justifiable. [10]

### Exemplar A Level 2

5 marks

8		A problem with s47 OAPA is that it has the
		same mens rea as s20: intention or recklessness. This
	P	creates inconsistency as, even though it's a less serious
		crime, it is on par with and confusion is the law as
		the two sections overlap, even though one is more
	DEV	serious than the other. Furthermore, the one a small
		cut could move an offence from s47 to s20
	+	which is unjust since the <del>sent</del> sentencing powers are
		greater in one. The Law Commission 2015 Report
		suggests that the offences are split into 3
	P	clauses: serious injury with intention, serious injury
		with recklessness, and injury with intention or
	DEV	recklessness. This will make the law morally just
		as the actus reus and mens rea are proportionate.
		Another problem is that the <del>act is</del> statute is
		outdated. This means it doesn't include injury through
		disease or mental health, and the levels of these
		are not classified. Due to this, judges have to rely on
		common law to decide whether the psychiatric harm
		or the transmission of HIV is a s47 offence or
	P	s20 offence. To reform this, the Law Commission
		Report also suggests the inclusion of such injuries
		in statutes. This will make the law morally just as
	DEV	it will be consistent and clear for such cases.
		Furthermore, the <del>language</del> language is also



		undear. For example, 'force' was interpreted as 'the
P		slightest of touches'. If, as the Draft Bill (1998)
		suggested, the language of the statute was made
		clearer, then the law would be easier to apply
DEV		and defendants would get fairer judgement.

## Examiner commentary

The candidate begins by discussing, in detail, the issue of s.47 having the same *mens rea* as s.20 OAPA. They develop the discussion by addressing the issue of inconsistency and confusion. This point is further developed by addressing the injury difference. To conclude this discussion, the candidate refers to the Law Commission Report 2015 in respect of reform which would make the law more 'morally justifiable'. The next issue addressed is that the Act is outdated, and the problems associated with this, in particular, new types of 'injury'. Again, this candidate uses the Law Commission Report 2015 when they conclude this point and suggest reform. The final paragraph addresses the issue of language and the need for this to be made clearer. Unfortunately, despite a range of well developed points and developed points being discussed and a sustained focus on the question, this response was capped at Level 3. The specification states that 'Question 8 is to be treated as a mini essay with a conclusion'. Whilst this candidate concludes at the end of each point there is no clear overall conclusion. The implied conclusions at the end of each point were considered enough to be considered 'basic' conclusions and for that reason the response was placed in Level 2. The quality of discussion indicated that this response should be placed at the top of Level 2.

## Exemplar B Level 4

9 marks

8.		S.47 Offences Against the Person Act 1861 is
		ABH. The first problem with this is that the
		actus reus and mens rea do not correspond as
		there needs to only be the mens rea of
		assault or battery a much lesser charge and
		requires no foresight of the injury. In Savage
		he intended the battery but didn't foresee the
		cut to the face but still faced the more
		serious charge. The suggested reform from the
		1980s and 2015 would mean the actus reus and
		the mens rea of an injuring offence would
		correspond - with the offence split in two
		with intention and recklessness - This would
		make the law more clear and more moral
		as people who intend no damage face lesser
		charges and sentences.
		Another issue is with sentencing. It is
		a huge step up from the s.39 Criminal Justice Act
		maximum sentence of 6 months being a maximum

		tariff of 5 years. This further highlights how the mens rea for s. 47 is unfair to defendants. Furthermore the maximum sentence of 5 years imprisonment is equal to that of s. 20 OAPA 1861 despite being a less serious offence. New measures in suggested law reform would even cut the maximum tariffs to smaller steps and to more corresponding sentences to the crime which would provide more justice and peace of mind to victims and defendants.
		The language is very outdated meaning the law is hard for lay people to understand. Changes such as 'occasioning' changing to 'causing' would make it a lot more clear and allow people to understand the offence.
		I think law reform would be very helpful for lay people if it gets passed as acts from 1980, and 2015 are yet to be - showing slow progression in to law.

## Examiner commentary

The candidate starts by discussing the problem of the *actus reus* and *mens rea* not corresponding as there is no requirement for foresight of the injury. They develop this discussion by addressing reform from 1998 (Draft Bill) and 2015 (Law Commission Report). They conclude this point by stating that this reform would bring clarity and make the law more 'moral', thus attempting to refer back to the question although it would have been beneficial to make a specific reference to being 'morally justifiable'. The next issue addressed is sentencing and the difference between the sentences available for s.47 and s.39 CJA. They discuss this point in detail and suggest reform, concluding that it would provide more justice. The final discussion point relates to the outdated language. This point is not developed. The candidate concludes with a summary of previously made comment - this is acceptable as a conclusion. This candidate demonstrates excellent evaluation in places and addresses a range of issues. There is a sustained focus on the question throughout.

## Exemplar C Level 3

8 marks

8		There are several problems with the OAPA, the main issue is the wording in s.47.
		With ABH there is <del>definitely</del> no clear definition as to what would be classified as actual occasioning ABH and battery occasioning ABH.



		It also hasn't got a clear definition as to what would be hierarchy of the definition.
	DEV	ABH get confused between Actual and Battery and GBH. This is <del>not</del> is justified as people can get sentenced for an offence with which it should be the other due to poor definition.
	+	
		Another issue surrounding it is the hierarchy. ABH get put in the middle and can either be very serious Battery or minor GBH. Also multiple ABH make a GBH, known from <u>Brown v Stratton</u> . This means there is uncertainty as to which should be known.
	P	
		For reform, the law commission has discussed and considered the the definition for harm from ABH will be clear and will remove it, the way it will be clear as to what type
	P	
		of NEOP they had committed. This is more justifiable as it means there is more equality throughout law as there is a clear definition for it.
	DEV	
		Another reform would be having a clear hierarchy between all the NEOP acts, this means that there is a clear structure to them. This makes it more justifiable as it means people will be charged with the right type of crime. The mean morally fairness for the defendant.
	P	
	DEV	
		In conclusion, s. 47 of the NEOP Act has a lot of <del>bad</del> issues present moral men with wording and hierarchy, however the law commission has proposed it for reform.
	?	



## Examiner commentary

The candidate begins by stating that they consider the main problem with s.47 to be the lack of definition of what is to be considered actual bodily harm, taking account of both assault and battery. They develop this discussion by addressing the confusion this causes. To conclude the candidate points out how this is not *justified* if people 'possibly' can be sentenced for the wrong offence. The second paragraph is on a similar theme and addresses the fact that there is uncertainty when dealing with the range of injuries. Addressing the question and the issue of reform, the third paragraph looks at the Law Commission Report and its definition of harm and how reform is *justifiable* if it means equality. The last discussion point relates to the issue of the hierarchy of offences and how this would make it *morally fair* for the D. To end the candidate reaches an overall conclusion. There is good evaluation throughout the response and the candidate addresses a range of issues. There is focus on the question and both reform and morality are addressed. Most of the points made were discussed in detail. The script would have benefited from using the term 'morally justifiable'.

## Exemplar D Level 4

9 marks

8.	<p>s.47 of the Offences Against the Persons Act of 1861 regards assault or battery that occasions the infliction of <del>some harm</del> ABH. The similarity to other sections and the outdated nature of the s section causes it to have many problems.</p> <p>Firstly, as the Act came from 1861, many of the terms used are outdated and difficult to interpret. For example, there may be inconsistency in what is determined as 'Actual' harm as opposed to 'Bodily' harm in s.20 and s.18. Furthermore, the word 'malicious' is used regarding the mens rea of the section which has gained a new, modern meaning which makes it hard to interpret. Thus, regarding the language, it would make it more legally justifiable as there would be more consistency in interpretations and reduce making it easier for lawyers to advise clients.</p> <p>A further problem with s.47 is that it has the same <del>same maximum</del> sentence of 5 years as s.20 which means</p>
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that a smaller harm, has the potential of being dealt with in the same way as a serious crime thus allowing lesser criminals harsher sentences which is morally incorrect. Therefore, by changing the sentence of either s.20 or s.47 would cause there to be a larger gap in the law allowing two different crimes rather than two very similar ones with different outcomes that are dealt with in the same way.

Finally, s.47 requires the presence of the mens rea needed in s.39 of the Criminal Justice Act 1988. Not only does this require the need for cross referencing two Acts, but it also means the defendant need not have even intended or have been reckless to have caused any harm. Therefore,

the argument is made of whether the two crimes should be merged as a reform which would make it morally justifiable as a very low harm is placed in order to make it fairer for dependents to be protected from injustice.

In conclusion, the reforming of the law regarding s.47 such as the Commission Scheme in which OBA and OBA were merged into one clause would be morally justifiable as although it is not as minor as OBA assault of another, it is still more minor than OBA so should be treated as such to allow justifiable verdicts on dependents who are actually aware of the harm they could have caused.



## Examiner commentary

In the first paragraph the candidate begins by making a statement regarding two issues: those of 'similarity' and being 'outdated'. In the second paragraph one of these points, namely the issue of being outdated, is discussed in detail by addressing the problems with wording and the change in meaning of words over time. The candidate also suggests a way of reforming this to make it more '*morally justifiable*' and this is an example of a very well developed discussion point. The third paragraph deals with the similarity point, concentrating in the first instance on the maximum sentence and its similarity to that of s.20. The discussion is developed further by comparing the two offences in terms of the different requirements regarding harm and how this is '*morally*' incorrect. To conclude this paragraph the candidate suggests a possible way of reforming this to make the sentencing fairer. The fourth paragraph looks at the issue of needing to cross reference two Acts when addressing s47 and the *mens rea* issues. Again, the candidate refers to the question and addresses the issue of '*morally justifiable*' and suggests reform. To end their response the candidate summarises their discussion points in a conclusion. Whilst there is no additional credit for repeating previously stated points the specification states that Question 8 requires candidates to consider the law in relation to morality or justice; in addition the question is considered an extended response question and, as such, should be treated as a mini essay with a conclusion. The candidate fulfils this criteria. There is excellent analysis and evaluation of a range of issues relevant to the question. This candidate had one detailed, well developed discussion point and two developed discussion points. Had there been another substantiated, well developed discussion point this candidate would have achieved full marks.

## Exemplar E Level 2

3 marks

8.	One major problem with section 47 is how it is defined. It is defined as 'assault occasioning actual bodily harm'. However assault actually means assault or battery. This is a problem because people do not understand the real meaning of assault as it is defined in many different ways. This could be made more justifiable if the meaning of assault was made more clear so that <del>all</del> people could understand the law better. +
?	Also, because assault can mean assault or battery, it can cause more confusion
?	because the definition of battery also includes the word 'inflict' This can be a problem because
?	again people find it hard to understand what the term inflict actually means. However this could
?	be solved by using more simplistic words such as 'cause'.
?	Another problem with s47 is that the maximum prison sentence is only 6 months.
	This is a problem because some people may believe that in order to reform someone for what



		they've done <sup>15</sup> by giving them a better prison
		sentence which meets the crime better. eg. 'an
		eye for an eye' this can be made more
		morally justifiable by extending the sentence
		for s.47, depending on what they are liable
		for.

## Examiner commentary

The response starts well as the first paragraph discusses the issue of the definition of actual bodily harm and how different definitions cause confusion. To conclude this discussion point they refer to how the offence would be 'more justifiable' if the definition were to be made clear. The second paragraph suggests confusion - the word inflict is not relevant to s.47. The final paragraph addresses the issue of sentencing. Unfortunately, the sentence stated and discussed is incorrect therefore no credit can be awarded for this paragraph. The candidate does use the words 'morally justifiable' but in an inaccurate paragraph. As a result, this response can only be considered basic evaluation with a partial focus on the question. To achieve higher marks the response required discussion of a wider and more accurate range of points and a greater focus on the question.

## Exemplar F Level 2

5 marks

8		Some problems with s.47 OAPA 1861 is that the
		wording of the statute is ambiguous <del>it</del> and can
		lead to judges interpreting <sup>P</sup> it in different
		ways leading to inconsistency. This problem was
		tried to be resolved in the 2013 reforms report
		where new wording for statutes was suggested
		but parliament never implemented <sup>DEV</sup> it. Another
		problem with s.47 OAPA 1861 is that the
		it was written such long a long time
		ago it cannot incorporate <sup>P</sup> modern problems
		meaning it isn't applicable this reform can
		be seen in the 1998 draft bill where

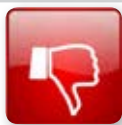
8.		one of the four clauses <sup>DEV</sup> included the wording
		to incorporate modern society
		<del>it</del> this can be seen with the wording 'actual
		bodily harm', the word 'actual' is very
		subjective and can lead to a variety of
		interpretations.

## Examiner commentary

The candidate offers some reasonable discussion points, starting with the issue of the ambiguity in the wording and the fact that the result of this is that judges interpret the law differently. There is also mention of the Law Commission Report. The next issue to be

addressed is the issue is the age of the Act and the fact it does not take account of a range of injuries - 'modern problems'. Reform by virtue of the 1998 Draft Bill is addressed. Some of the key points relating to the question are raised by but only partially developed. There is a partial focus on the question and no mention of '*morally justifiable*'. In addition, the response lacks a clear conclusion.





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### General qualifications

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