

**GCE**

**Law**

**H415/03: Further law**

Advanced GCE

**Mark Scheme for November 2020**

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

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

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

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## Annotations

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

**Section A**

1\* It is impossible to create justice for all, and the law should not attempt to do so'. Discuss the extent to which the law creates justice for all.

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

**AO1 Indicative content**

Answers **may** include:

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

Credit any other relevant point(s)

**AO3 Indicative content**

Answers **may** include:

- Discuss the problems of trying to create a common definition of justice that is shared by all members of society
- Discuss whether the law should try to create justice for all or for the majority
- Discuss the failings of the law and legal system and what could be done to improve justice

- Discuss aspects of inequality in society that could make the law unfair for certain people and favour others
- Discuss the various theories of law and justice and how they try to create justice in a society. Credit any other relevant evaluation of the theories of justice
- Discuss the different types of justice with examples from the whole course of study:
  - Formal justice –how did the criminal justice system fail to achieve justice in the miscarriage of justice cases? The findings of the Runciman Commission and the Criminal Cases Review Commission. The Stephen Lawrence case and the findings of the McPherson Report. Criticisms could be made of the judiciary. Evaluation of the system of ‘trial by your peers’
  - Substantive justice – discussion of any legal rule and whether it achieves justice
  - Distributive justice –can the law create justice for everyone regardless of class, wealth, gender, race or disability? Discuss how this can lead to inequality e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, institutional racism in the police force following the murder of Stephen Lawrence etc
  - Corrective justice – discussion of the high re-offending rates. Inequality of bargaining power in civil cases

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

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

2\* 'Technology will always advance more quickly than the law.' Discuss the challenges involved in the law keeping up with technological advances.

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

### AO1 Indicative content

Answers **may** include:

- Describe the intersection of law and technology
- Describe advances in the law relating to cybercrime e.g. the Computer Misuse Act 1990, hacking viruses, criminal damage, mail-bombing and web defacement, identity theft and identity fraud. Credit any other relevant examples of cybercrime using examples from the study of criminal law
- Describe advances in the law relating to privacy and data protection e.g. CCTV, ANPR, biometrics, RFID, location data, data protection, and the Investigatory Powers Bill 2016 (or other human rights examples)
- Describe advances in the law relating to e-commerce e.g. electronic contracts, the Electronic Commerce (EC Directive) Regulations 2002, communicating acceptance and electronic payment methods (Electronic Money Directive 2000 and 2009). Credit any other relevant examples of e-commerce using examples from the study of contract law
- Describe advances in the law relating to artificial intelligence e.g. driverless cars and implications for negligence claims. Credit any other relevant examples of artificial intelligence using examples from the study of tort law
- Candidates can draw on personal knowledge such as E-Safety education

Credit any other relevant point(s)

### AO3 Indicative content

Answers **may** include:

- Discuss the challenges of technology providing new ways to commit old crimes (e.g. criminal damage of intangible property R v Whitely)
- Discuss the challenges of dealing with crimes for which there was/is no existing legal provision (e.g. classifying 'legal highs' as illegal and whether software is goods or services?)

- Discuss the challenges posed by the growth of artificial intelligence (e.g. who is taking the culpable decision - man or machine?)
- Discuss the challenges of re-defining jurisdictional boundaries (e.g. in which jurisdiction does a crime occur – where the loss is suffered or the crime commissioned? Associated extradition issues)
- Discuss the challenges of globalisation (e.g. different levels of respect for intellectual property rights in different jurisdictions/cultures)
- Discuss the ethical and moral challenges raised by new technology (e.g. rights in personal data after death, privacy issues, easy access to adult material or illegal information, issues raised by the misuse of personal material such as revenge porn and the influence of social media re: defamatory material & 'fake news')
- Discuss challenges in law enforcement (e.g. technology used to either commit crime or aid legal evasion, detecting criminals & tracking hackers, DNA, vigilante entrapment, juries accessing information and the challenges to traditional policing models)
- Discuss challenges of protecting privacy and data protection in the face of technological advances (e.g. prolific use of social media, CCTV, drones etc)
- Discuss the challenges of appropriate responses at the state level (e.g. the Investigatory Powers Act 2016 & fears of the expansions of power that will be given to the government and GCHQ. Concerns over the roles of private companies such as Cambridge Analytica as well as interference at the state level by foreign powers)

Reach any sensible conclusion

Credit any other relevant point(s).

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

**Section B**

3 Advise Jasmine and Berthold as to whether they are within their rights in organising and participating the sit-in **and** whether the university can challenge them under Article 11.

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

**AO1 Indicative content**

Answers may include:

- Article 11 European Convention on Human Rights (ECHR): Right to freedom of peaceful assembly and association
- Three main rights – peaceful assembly, association with others, right to form and join trade unions. It is a collective right. It is a qualified right
- This covers the following activities:
- Marches, demonstrations, meetings in public and private (including sit-ins - *Cisse v France*)
- There is a positive obligation on states to ensure that the right can be exercised safely - *Platform Artze fur das Leben v Austria, Appleby v UK*
- The right is qualified and can be limited by 11(2):
- If prescribed by law, necessary in a democratic society, for a legitimate aim
- A state may require notification or authorisation of the assembly but any refusal by the state to grant authority must be justified in law
- Legitimate aims include – interests of national security, prevention of disorder or crime, protection of health or morals, protection of rights and freedoms of others
- The legal basis for any interference must be clear and precise in law
- Article 11 cases are decided in a similar way to Article 10 - demonstrators are allowed to represent views which may be seen as offensive to others
- Cases are decided in line with the criteria of proportionality – is the limitation effective? The least intrusive measure possible? Does it deprive the very essence of the right?
- The rights of third parties may be considered but any infringement will be subject to the idea of proportionality - *Ollinger v Austria*
- Margin of appreciation is quite wide in Article 11 cases and varies from country to country
- Any intention to cause disruption will give the state a wide margin of appreciation - *Christians against Racism and Fascism v UK, G v Federal Republic of Germany*

Credit any other relevant point(s)

**AO2 Indicative content**

Answers may include:

- Jasmine and Berthold have a basic right as part of the student union to exercise the right to assemble and organise a sit-in
- This would be seen as protected under Article 11 as long as it does not infringe others' rights or lead to illegal actions
- However, they may not have followed correct procedures in not informing the university or police about their intentions
- This may impact on whether the court would support their right under article 11
  
- The balance of third parties' rights will be taken into account - many students are being denied the ability to study in peace for their final exams
- It does not appear that they intended for violence to break out although they would have seen some disruption as an inevitable part of their protest in a library
- Once the fight breaks out and bookshelves are thrown to the ground, this would give the authorities the right to challenge the continued sit-in as a legitimate challenge would relate to preventing crime and disorder
- If it could be shown that they deliberately intended to be disruptive this would strengthen the position against them as there is a wider margin of appreciation in such situations

Reach any sensible conclusion

Credit any other relevant point(s).

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

4 Advise Frankie and Edward whether they will face legal consequences in respect of their actions under the law of trespass, public order or any other relevant area of law. Do **not** discuss Article 11 in this answer.

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

### AO1 Indicative content

Answers may include:

Interference with Article 11 rights may be justified in the following situations:

- Common law:
- Breach of the peace defined in *Howell* – 'harm done or likely to be done to a person or in his presence to a property'
- Prevention of a breach involves balancing the rights of the protestor against the alleged breach - *McClure and Moos v Cmmr of the Police of the Metropolis*
- Trespass to land – civil law
- Statutory restrictions:
- Aggravated trespass s68(1) Criminal Justice and Public Order Act 1994 (CJPOA) – land includes trespass within a building *DPP v Chivers*
- Elements of the offence include:
- Trespass,
- Does anything intended to intimidate, obstruct or disrupt the lawful activity which persons are engaged in
- Necessity for some additional conduct distinct from the trespass - such as the demonstration intended to intimidate *Eduard Bauer v DPP*
- Criminal damage under the Criminal Damage Act 1971
- Pubic Order Act Offences:
- Riot s.1, violent disorder s.2, affray s.3 – Public Order Act 1986 (POA)

Credit any other relevant point(s)

### AO2 Indicative content

Answers **may** include:

Breach of the peace. The use of aggression and abusive threatening language may well constitute a breach of the peace under the *Howell* definition  
Consider the balance of the rights of Frankie and Edward against the library users. Likely to be seen as a breach

Are Frankie and Edward trespassers?

This depends on their license to be in the library and whether they have breached the terms of that licence or otherwise gone beyond the permission -  
*The Calgarth*

If so, this will extend the powers of the authorities to deal with them under the powers above  
Once they are expressly asked to leave and yet remain, they clearly become trespassers

Aggravated trespass

It appears that their actions would at least be disrupting or obstructing other students from using the resources in the library. This appears to be the case  
as the other students are unable to study

Frankie and Edward will argue that it was never their intention to intimidate but to protest peacefully

They are also demonstrating as well as merely trespassing and this could be seen as aggravated trespass

Public Order Offences

The distinction between ss1-3 of the POA is largely one of scale and numbers

Riot: As there are 9 students (not 12 or more) who chose to remain in the library involved in the aggressive behaviour this does not constitute a riot

Violent disorder:

There are 3 or more persons and they do use threatening language and behaviour which may cause a person of reasonable firmness present at the  
scene to fear for their safety

Affray: Individually Frankie and Edward could alternatively be charged with affray

Would a person of reasonable firmness fear for their safety?

Frankie and Edward would have to be involved in the violence/threatening behaviour to be guilty of either violent disorder or affray

Reach any sensible conclusion

Credit any appropriate argument.

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

**5\* & 8\*** The right to a fair criminal trial has been described as ‘the birthright of every citizen’. Discuss the extent to which the right to a fair criminal trial in the UK courts has been protected, using case law from **both** the European Court of Human Rights **and** the UK courts.

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

### AO1 Indicative content

Answers **may** include:

- Elements of a Fair Trial:
- Magna Carta 1215 rights– including trial by jury and due process
- Police and Criminal Evidence Act 1984 (PACE) – including right to access legal advice, recording of interviews, exclusion of unfair evidence - *Golder v UK*
- Right against self-incrimination including:
- CJPOA 1994 – right to silence (although subject to limitations) - *Brown v Stott, Murray v UK*
- Independent and impartial judiciary as guaranteed by e.g. the Act of Settlement 1701, Constitutional Reform Act 2005
- Article 6 European Convention on Human Rights (ECHR):
- Public hearing within a reasonable time by an independent and impartial tribunal
- Justice must be done and also seen to be done – effect of secret or partially secret trials – *Incedal*
- Judicial bias - *R v Bow St Magistrates, ex parte Pinochet Ugarte*
- Limitations are possible:
- 6(2) Presumption of innocence
- 6(3) Promptly informed in a language he understands of the nature and cause of the accusation against him/her
- Adequate time and facilities for the preparation of a defence
- Defend himself/herself in person or through legal assistance (given freely when the interests of justice demand)
- Examine witnesses against him/her
- *R v Davies* – use of anonymous witnesses rendered a trial unfair
- Free assistance of an interpreter if he/she cannot understand or speak the language used in court
- Relevant cases include *V and T v UK*

Credit any other relevant point(s)

**AO3 Indicative content**

Answers **may** include:

- Article 6 ECHR is a qualified right and can be limited in several ways
- S6(3) ECHR sets out only minimum guarantees and these can be limited when it is necessary to do so
- S34 CJPOA 1994 right to silence is undermined by the ability of the jury to draw adverse inferences under ss.34-37
- Trials have been held to be unfair where witnesses were allowed to give evidence anonymously
- Trials have been held in partial secrecy where the public has not been able to see the process
- Access to justice has been under pressure due to cuts in legal aid. Changes in the means test have led to an increase in unrepresented defendants even in criminal courts. The Bar Council has warned of the negative consequences of such severe cuts
- Equality of Arms:
- Disclosure regime has created many problems due to imbalance in power between prosecution and defence
- Non-disclosure of evidence has resulted in many failed trials and historical miscarriage of justice cases
- Recent examples include 47 rape trials being abandoned by the CPS due to non-disclosure of evidence to the defendants e.g. Liam Allen case
- Consider the particular difficulties involved in terrorist cases and the particular challenge they present for human rights protection e.g. extended detention periods without charge

Reach any sensible conclusion

Credit any other relevant point(s).

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

6 Advise John how he will be able to use Article 8 to support his tribunal case.

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

### AO1 Indicative content

Answers **may** include:

- Article 8 ECHR – a qualified right which can be limited in certain situations
- Any interference must be:
  - In accordance with the law
  - Have a legitimate aim
  - Be necessary in a democratic society
- Covers private life, family, home and correspondence
- Broad, inclusive scope of Article 8 ECHR includes: physical and social identity, gender identity, name and sexual orientation – *Pretty v UK*
- Autonomy and dignity are also key features of this right - *Peck v UK*
- Private life includes sexual orientation and freedom - *Dudgeon v UK*
- Any laws which treated homosexuals less favourably cannot be justified - *BB v UK, ADT v UK*
- Barriers imposed on a transgender person violated their Article 8 ECHR rights - *Goodwin v UK*
- Correspondence includes a broad range of forms of communication and is also covered by Article 8
- Any interference must be justified under Article 8(2) ECHR - *Halford v UK, Golder v UK*
- Interference cannot be arbitrary but must be part of an open policy which all employees have already been made aware of - *Copland v UK*
- In *Barbulescu v Romania* the employer was found to be in violation as their IT policy did not set out the extent to which their internet usage and online communications would be monitored

Credit any other relevant point(s)

### AO2 Indicative content

Answers **may** include:

**John's transition to his preferred gender**

- John will argue that his gender is an aspect of his private life and that his transition is part of his personal development
- John will argue that the real reason for his dismissal was that the college discriminated against him on the grounds of his sexual orientation and transgender status
- John will claim that this is a breach of his right to a private life
- Private life has been defined by the European Court of Human Rights (ECtHR) as including a person's sexual orientation and personal development
- The national laws should respect these aspects of a person's life
- John will say that his employer has failed to protect his right and that there is no justification for this under Article 8(2) ECHR

**Monika secretly reading John's emails**

- Emails are protected under 'correspondence' as part of Article 8 ECHR
- John will argue that the college had no clear policy on email use and interference and that this constitutes a violation
- The fact that Monika is secretly reading his emails would support this
- The college would be seen as a hybrid authority, a private body providing a public service, so would be treated as a public body

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

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

7 Advise John whether he is protected by the laws on harassment and offensive communications **and** of his eligibility to take his case to the European Court of Human Rights if his other legal claims have failed.

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

### AO1 Indicative content

Answers **may** include:

Harassment:

- Protection from Harassment Act 1997 (PHA)
- Contains civil and criminal remedies.
- S.1 PHA Involves someone pursuing 'a course of conduct' amounting to harassment where he 'knows or ought to know' it amounts to harassment of the other
- This includes alarming or causing distress to a person
- S.2 PHA a summary offence – up to six months

Malicious Communications Act 1998:

- An offence to send another person a letter, electronic communication or article which conveys:
- A message which is indecent or grossly offensive,
- A threat,
- Information which is false and is known to be false by the sender
- The effect must be to cause distress to the recipient or any other person

The European Court of Human Rights (ECtHR):

- Court deals with both inter-state complaints and those between the individual and the state
- Its job is to interpret the rights contained in the ECHR. It is not bound by previous precedent but can change and adapt to mirror the changes in society – the 'living instrument' doctrine
- Autonomous meanings – the ECtHR can give its own separate meanings to words regardless of the national courts. This brings consistency across member states
- An applicant can only bring a case where they have suffered a significant disadvantage

- Eligibility Criteria for ECtHR:
- Person must be seen as a victim – and directly affected by the act complained of – Article 34 ECHR
- All domestic legal channels must have been exhausted - Article 35 ECHR
- Complainant cannot be anonymous.
- The claim must be substantially new and not a previously examined situation or case - Article 35 ECHR
- The claim cannot be incompatible with the ECHR
- Time limit for pursuing a claim is six months after the domestic court has handed down the final decision

Credit any other relevant point(s)

### **AO2 Indicative content**

Answers may include:

#### **Monika's abusive emails to John and the social media comments**

- The fact that there are several emails would satisfy the course of conduct
- Monika would be well aware that the content of the emails discussing his gender and sexuality would be distressing to John
- She would be guilty of harassment
- The letters and emails would also be covered by Malicious Communications Act. The messages are grossly offensive to John and cause him distress.
- She would therefore be guilty of this offence

#### **John taking his case to the ECtHR**

- John would only be able to take his case further if he has exhausted all the avenues of his claim in the domestic courts
- John would not be entitled to keep his identity anonymous, although he can apply to be referred to by his initial only in the case name
- The fact that his case has very limited case law may make it more likely to be heard by the ECtHR as it would be seen as substantially new
- John would also be likely to take the case to the ECtHR due to the fact that the domestic legislation is in conflict with the Convention although this is not always necessary

Reach any reasonable conclusion

Credit any other relevant point(s).

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

8\*

<b>SEE QUESTION 5 (ABOVE) - SAME QUESTION AND MARK SCHEME</b>
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9 Advise whether there has been good consideration in the contracts between Sally and the manager of the leisure centre, Sally and the band **and** Sally and Danny.

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

### AO1 Indicative content

Answers **may** include:

Explain that consideration is required from each party in order to make a binding contract

Explain when performance of an existing obligation can amount to good consideration:

- Performance of an existing contractual duty does not amount to consideration unless performance goes beyond that obligation - *Stilk v Myrick, Harley v Ponsonby*
- Explain that good consideration will be shown for a subsequent promise if continuing the work allows the promisor to avoid a specific detriment - *Williams v Roffey*
- Explain that performance of a public duty does not normally amount to good consideration - *Collins v Godefroy*
- Explain that exceeding a public duty does amount to good consideration for a promise of payment - *Glasbrook v Glamorgan, Ward v Byham*

Explain the rules for past consideration:

- Past consideration is not normally good consideration - *Re McArdle*
- There are exceptions to the rule in past consideration when the reward was always expected - *Stewart v Casey*
- There are exceptions to the rule if the promisee acted at the promisor's request - *Lampleigh v Braithwaite*

Credit any other relevant case(s)

Credit any other relevant point(s)

### AO2 Indicative content

Answers **may** include:

Sally and the manager of the leisure centre

- Identify that the manager has given good consideration in promising to allow the club to use a room

- Identify that Sally's consideration, using the centre throughout the previous year, is past and so is not good consideration
- Identify that when the club used the centre throughout the year it was not with the expectation that they could use the room for the party and so the exceptions to past consideration do not apply
- Conclude that the manager gives good consideration but Sally does not

#### Sally and the band

- Identify that Sally is giving good consideration when she promises to pay the band for performing
- Identify that in performing their existing obligation to play, the band will not normally be giving good consideration for the second promise of payment
- Identify that Sally is avoiding the detriment of having to find a new band when they threaten to pull out
- Conclude that the band has given good consideration for the second promise of payment

#### Sally and Danny

- Identify that Sally is giving good consideration when she promises to pay Danny
- Identify that Danny is performing a public duty and that this is not good consideration for a promise of payment
- Identify that it is good consideration if Danny goes beyond his public duty and this could be seen if he makes extra patrols when he would not normally do so

Reach any sensible conclusion.

Credit any other relevant point(s).

	<b>AO1</b>	<b>Mark</b>	<b>AO2 1a/1b</b>	<b>Mark</b>
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	<b>9–10</b>	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	<b>12–15</b>
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<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

**10** Advise whether the doctrine of privity will prevent Ben from suing BestFit for the money they owe him **and** Ben's family from claiming compensation for the disappointment of the poor hotel room.

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

### AO1 Indicative content

Answers **may** include:

Explain the rules of privity:

- That a contract can only be enforced by and against the parties to the contract - *Tweddle v Atkinson*

Explain the statutory exceptions:

- The Contracts (Rights of Third Parties) Act 1999 (C(RTP)A): allows a party who was intended to benefit from a contract, which they were not a party to, to enforce the contract in their own right
- Rights arise under the act under s.1(1)(a) where the contract expressly states that the third party shall have such a right, or s.1(1)(b) where the contract purports to confer a benefit on them - *Nisshin Shipping v Cleaves*
- Under s.1(3) the third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description
- The statute will not apply, by s.1(2), where it appears that the parties did not intend the term to be enforceable by a third party - *Prudential Assurance v Ayres*, *Dolphin & Maritime v Sveriges*, and the rights of a third party may be expressly excluded

Explain exceptions developed by the courts:

- Special cases, where a contracting party may sue on behalf of another who was intended to benefit from the contract in certain categories of case - *Jackson v Horizon Holidays*, *Woodar v Wimpey*

Credit any other relevant case(s).

Credit any other relevant point(s).

### AO2 Indicative content

Answers **may** include:

#### **Ben and BestFit**

- Identify that Ben is not part of the contract between A1 and BestFit and has not given consideration to the contract

- Identify that the contract does not appear to say that Ben has a direct right to enforce the contract against BestFit, and so s.1(1)(a) does not apply
- Identify that the contract purports to give Ben a benefit and so s.1(1)(b) will apply as long as his rights have not been excluded
- Identify that he is clearly identified in the contract as required by s.1(1)(3)
- Conclude that Ben will be able to bring an action directly against BestFit to recover the 5% of sales

**Ben's family and Saveloy Hotel**

- Identify that Ben's family do not have a contract with the Saveloy Hotel
- Identify that Ben's contract with the Saveloy may make no mention of a family joining him and that it may not be possible to identify them from the contract, therefore the C(RTP)A will not apply
- Identify that a contract to stay at a hotel is a special case as it is likely to be made by one person on behalf of a group
- Identify that in special cases the person who made the contract can sue for the losses incurred by those intended to benefit from the contract
- Conclude that the family members will not be able to sue but Ben will be able to sue on their behalf

Reach any sensible conclusion.

Credit any other relevant point(s).

	<b>AO1</b>	<b>Mark</b>	<b>AO2 1a/1b</b>	<b>Mark</b>
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	<b>9–10</b>	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	<b>12–15</b>
<b>Level 3</b>	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.	<b>6–8</b>	Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.	<b>8–11</b>
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<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

**11\* & 14\*** Discuss the extent to which the rules relating to acceptance and revocation of bilateral offers are in need of reform.

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

### AO1 Indicative content

Answers **may** include:

Explain when the court will find a bilateral offer:

- Where an unequivocal offer has been made to one person which requires agreement to accept

Explain the rules for acceptance of a bilateral offer:

- The postal rule means that a letter of acceptance takes effect from the moment it is posted - *Adams v Lindsell*
- The exceptions to the postal rule limit when it applies: it only applies if the offer was made by post - *Quenerduaine v Cole*; it may be excluded by the parties - *Holwell Securities v Hughes*
- Acceptance by instant means such as email take effect when and where the acceptance is received - *Entores v Miles Far East Corporation*, and the exact time of acceptance is subject to sound business practice and the parties' expectations - *Brinkibon v Stahag Stahl, Thomas v BPE Solicitors*
- Acceptance must be communicated - *Felthouse v Bindley*
- Acceptance may be by conduct - *Brogden v Metropolitan Railway*
- Where acceptance is required to be made in a certain way it will generally be sufficient if it is made in any other way which does not disadvantage the offeror - *Manchester Diocesan Council v Commercial and General Investments*

Explain the rules for revocation of a bilateral offer:

- Revocation must be before acceptance is communicated - *Byrne v Van Tienhoven*
- Revocation may be carried out by a reliable third party - *Dickinson v Dodds*
- A promise not to revoke an offer is not binding unless consideration has been given to keep the offer open - *Dickinson v Dodds*

Credit any other relevant case(s).

Credit any other relevant point(s).

### AO3 Indicative content

Answers **may** include:

Discuss the evidence for and against reform of the rules of acceptance:

- The postal rule made sense when it was first used as there were few alternatives for long distance communication, but it causes uncertainty when an acceptance takes place without the offeror being aware, and when it is still open to the offeror to revoke
- The sound business practice rule can lead to pragmatic decisions reflecting individual circumstances, but implementation of the rule may vary from judge to judge - *Thomas v BPE Solicitors*
- Silence cannot amount to acceptance – a fair rule but may not reflect the actual intention of the parties. In *Felthouse v Bindley* the nephew wished to accept his uncle's offer but this intention was defeated by a technicality
- The rule that acceptance may be by a different means than the one specified, as long as the offeror is not disadvantaged, leaves a lot of discretion to the judge in its implementation
- There may be a lack of clarity about the difference between a counter-offer and a mere enquiry

Discuss the evidence for and against reform of the rules of revocation:

- The rule that revocation must be before acceptance is clear and means that the parties should have certainty about whether or not a contract has been formed
- However, the rule may be hard to implement if the rules for acceptance are unclear – for example using the postal rule
- The rule that it can be communicated by a reliable third party allows for justice and prevents fraudulent acceptance, but there may be uncertainty about what constitutes a reliable third party
- The rule that consideration is required in order to keep an offer open may not be obvious to a non specialist

Suggest possible reforms to the law:

- Removal of the postal rule as it is no longer relevant or just treat letters the same as emails so that acceptance takes effect when and where it arrives
- Develop a more definite rule than 'sound business dealings', for example ensure that businesses state out of hours times when a communication will not take effect
- Enforce definite promises not to revoke an offer, regardless of whether consideration has been given. Consideration has been disregarded in privity reforms and so there is no reason why it couldn't be here

Reach any sensible conclusion.

Credit any other relevant point(s).

12 Advise whether Sue can argue that her contracts to pay extra money for the fuel **and** to buy the service deal can be made void for economic duress.

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

### AO1 Indicative content

Answers **may** include:

Explain the consequences of economic duress on a contract - that it becomes voidable:

- Explain that economic duress is pressure which goes beyond the usual rough and tumble of business dealings - *Interfoto v Stiletto Visual Programmes*
- Explain that to claim economic duress there must be an unlawful threat, that this can be to breach a contract - *Atlas Express v Kafco* or to commit a tort - *Universal Tankships v ITWF*
- Explain that ordinary commercial pressure will not amount to an unlawful threat or to duress. This could be a threat not to renew a contract or to let a company go bankrupt - *The Siboen and Sibotre, CTN Cash and Carry v Gallagher* or merely an indication that a party is unable to continue with a contract - *William v Roffey*
- Explain that the threat must have vitiated the consent of the other party and left them with no realistic alternative but to comply with the demand - *Atlas Express v Kafko, Pao On v Lau Yiu Long*
- Explain that the party seeking to claim duress must have protested at the time and must not hesitate in taking legal action to avoid the contract - *Pao On, The Atlantic Baron, DSND Subsea v Petroleum Geo-Services*
- Explain that if a party seeks legal advice before complying with a threat they may be seen as having taken a business decision and be unable to claim duress - *Pao On v Lau Yiu Long*
- Explain that the right to end a contract for duress may be lost through lapse of time - *The Atlantic Baron*

Credit any other relevant case(s).

Credit any other relevant point(s).

**AO2 Indicative content**

Answers **may** include:

Sue and the extra money for the fuel

- Identify that the threat to breach the 2 year fixed price deal is illegitimate as it amounts to a breach of contract
- Identify that Sue is left with no realistic alternative but to agree to pay the extra as there are no other suppliers of the fuel
- Identify that Sue obtained legal advice before agreeing so she can be said to have made a voluntary business decision
- Identify that Sue waited for a further 6 months before ending the contract and this would amount to a lapse of time and may prevent a claim for economic duress
- Come to a reasonable conclusion on the facts

Sue and the service deal

- Identify that Sue complained at the time and so it was clear to AB Boilers that she was not entering the service contract of her own free will
- Identify that the threat not to renew the contract after 2 years is legitimate business pressure
- Identify that although she is left with no realistic alternative but to agree, there is probably no economic duress

Reach any sensible conclusion

Credit any other relevant point(s).

	<b>AO1</b>	<b>Mark</b>	<b>AO2 1a/1b</b>	<b>Mark</b>
<b>Level 4</b>	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.	<b>9–10</b>	Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.	<b>12–15</b>
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<b>Level 0</b>	No response or no response worthy of credit.	<b>0</b>	No response or no response worthy of credit.	<b>0</b>

**13** Advise whether Rajinder will be able to get orders from the court forcing Harry **and** Eva to perform their contracts **and** an order to prevent XY from completing the building contract for Fred.

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

#### **AO1 Indicative content**

Answers **may** include:

Explain when specific performance will be awarded:

- It may be awarded where damages are inadequate e.g. for unique property such as land
- It will be awarded where damages would only be nominal - *Beswick v Beswick*

Explain when it will not be awarded:

- Explain that specific performance is an equitable remedy and it will be awarded at the court's discretion
- In contracts which require monitoring of an ongoing obligation - *Ryan v Mutual Tontine*
- Where it would cause hardship - *Patel v Ali*
- Where the contract was obtained unfairly or through taking advantage of the other party's mistake - *Walters v Morgan*

Explain when injunctions will be awarded:

- Injunctions may be awarded to prevent a future breach of contract or to force someone to do something - *Lauritzencool v Lady Navigation*

Explain when injunctions will not be awarded:

- Where it would be unfair to the defendant - *Shell v Lostock Garage*
- If the effect is to give specific performance where it would not normally be granted e.g. an employment contract - *Page One Records v Britten*

Credit any other relevant point(s).

Credit any other relevant case(s).

**AO2 Indicative content**

Answers **may** include:

Rajinder and the painting from Harry

- Identify that a painting is a unique item and Rajinder will not be able to buy the same painting elsewhere
- Identify that Harry is selling the painting for far less than it is worth but that this was not known to Rajinder when he made the contract and so he is not exploiting Harry
- Conclude that Rajinder will be able to claim specific performance for the painting

Rajinder and XY builders

- Identify that the garage is not a unique item and that damages will be an adequate remedy as Rajinder can employ other builders to do the work
- Identify also that if specific performance was granted the court would be in the position of having to supervise the work being done as this is an ongoing obligation
- Identify that an injunction against XY would have the effect of granting specific performance of the contract with Rajinder
- Conclude that neither an injunction or specific performance will be granted

Rajinder and the house from Eva

- Identify that property is a unique item and so specific performance can be ordered
- Identify that Eva has become ill since making the contract and it may cause hardship to require her to move as she is reliant on her sister who lives next door
- Identify that Harry is not planning to use the property as a residence but intends to knock it down so no hardship will be caused if specific performance is not awarded
- Conclude that specific performance will not be granted in this case

Reach any sensible conclusion.

Credit any other relevant point(s).

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

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

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