

Teacher Support Materials

Section C Exemplar Responses

GCE Law

OCR Advanced Subsidiary GCE in Law H124

OCR Advanced GCE in Law H524

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1 Introduction

This material relates to the Section C questions of units G143: Criminal Law, G145: Law of Contract and G147: Law of Torts.

It further exemplifies the specimen assessment materials and the exemplar candidate responses in the Teacher Support Materials for each unit.

It is important to make the point that the Teacher Support Materials play a secondary role to the Specification itself. The Specification is the document on which assessment is based and specifies what content and skills need to be covered in delivering the course. At all times, therefore, this teacher support should be read in conjunction with the Specification. If clarification on a particular point is sought then that clarification should be found in the Specification itself.

OCR recognises that the teaching of this qualification will vary greatly from school to school and from teacher to teacher. With that in mind, these Teacher Support Materials are offered as guidance.

2 Unit G143 Criminal Law

Question

Dennis intends to steal money from his father, Albert's, house to buy drugs. Dennis enters Albert's house while Albert is out using a key which Albert has given him. There is no money in the house and, in a rage, Dennis smashes the television. Albert returns unexpectedly and Dennis punches him breaking Albert's jaw.

- A. Dennis cannot be convicted of burglary because he is not a trespasser.
- B. Dennis cannot be convicted of burglary under s9(1)(a) Theft Act 1968 because he did not steal any money from the house.
- C. Dennis can be convicted of burglary under s9(1)(b) Theft Act 1968 because he smashed the television.
- D. Dennis can be convicted of burglary under s9(1)(a) Theft Act 1968 because he broke his father's jaw.

Evaluate the accuracy of each of the four statements, A, B, C and D individually, as they apply to the facts in the above scenario. [20]

Mark scheme

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 2

[20]

In the case of A:

- Reason that burglary requires that the defendant enters as a trespasser with the intent to commit one of three ulterior offences or enters and goes on to commit one of two offences
- Reason that a defendant can become a trespasser by exceeding his permission to enter
- Conclude that it will not matter that Dennis has a key – the statement is inaccurate

In the case of B:

- Reason that the s9(1)(a) offence requires that the defendant enters a building as a trespasser with the intent to commit one of three ulterior offences
- Reason that Dennis has entered as a trespasser and intended to commit an accepted ulterior offence, theft, so it does not matter if he does not go on to steal
- Reason also the possibility of conditional intent
- The statement is inaccurate

In the case of C:

- Reason that s9(1)(b) requires that the defendant having entered as a trespasser goes on to steal or commit GBH
- Reason that Dennis has entered as a trespasser but goes on to commit criminal damage, not theft or GBH
- Conclude that Dennis could not be convicted under s9(1)(b) and the statement is inaccurate

In the case of D:

- Reason that, while GBH is also an accepted ulterior offence, Dennis did not enter with that intention
- Conclude that Dennis cannot be convicted on this basis under s9(1)(a) and that the statement is inaccurate
- Reason that breaking Albert's jaw is likely to be GBH
- Credit any reasoning that Dennis may as a result be convicted under s9(1)(b)

Example Grade A Answer:

Statement A

It is inaccurate to say that Dennis could not be classed as a trespasser. AO2 In tort it is possible for a person to enter lawfully but become a trespasser. AO2 In crime a person must enter as a trespasser but all lawful visitors enter subject to restrictions and if they exceed the genuine and permitted purpose for their visit then they are classed as trespassers. AO2 Even though Dennis has a key to his father's house, his father would not give him permission to come onto the property to steal his property so Dennis could be a trespasser and a burglar.

Statement B

S9(1)(a) burglary requires that the defendant enters a building or a part of a building as a trespasser with the intent of committing one of three accepted ulterior offences, theft, GBH or criminal damage. Since Dennis has entered as a trespasser, having exceeded the lawful purpose of his visit AO2 and since his father's house is clearly a building AO2 Dennis satisfies the definition as he also intends to commit one of the ulterior offences. AO2 Because of the doctrine of conditional intent it makes no difference whether he does in fact go on to steal. AO2 He has fulfilled the criteria for burglary with intent. AO2

Statement C

Criminal damage does not count. AO2 There can be no conviction. AO2

Statement D

Dennis can be convicted of 9(1)(b) but not 9(1)(a). AO2 He entered with the intention of stealing not of committing GBH on his father AO2 so the statement is inaccurate. AO2

Examiner's commentary

General comments

The candidate has focused on the critical issue in each question, although the response to Statement C is fairly abrupt and lacking detailed reasoning. The candidate applies the principles of law. The candidate does not use any cases and this is entirely appropriate for this style of question.

The response is a grade A because of the quality and the precision of the AO2. The candidate has a clear appreciation of the law and its applicability in each scenario.

For Statement A the candidate clearly understands the key elements of trespass for the purposes of burglary, and is obviously aware of the case law on exceeding permission, has reasoned appropriately and, even though an evaluation of the statement is made at the beginning the addition of this correct conclusion allows the candidate to achieve Level 5.

The answer to Statement B is very full and very detailed. The candidate shows a clear and precise understanding of all of the elements of the offence and has reasoned appropriately in the context of the scenario. A correct conclusion is also offered and so the candidate achieves Level 5 again.

The answer to Statement C is a bit terse and brief but there is some basic understanding in the reasoning and the conclusion is sustainable. However, the candidate has failed to give full explanations or develop the reasoning so can reach no higher than Level 2.

For Statement D the candidate has identified significant elements of the burglary with intent offence. The candidate has implied that, like stealing, GBH would fall under s(1)(a) but that Dennis has not entered intending this offence. The candidate also gains credit for recognising, though not reasoning, that s9(1)(b) is a possibility. However, the candidate has not identified that Dennis enters as a trespasser, nor actually stated that the ulterior offences for s9(1)(a) include GBH, and implies rather than concludes that the statement is inaccurate so cannot achieve Level 5.

Nevertheless, for understanding of all the main issues the candidate achieves Level 4.

Mark

AO2	16
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Stretch and challenge

There is good evidence of stretch and challenge here. The candidate has good perception and incisive legal reasoning skills and also generally understands the demands of the different style of assessment. However, the candidate has not sustained the high quality shown in Statements A and B across the whole exercise and is unable to attain a Level 5 mark over all.

Examiner's advice

The candidate shows great confidence in this style of assessment and is able to score very high marks through high level legal reasoning skills. With more attention to detail for Statement C, as indicated above, and with a slightly more extensive answer to Statement D the candidate could have achieved maximum marks.

Example Grade E Answer:

Statement A

Dennis is a trespasser AO2 as he intended to steal from his father. AO2

Statement B

Dennis has the intent to steal so it doesn't matter if he does steal. AO2 So he can be convicted.
AO2

Statement C

s9(1)(b) is impossible. AO2 He can't be convicted. AO2

Statement D

Dennis can't be convicted under s9(1)(a) AO2 because although he entered his Dad's house as a trespasser because he intended to steal going beyond what his Dad would have consented to AO2 he has done something different. So the statement is wrong. AO2

Examiner's commentary

General comments

The logic of the candidate varies. The responses to Statement A and Statement B have some limited reasoning, and some limited understanding of at least one essential element of the offences appropriate in the circumstances. Statement C has a correct conclusion but with no real legal reasoning, only bare recognition. Statement D, on the other hand, while lacking full explanation of the area, includes some good reasoning of more than one aspect of the offence relevant to the scenario.

In answer to Statement A, the candidate has given a correct conclusion, and used limited reasoning showing some implied understanding of an essential element of the offence. However, reasoning is limited only for Level 2.

Statement B shows implied understanding of theft being an ulterior offence and of the principle of conditional intent, but the reasoning is limited so the candidate can only reach Level 2.

Statement C is very curt, and while in essence it is possibly correct with understanding of sorts, there is no legal reasoning apparent so the candidate cannot achieve more than Level 1.

In answer to Statement D, the candidate understands the nature of burglary under s9(1)(a), the need to enter as a trespasser with the intent of committing an accepted ulterior offence, and recognises that theft is such an offence, and concludes correctly that Dennis has not committed the offence that he intended to when he entered as a trespasser. The candidate also gains credit for recognising, though not reasoning, what makes Dennis as a trespasser. However, the candidate has not identified that Dennis enters as a trespasser, and so achieves Level 4.

The answer overall can only reach the top of Level 2, 'some of the more obvious points'.

Mark

AO2 8

Stretch and challenge

As would be expected from a grade E answer there is no evidence of stretch and challenge. The candidate probably has understanding of the area and there is limited reasoning in some of the four answers. However, there is no detailed legal reasoning and so the higher level skills are not apparent to any extent.

Examiner's advice

For Statements A and B, the candidate clearly understands some of the essential elements of the individual offences but needed much more developed reasoning to secure high marks. A much higher mark could have been achieved in A by identifying the nature of the s9(1)(a) offence, and identifying the significance of the ulterior offences more directly. In Statement B again a fuller recognition of the offence and a more direct reference to conditional intent with these reasoned against the scenario was needed for high marks.

The answer to Statement C lacks legal reasoning. The recognition that s9(1)(b) is impossible and that the statement is therefore inaccurate is creditable but is very limited. Explanation of the requirements of the s9(1)(b) offence, of the need for entry as a trespasser and more detailed reasoning that the offence that Dennis has gone on to commit does not fall under this type of burglary would have secured higher marks.

The candidate has made a good attempt at Statement D and with more development Level 5 could have been achieved, for instance recognition of the possibility of a conviction under s9(1)(b).

3 Unit G145 Law of Contract

Question

Stan advertised his antique oval table for sale in the local newspaper. A man, falsely calling himself George Bush, called at Stan's house and agreed to buy the table for £3,000. Stan accepted a cheque from the man because once he heard the man's name Stan believed that he was selling the table to the American President. The cheque later bounced. Stan is now trying to recover the table from Mabel who innocently bought it from the man calling himself George Bush.

- A. The contract between Stan and George Bush will be declared void for mutual mistake.
- B. The contract between Stan and George Bush will be declared void for common mistake.
- C. The contract between Stan and George Bush may be set aside on the basis of a claim of *non est factum* because the situation satisfies all elements of such a claim.
- D. The contract between Stan and George Bush will be declared void for unilateral mistake.

Evaluate the accuracy of each of the four statements, A, B, C and D individually, as they apply to the facts in the above scenario. [20]

Mark scheme

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 2

[20]

In the case of A:

- Reason that a mutual mistake is where both parties are mistaken but are making different mistakes and are therefore at cross purposes
- Reason that in order for the contract to be declared void the court must be unable to make any meaningful sense of the agreement
- Reason that here only one party is actually mistaken so the contract cannot be declared void on that basis

In the case of B:

- Reason that a common mistake is where both parties are mistaken and both are making the same mistake
- Reason that a common mistake can be about the existence of the subject matter when the contract was formed (*res extincta*) or about the ownership of the property when the contract was formed (*res sua*) or in rare circumstances where the quality of the contract as performed would be completely different to that anticipated by both parties in the contract
- Reason that here only one party is actually mistaken so common mistake cannot be applied to void the contract

In the case of C:

- Reason that *non est factum* is a specific plea involving a document that has been signed by mistake
- Reason that for the pleas to succeed the document must have been radically different to what it was represented as being by the other party and that the party signing has not been negligent in any way
- Reason that the facts here do not suggest that such a mistake has occurred
- Conclude that *non est factum* cannot be used to set aside the contract

In the case of D:

- Reason that a unilateral mistake is one where only one party is mistaken, the other party knows of the mistake and is taking advantage of it
- Reason that the mistake can be as to the identity of the other party
- Reason that the mistake must be operative for the contract to be declared void so the identity of the other party must be material to the making of the contract
- Reason that in face to face dealings the mistaken party is usually said to be contracting with the person in front of him and the mistake is only as to the creditworthiness of that party
- Reason that this mirrors the situation here

- Reason that while there is a unilateral mistake it is unlikely that the contract will be declared void

Example Grade A Answer:

Statement A

This statement is incorrect. AO2 A mutual mistake is when both parties are mistaken but at cross purposes. Here only Stan is mistaken and the man calling himself George Bush is encouraging the mistake so it cannot be a mutual mistake. AO2 So the contract cannot be declared void on this basis. AO2

Statement B

A common mistake only occurs when both parties are making the same mistake, which would have to be about the existence of the property or about the true ownership of the property for the contract to be declared void. As only Stan is mistaken in this situation it could not be considered to be a common mistake. AO2 Even if the mistake was shared by both parties the contract would not be declared void unless it concerned the existence or ownership of the property. If it was only a mistake about the quality of the bargain made then the contract would continue and not be declared void AO2 The statement is inaccurate. AO2

Statement C

There can be no claim of non est factum here. AO2 Nothing was signed so the statement is inaccurate. AO2

Statement D

This is a unilateral mistake. AO2 The mistake is one made by one party to the contract only, Stan, AO2 and the man calling himself George Bush is hoping that Stan will mistake him for the American president as he knows that the cheque that he gives Stan will bounce. AO2 Unilateral mistakes are often about the identity of the other party to the contract and that is what the mistake is about here. AO2 In a unilateral mistake the contract is made with the person in front of you.

Examiner's commentary

General comments

The candidate has focused on the critical issue in each question, although the response to Statement C is fairly abrupt and lacking detailed reasoning. The candidate applies the principles of law. The candidate does not use any cases and this is entirely appropriate for this style of question.

The response is a grade A because of the quality and the precision of the AO2. The candidate has a clear appreciation of the law and its applicability in each scenario.

For Statement A the candidate clearly understands the key elements of a mutual mistake that both parties are mistaken and, for there to be any impact on the contract, that they must have been at cross purposes. The candidate has reasoned appropriately and, even though an evaluation of the statement is made at the beginning the addition of this correct conclusion allows the candidate to achieve Level 5.

The answer to Statement B has full reasoning. The candidate shows a clear and precise understanding of the elements of common mistake and relates this precisely to the scenario. The candidate also recognises that not all common mistakes in any case result in the contract being declared void. A correct conclusion is also offered and so the candidate achieves Level 5 again.

The answer to Statement C is a bit terse and brief but the reasoning and conclusion though limited are correct. However, the candidate has failed to develop the reasoning beyond connect it with the signing of a document so can reach no higher than Level 2.

For Statement D the candidate has identified the significant elements of unilateral mistake in detail and applies them to the scenario. Unfortunately the candidate is inconclusive and has not considered whether the contract would be declared void so cannot get into the highest level. Nevertheless, for understanding the main issues the candidate achieves Level 4.

Mark

AO2	16
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Stretch and challenge

There is good evidence of stretch and challenge here. The candidate has good perception and incisive legal reasoning skills and also generally understands the demands of the different style of assessment. However, the candidate has not sustained the high quality shown in Statements A and B across the whole exercise and is unable to attain a Level 5 mark over all.

Examiner's advice

The candidate shows great confidence in this style of assessment and is able to score very high marks through high level legal reasoning skills. With more attention to detail in Statement C, as indicated above, and with the addition of a conclusion to Statement D the candidate could have achieved maximum marks.

Example Grade E Answer:

Statement A

It is not mutual mistake. AO2 Only Stan is mistaken not the other man. AO2

Statement B

It is not a common mistake. AO2 They haven't both mistaken whether the table exists at the time when they made the contract. AO2

Statement C

This is not non est factum. AO2

Statement D

This is unilateral mistake AO2 because only one party has to be mistaken which is what's happening here. AO2 George Bush is trying con Stan that he is the American president so he can get the car because he knows the cheque is going to bounce. AO2 Stan should have checked out who he really was. AO2

Examiner's commentary

General comments

The logic of the candidate varies. The responses to Statement A and Statement B have limited reasoning, and limited understanding of at least one essential element of each mistake appropriate in the circumstances. Statement C has a correct response but with no real legal reasoning, only bare recognition of an aspect of mistake. Statement D, on the other hand, while lacking full explanation of the area, includes good reasoning of more than one aspect of mistake relevant to the scenario.

In answer to Statement A the candidate has given a correct conclusion, and used limited and implied reasoning of an essential element of mutual mistake i.e. that it is not a mistake made by one party only. However, reasoning is limited only for Level 2.

The answer to Statement B shows understanding of the requirement that a common mistake must be made by both parties and that it would concern the existence of the subject matter of the contract for the contract to be void. However, reasoning is only limited so the candidate can only reach Level 2.

The answer to Statement C is very curt, and while in essence it is possibly correct, there is no legal reasoning apparent so the candidate cannot achieve more than Level 1.

For Statement D the candidate understands the nature of unilateral mistake, that it is a mistake made by one party that it is generally linked to fraudulent behaviour by the other party, and the requirement that it can be to do with the identity of the other party and that the mistaken party should check the identity of the other party. So there is good understanding but reasoning does not stretch as far as reaching a conclusion so the candidate can achieve Level 4 but not Level 5.

The answer overall can only reach the top of Level 2, 'some of the more obvious points'.

Mark

AO2	8
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Stretch and challenge

As would be expected from a grade E answer there is no evidence of stretch and challenge. The candidate probably has understanding of the area and there is limited reasoning in some of the four answers. However, there is no detailed legal reasoning and so the higher level skills are not apparent to any extent.

Examiner's advice

For Statements A and B the candidate clearly understands some of the essential elements of mutual mistake and common mistake respectively but needed much more developed reasoning to secure high marks. A much higher mark could have been achieved in Statement A by identifying that a mutual mistake is where the two parties are both mistaken but at cross purposes and beyond any compromise for the contract to be void. In Statement B a more developed reasoning of the need for both parties to make the same mistake, possibly about the existence of the subject matter for the contract to be declared void, as the candidate has impliedly referred to, and applying these points to the scenario, was needed for high marks.

The answer to Statement C lacks any legal reasoning. The candidate has reached a conclusion but needed to identify that the mistake was not mistakenly signing a document that was different to the one that the party thought he was signing and that there was no carelessness on his part before a high mark could have been achieved.

The candidate has made a good attempt at Statement D, shows good understanding of the various aspects of unilateral mistake, and probably only needed a conclusion to achieve Level 5.

4 Unit G147 Law of Torts

Question

Alison tells her husband Paul that she is leaving him. Paul asks her for a farewell kiss and she agrees. Paul holds Alison firmly round the waist. After the kiss Alison says 'Now let me go'. Paul does not release her and replies 'You know I'll never let you leave me Alison.'

- A. Paul will be found liable under the tort in *Wilkinson v Downton*.
- B. Paul cannot be found liable in assault.
- C. Paul will be found liable in battery.
- D. Paul may be found liable in false imprisonment.

Evaluate the accuracy of each of the four statements, A, B, C and D individually, as they apply to the facts in the above scenario. [20]

Mark scheme

Mark Levels	AO2
Level 5	17-20
Level 4	13-16
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 2

[20]

In the case of A:

- Reason that the tort of *Wilkinson v Downton* covers intentional indirect harm
- Reason also that the successful cases have involved the causing of psychiatric harm
- Reason that the action here is intentional but is also direct
- Conclude that the tort cannot apply

In the case of B:

- Reason that assault is causing a person to apprehend an imminent battery
- Reason that it is the belief in the existence of the threat by the victim that is important rather than whether it will be carried out
- Reason that traditionally words alone were insufficient to constitute an assault, the words must be accompanied by some threatening actions
- Reason that this position has now changed in criminal law where it is possible for a conviction in respect of words or even silence
- Reason that the words here together with the fact that Paul is holding Alison firmly round the waist at the time makes it perfectly plausible that she could be put in fear of imminent force
- Conclude that liability for assault is possible

In the case of C:

- Reason that battery is the direct and intentional application of unwanted force to another person
- Reason that it is arguable whether hostility is a necessary element of the tort
- Reason that consent is a defence to battery
- Reason that Alison has consented to the initial touching here and the issue is whether continuing to hold her becomes a battery
- Conclude that a successful action for battery is unlikely

In the case of D:

- Reason that false imprisonment is intentional total bodily restraint
- Reason that there is no actionable tort if there is any safe means of escape
- Reason that the only defences are based on lawful justification for the restraint
- Reason that there is no lawful justification here and that the issue is whether Alison has a safe means of escape which may depend on the relative strength of the parties
- Conclude that liability for false imprisonment is a possibility

Example Grade A Answer:

Statement A

The statement is wrong. AO2 Wilkinson v Downton requires intentional indirect harm. While Paul's actions maybe intentional they are all direct. AO2 Besides this we are not told that she has suffered a psychological injury which is also usually required for the tort. AO2

Statement B

An assault requires intentionally and directly causing another person to apprehend an imminent battery. As Paul holds onto Alison when he says that he will never let her leave him it is reasonable that she may feel that he is going to harm her. AO2 Besides this where the threat comes from words this can amount to assault if it is accompanied by threatening actions. AO2 In this case holding onto her could be seen as threatening behaviour. AO2 If tort was to follow recent criminal law the words alone could amount to an assault. The statement is inaccurate. AO2

Statement C

There is no battery here even though his actions are intentional and direct. AO2 Alison has allowed Paul to kiss her. AO2

Statement D

There is not likely to be a false imprisonment here so the statement is inaccurate. AO2

There is a total bodily restraint of sorts, since Paul has his arms round Alison's waist AO2 but Alison probably can escape without harm. AO2 If she felt threatened so that there was not a safe means of escape then there could be a false imprisonment.

Examiner's commentary

General comments

The candidate has focused on the critical issue in each question, although the response to Statement C is fairly abrupt and lacking detailed reasoning. The candidate applies the principles of law. The candidate does not use any cases and this is entirely appropriate for this style of question.

The response is a grade A because of the quality and the precision of the AO2. The candidate has a clear appreciation of the law and its applicability in each scenario.

For Statement A the candidate clearly understands the key elements of the tort, including the customary requirement for psychological harm, has reasoned appropriately and, even though an evaluation of the statement is made at the beginning the addition of this correct conclusion allows the candidate to achieve Level 5.

The answer to Statement B is very full. The candidate shows a clear and precise understanding of the elements of assault as they relate to the scenario. The candidate also recognises the significance of words in assault and that tort has not yet followed crime on the issue of whether words alone can amount to an assault. A correct conclusion is also offered and so the candidate achieves Level 5 again.

The answer to Statement C is a bit terse and brief but the reasoning and conclusion are sustainable in the case of the kiss. However, the candidate has failed to consider the potential battery in Paul holding onto Alison after she withdraws consent, and there is nothing to say that she consented to that in the first place, only to the kiss, so the candidate can reach no higher than Level 2.

For Statement D the candidate has identified a significant element of the tort but is rather inconclusive and had not considered whether there is any form of justification. Nevertheless, for understanding of what the main issue is the candidate achieves Level 4.

Mark

AO2	16
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Stretch and challenge

There is good evidence of stretch and challenge here. The candidate has good perception and incisive legal reasoning skills and also generally understands the demands of the different style of assessment. However, the candidate has not sustained the high quality shown in Statements A and B across the whole exercise and is unable to attain a Level 5 mark over all.

Examiner's advice

The candidate shows great confidence in this style of assessment and is able to score very high marks through high level legal reasoning skills. With more attention to detail in response to Statement C, as indicated above, and with a slightly more extensive answer to Statement D the candidate could have achieved maximum marks.

Example Grade E Answer:

Statement A

It is not Wilkinson v Downton. AO2 Paul's actions are direct. AO2

Statement B

Paul has assaulted Alison. AO2 His words now can amount to an assault, even silent telephone calls can.

Statement C

This is battery. AO2 It is unwanted contact. AO2

Statement D

This is a false imprisonment AO2 because when Paul will not let Alison go he is creating a total bodily restraint which is what is required and he has no legal justification to do this. AO2 She hasn't got a safe means of escape. AO2

Examiner's commentary

General comments

The logic of the candidate varies. The responses to Statement A and Statement B have limited reasoning, and limited understanding of at least one essential element of each tort appropriate in the circumstances. Statement C has a correct response but with no real legal reasoning, only bare recognition of an aspect of the tort. Statement D, on the other hand, while lacking full explanation of the area, includes good reasoning of more than one aspect of the tort relevant to the scenario.

In answer to Statement A the candidate has given a correct conclusion, and uses limited reasoning showing understanding of an essential element of the tort. However, reasoning is limited only for Level 2.

The response to Statement B shows understanding of the significance of words to battery, though has not referred to the need for threatening action and has not distinguished between the law in tort from that in crime so can only reach Level 2.

The response to Statement C is very curt, and while in essence it is possibly correct with understanding of sorts, there is no legal reasoning apparent so the candidate cannot achieve more than Level 1.

For Statement D the candidate understands the nature of false imprisonment, the need for total restraint, no safe means of escape, and the fact that lawful justification is a possible defence which is not applicable in the circumstances, so the candidate can achieve Level 4.

The answer overall can only reach the top of Level 2, 'some of the more obvious points'.

Mark

AO2 8

Stretch and challenge

As would be expected from a grade E answer there is no evidence of stretch and challenge. The candidate probably has understanding of the area and there is limited reasoning in some of the four answers. However, there is no detailed legal reasoning and so the higher level skills are not apparent to any extent.

Examiner's advice

For Statements A and B the candidate clearly understands some of the essential elements of the individual torts but needed much more developed reasoning to secure high marks. A much higher mark could have been achieved in Statement A by identifying that *Wilkinson v Downton* requires intentional conduct which Paul exhibits, and also generally psychological harm which does not appear to be. In Statement B, recognition of the need for direct intention to cause apprehension of imminent harm and applying this to the scenario was needed for high marks, and the candidate could have identified that tort has not yet matched the point on words alone

present in criminal assault.

The answer to Statement C lacks legal reasoning. The recognition of unwanted conduct is very limited reasoning. Application of the requirements of direct and intentional unlawful contact to the scenario, considering whether Paul's holding Alison is other than a 'mere brush of life' or some comment on hostility would have secured higher marks.

The candidate has made a good attempt at Statement D and with more development Level 5 could have been achieved.