



GCE MARKING SCHEME

SUMMER 2016

**LAW – PAPER LA4 (A2)
UNIT 4: UNDERSTANDING LAW IN CONTEXT:
FREEDOM, THE STATE AND THE INDIVIDUAL**

**OPTION 2: CRIMINAL LAW & JUSTICE
1254/02**

INTRODUCTION

This marking scheme was used by WJEC for the 2016 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

It is hoped that this information will be of assistance to centres but it is recognised at the same time that, without the benefit of participation in the examiners' conference, teachers may have different views on certain matters of detail or interpretation.

WJEC regrets that it cannot enter into any discussion or correspondence about this marking scheme.

GENERAL MARKING GUIDANCE

General Instructions to LA4-02 Marking Scheme

Please refer to the marking matrix sent to you by the WJEC and apply the marks directed. The matrix reflects the assessment objectives for A2 Level Law and the marks are distributed precisely on the basis of these objectives. The various levels in the mark scheme according to the assessment objectives will be standardised at the Examiners' Meeting on the basis of sample scripts. At this time we can determine precisely what is reasonable in terms of the various components in the mark scheme. The marking instructions attached therefore, represent only a broad outline as to what is required.

You will note that marks are allocated for spelling, grammar and syntax. All questions are marked out of 25. You will be required to provide 10 scripts, that is, a cross-section of marks for the Chief Examiner very early in your marking work. You may be instructed to alter your pattern of marking as a result of this scrutiny. All Assistant Examiners shall do this in order to ensure that standards are acceptable and consistent. A second group of scripts will be required. If there is anything unusual about an answer or about the script please make a note on the front cover for the Chief Examiner. Borderline scripts can be read again at the grading stage and such notes will be helpful. Please initial all scripts in the box provided. If you have any queries then please contact the **Principal Examiner**. If you have any administrative queries - contact the **Subject Officer Joanna Lewis on (029) 20265167 or e-mail joanna.lewis@wjec.co.uk**

Whilst comments on each question are not required you are nevertheless requested to isolate your final mark into the categories anticipated in the mark scheme. Please examine the rubric carefully as candidates are only required to answer **two** questions from Section A and **one** question from Section B.

Principles of Marking
(for LA4-02)

1. The assessment is based upon four levels of attainment for Objectives AO1, AO2 and AO3, as indicated in the mark scheme.
2. The levels of assessment used in the mark schemes indicate the relative value of knowledge, understanding and skills which are relevant and may occur in the answers. In order to allow for different approaches by the candidates and to achieve flexibility, the sub-totals of each assessment objective must be indicated at the end of each answer, in accordance with A2 suggested weighting.
3. The range of marks allocated to each of the levels for each of the objectives is recorded in the mark schemes.

Levels-of-response marking is to be used in all questions and parts of questions. The whole response is to be read and then, taking everything into account, allocate to the level of 'best fit' on the mark scheme. There is usually a band of marks allocated to each level: discrimination will be made with reference to the development of the answer.

4. The question specific mark scheme indicates the kind of material and analysis that a candidate might display in his/her answer. This is neither prescriptive nor exhaustive but indicates the general level likely to be achieved by a 17-18 year old under examination conditions having followed an appropriate course of study. Other approaches of equal merit will be awarded at the appropriate level. The question specific mark scheme is NOT a set of Model answers and every point does not need to be covered in order to achieve full marks.
5. Examiners should not hesitate to award full marks to answers which are well argued and well presented or which show a freshness of treatment even if they do not fall fully within the suggested marking scheme, provided the answer demonstrates a high level of understanding and argument relevant to the question as set.
6. Wholly narrative or descriptive answers to questions requiring analysis and evaluation can only receive marks for Assessment Objective 1 (Knowledge and Understanding) and full marks can be awarded within this section if the answer so justifies.
7. For evaluation, at the top for AS level, it will be sufficient for candidates to demonstrate a sound analysis of reasoning and arguments in relation to legal issues. Candidates at the top level of A2 will be expected to have progressed beyond this, as demonstrated by the level 4 descriptor for Assessment Objective 2 in the A2 mark schemes.

MARKING INSTRUCTIONS

ASSESSMENT

1. Each question is to be marked according to the stated level descriptors in the mark schemes. In such marking, it is essential that the whole response to a part-question is read and then allocated to the level it best fits. Examiners may wish to underline significant features or make a brief comment to justify the level allocated.
2. Where a band of marks is allocated to a level, discrimination will be made with reference to the development of the response.
3. Aim to use the full mark range. Do not hesitate to award maximum marks to responses which meet the criteria of the relevant level descriptor in the Matrix. Equally, responses which are completely irrelevant should be awarded no marks.
4. Apply the principle of salvage between part-questions in an essay so that due credit is given for relevant knowledge, understanding and evaluation, even if the material is misplaced.

METHOD OF MARKING

5. No half marks or bonus marks are to be awarded under any circumstances.
6. A ringed total, indicating the total marks gained in responses to all parts of a question, should be shown at the end of each complete answer.
7. Any written comments on scripts should be factual, preferably using the terminology found in the level descriptors. No reference should be made to the possible grade achieved and no derogatory comment should be made. **Always mark using a red pen. Pencil or any other colour is not acceptable.**
8. The key to fair marking is consistency. Do not change your marking pattern once scripts have been despatched to the WJEC.

SAMPLE SCRIPTS

9. Send ten scripts to the Principal Examiner by first class letter post within 60 hours of the standardisation meeting of examiners. Do not send any scripts to the WJEC until the Principal Examiner contacts you by phone or letter. **Please ensure that you send in to WJEC at least 70-100 scripts well in advance of the return of scripts date to ensure that the WJEC can select specimen scripts for standardisation purposes.**

EXAMINER'S REPORT

10. A written question-by-question report on the performance of candidates, as evidenced in the scripts you have marked, should be sent to the Principal Examiner within FIVE DAYS of the stated date for completion of marking. Your report is most helpful if it contains comments on frequent misunderstandings, weaknesses, common errors and questions which caused difficulties, as well as positive qualities, good practice and encouraging features. A comment that a particular question was answered well or badly is of no value unless accompanied by some specific explanation.

LAW – PAPER LA4 (A2)

**UNIT 4: UNDERSTANDING LAW IN CONTEXT:
FREEDOM, THE STATE AND THE INDIVIDUAL**

OPTION 2: CRIMINAL LAW & JUSTICE

Answer **two** questions from Section A and **one** question from Section B

SECTION A

1. **To what extent have the courts in recent years been reluctant to accept that Parliament intended a crime to be one of strict liability?** [25]

Credit reference to:

- Nature of strict liability; distinction between strict and absolute liability, e.g., *Larsonneur*, *Winzar* – desirable but not essential.
- General presumption that mens rea is required; e.g. *Sweet v Parsley*; *Gammon Ltd v A-G for Hong Kong*.
- The principles set out by Lord Scarman in *Gammon* as to when the presumption of mens rea can be displaced.
- Illustration of the *Gammon* principles with examples of case law, e.g., *Callow v Tillstone*, *Sweet v Parsley*, *DPP v B(A minor)*, *Smedleys v Breed*, *LBC of Handsworth v Shah*, *Storkwain*, *Alphacell v Woodward*.
- Justifications given for strict liability: makes it easier to enforce the law; applies to issues of social concern; promotes vigilance; benefits outweigh the injustice – penalty usually relatively small, not considered true crimes, no social stigma.
- Arguments against: ease of enforcement not generally a reason for disregarding mens rea; most crimes involve issues of social concern, e.g., murder, but still need proof of mens rea; strict liability only promotes vigilance up to a point – if no amount of care can save people from conviction, then less incentive to improve one's practice; injustice is never acceptable; penalty not always small, e.g. *Gammon* itself; not true that there is no social stigma – a firm's business can be badly affected, and an individual ends up with a criminal record that follows you for life.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

2. To what extent can loss of control be a defence to a criminal charge? [25]

Credit reference to:

- s.54 of the Coroners and Justice Act 2009.
- The defence of loss of control is a partial defence that may reduce liability for murder to manslaughter. It does not operate to absolve the defendant of liability completely. It is not a general defence and exists only for the offence of murder.
- The loss of control defence was introduced in response to concerns in relation to the defence of provocation. The defence of provocation proved problematic and was subject to much consideration by the appeal courts. The appeal courts were not always consistent in the interpretation and application. The defence was also considered to have a gender bias in that it was too favourable to those who killed as a result of losing their temper (generally male defendants) but did not provide a tailored response to those who kill out of a fear of serious violence (often women experiencing domestic violence). The extent to which the new legislation addresses these issues is a moot point. The new defence of loss of control is broadly similar to the defence of provocation in the requirements; however, it is far more restrictive in its application.
- The Ministry of Justice Impact Analysis of 2009 estimated that the changes would result in a further 10-20 murder rather than manslaughter convictions per year at a cost of £4-8M in the prison and court systems.
- **Loss of self-control** - There is no requirement that the loss of self-control be sudden (s. 54(2)). This represents a change from the law of provocation which required the loss of control to be sudden and temporary (R v Duffy) which was seen as a significant barrier to victims of domestic violence. See, R v Ahluwalia, R v Thornton; however, in each of those cases there was no loss of control, sudden or otherwise and thus the cases would have the same outcome under the new defence. The Law Commission had recommended that there should be no requirement of loss of control as this was the element of the defence of provocation that operated against women.
- By virtue of s. 54(4), if D acted in a considered desire for revenge they cannot rely on the defence. This upholds the principle seen in R v Ibrams & Gregory
- **Qualifying trigger** - Under the old law of provocation virtually any act was capable of being used as evidence of provocation. This was considered problematic in that it was too wide. The provocative action did not have to be deliberate or aimed at the victim, even a baby crying was accepted as a provocative act (R v Doughty). The introduction of qualifying triggers have narrowed the ambit of the new defence quite dramatically.
- The qualifying triggers are set out in s. 55 Coroners and Justice Act 2009. A qualifying trigger may only relate to: **S.55 (3)** Where D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person. **or S.55 (4)** Where D's loss of self-control was attributable to a thing or things done or said (or both) which—(a) constituted circumstances of an extremely grave character, and (b) caused D to have a justifiable sense of being seriously wronged. The question of what constitutes circumstances of an extremely grave character and caused the defendant to have a justifiable sense of being seriously wronged is decided objectively: R v Hatter (2013). The breakdown of a relationship will not normally be regarded as circumstances of an extremely grave character nor entitle the aggrieved party to have a justifiable sense of being seriously wronged: R v Hatter (2013).
- **Limitations on qualify triggers** - Despite the restrictive wording used to establish a qualifying trigger, S. 55(6) Coroners and Justice Act 2009 provides two further limits as to what may be classed as a qualifying trigger.
- S.55(6)(a) The fact that a thing done or said constituted sexual infidelity is to be disregarded. S.55(6)(b) A person may not raise a qualifying trigger if they incited the thing done or said or the violence.

- **Sexual infidelity** -The limitation based on sexual infidelity represents a major change from the defence of provocation which was largely seen as an excuse for crimes of passion. This change is based on the view that in a civilised society there can be no excuse for killing due to infidelity. This provision has already been subject to interpretation by the Court of Appeal: R v Clinton (2012).
- Degree of tolerance and self-restraint -S.54(1)(c) requires that a person of the defendant's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of the defendant, might have reacted in the same or similar way. This is a question for the jury to decide. It replaces the reasonable man test which existed under the law of provocation which attracted widespread criticism and was subject to much conflicting interpretation in the courts culminating in the landmark case of Attorney General for Jersey v Holley [2005] . Reference to sex and age represents the position with regards to provocation established in DPP v Camplin [1978]. Problems with the reasonable man test related to the characteristics which could be attributed to the reasonable man. S.54(1)(C) makes explicit reference to just age and sex however, characteristics may be relevant when assessing the circumstances of the defendant although under s.54(3) circumstances which relate to the defendant's general capacity to exercise tolerance and self-restraint are to be disregarded. According to R v Clinton [2012] , sexual infidelity may be considered when looking at the circumstances under s.54(1)(c) in an appropriate case.
- The defence of provocation required some degree of proportionality test in that the jury were required to assess the gravity of the provocation in deciding if a reasonable man would have done as the defendant did. The new defence of loss of control does not have such a balancing exercise. The gravity of the provocation, or trigger event, is assessed at stage two and must meet the specified thresholds of either fear of serious violence (s.55(3), extremely grave or seriously wronged (s.55(4). There is no requirement that this is weighed against the conduct of the defendant. Also rather than the jury assessing whether the provocation would have made a reasonable man do as the defendant did, the jury are required to consider if a relevant person might have reacted in the same or similar way. The third element of the defence, is thus perhaps more generous to defendants.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

3. To what extent is the Crown Prosecution Service no longer fit for purpose? [25]

Credit reference to:

- Background and reasons for the establishment of the CPS (e.g., Justice Report, Phillips Commission).
- Prosecution of Offences Act 1985.
- Role of the CPS within the criminal justice system: taking the decision whether to prosecute; advising the police; conducting prosecutions in the magistrates' courts and Crown Court.
- Early problems and proposals for reform: Glidewell Report, Narey review.
- Major reforms: the Narey fast-track system; establishment of Criminal Justice Units; close collaboration with the police.
- Present structure of the CPS.
- Recent reforms, e.g., full advocacy rights; CPS Direct; CPS has taken over charging in all but minor cases.
- Establishment of the CPS Inspectorate
- Evaluation: the importance of an independent prosecution service, whether the CPS has made the system fairer and more efficient.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

4. Evaluate the extent to which duress can be a defence to a criminal charge. [25]

Credit reference to:

- Two types of duress: duress by threats and duress of circumstances.
- Duress by threats: where a person is forced to commit a crime by threats of death or serious injury to oneself or someone for whom one reasonably feels oneself to be responsible: Hasan, Shayler, Valderama-Vega.
- Extent of defence: does not apply to murder: Howe; or attempted murder: Gotts.
- Nature of threat: must be of death or serious injury; in Quayle and others, A-G's Ref. No.2 of 2004) the CA held that a threat to cause severe pain not associated with serious injury would not suffice; in Singh the CA held that a threat to expose immorality would not suffice; since 1746 in McGrowther it has been taken as axiomatic that a threat to harm property does not suffice (so not your dog, or the Mona Lisa).
- The threatened harm must be (or be believed to be) imminent: Hudson and Taylor, Hasan – in Hasan, the HL disapproved Hudson and Taylor as too favourable to D: the harm must be immediate or almost immediate with no possibility of evasive action.
- The two-part test: created in Graham but restricted in Hasan – a subjective element and an objective element.
- Subjective element: was D forced to act as he did because he believed that death or injury would follow either to him or someone for whom he reasonably felt himself to be responsible? In Hasan, the HL reiterated that the belief must be not merely genuine but also reasonable.
- Objective element: would a sober person of reasonable firmness, sharing the defendant's characteristics, have acted in the circumstances in the way that the defendant did?
- Characteristics: Bowen – age, sex, pregnancy, serious physical disability, recognised mental illness or psychiatric condition.
- Defence not available to D if, as a result of his voluntary association with others involved in criminal activity, he foresaw or ought reasonably to have foreseen the risk of being subjected to compulsion by threats of violence – Hasan. Also Cole – the CA said that the defence only applies where the duressor has demanded the very offence D commits – a general demand for money would not suffice.
- Duress of circumstances: essentially the same two part test applies where D claims he was forced by circumstances to commit an offence.
- Cases: Willer, Conway, Martin.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

SECTION B

Answer **one** question from this section.

5. **Sentencing involves balancing a variety of factors such as, retribution, rehabilitation, protection of the public and reparation, along with cost effectiveness and ensuring the rule of law is maintained. The courts do sometimes get it wrong and these mistakes have to be corrected.**

- (a) **Explain the main options available to a court in adult sentencing. [11]**

Credit reference to:

- Custodial sentences: the Criminal Justice Act 2003, s.152 (2) states that these are only available for offences so serious that neither a fine alone nor a community sentence can be justified for the offence.
- Determinate sentences: for sentences of more than 12 months, usually only half is served in prison and the other half in the community on licence with conditions and under supervision.
- Mandatory life sentence: compulsory for those convicted of murder: if released by the Parole Board they remain on licence for life.
- Indeterminate sentences: the court sets a minimum period which must be served before the offender becomes eligible for early release by the Parole Board.

Examples –

- Life imprisonment: Criminal Justice Act 2003, s.225: where an offender is convicted of a serious offence (defined as carrying a maximum sentence of at least 10 years) where in the court's opinion the offender poses a significant risk to the public of serious harm by committing further specified offences; where the maximum penalty for the offence is life imprisonment; where the court considers that the seriousness of the offence, or the offence and one or more associated offences, justifies the imposition of imprisonment for life.
- Imprisonment for public protection: where the offender is convicted of a serious sexual or violent offence punishable by imprisonment for life or a determinate sentence of 10 years or more; where in the court's opinion the offender poses a significant risk to the public of serious harm by the commission of further specified offences; the offence is punishable with life imprisonment and the court is satisfied that the seriousness of the offence justifies such a sentence; the offender has a previous conviction for an offence listed in schedule 15A of the Criminal Justice Act 2003 or the current offence warrants a notional minimum term of at least two years.
- Community orders can include any number of the requirements set out in the CJA 2003: unpaid work requirement; activity requirement; programme requirement; prohibited activity requirement; curfew requirement; exclusion requirement; mental health treatment requirement; drug rehabilitation requirement; alcohol treatment requirement; supervision requirement.
- Fines, conditional or absolute discharges.
- The Sentencing Council set up under the Coroners and Justice Act 2009 requires the court to take into consideration the five purposes of sentencing.

Candidates may refer to the aims of sentencing set out in the Criminal Justice Act 2003, s.142.

- Retribution – punishment: the sentence must be proportionate to the offence.
- Deterrence – may be individual or general. Individual deterrence is intended to deter the individual offender from re-offending; general deterrence is aimed at deterring others by making an example of the offender (e.g. Liam Stacey).
- Protection of society – sentence aims at protecting the public from the offender, e.g. custody; driving ban; curfew, etc.
- Rehabilitation – the aim is to help the offender amend his behaviour and prevent him re-offending. The Criminal Justice Act 2003 enables community sentences to be tailored to the individual needs of the offender.
- Reparation – the offender is required to make amends, such as by paying compensation to his victim, doing unpaid work for the community.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying the subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

(b) Evaluate the effectiveness of the Criminal Cases Review Commission.

[14]

Credit reference to:

- By December 2009 the Criminal Cases Review Commission had received over 12,000 applications and had dealt with about 11,500 of these. The Commission had referred 442 cases to the Court of Appeal – 407 of these had been heard and the convictions quashed in 287.
- Some cases have attracted a lot of publicity, for example, the Sally Clark case in 2003 and also that of Sion Jenkins in 2004.
- Candidates may refer to the membership, function and powers of the Commission.
- The Commission is not an appeal court.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO2
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation, making a convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way, making a limited synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way, making some basic synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

6. The law regarding bail is just the latest in a string of cases where the decisions of the European Court of Human Rights have altered United Kingdom law. The Ministry of Justice is trying both to anticipate and to react to Strasbourg rulings. Bail involves a delicate balancing act between the rights of the un-convicted defendant and the safety of the public.

(a) Explain the factors the courts take into account in deciding whether to grant or refuse bail . [11]

Credit reference to:

- Bail Act 1976, s.4 – presumption of entitlement to bail.
- Circumstances in which bail need not be granted: Bail Act 1976 Schedule 1 (e.g. defendant is likely to fail to surrender, commit further offences or interfere with witnesses or the administration of justice).
- Paragraph 9. Factors to be taken into account when considering whether bail should be granted.
- Modification of the general presumption in favour of bail – e.g., bail can only be granted in exceptional circumstances where the defendant is charged with murder, manslaughter or rape, or where previously charged with a specified serious offence or where the offence was committed while already on bail (Criminal Justice and Public Order Act 1994 s.25 as amended by Crime and Disorder Act 1998).
- Right of the prosecution to appeal against grant of bail: Bail Amendment Act 1993.
- Powers of courts to impose bail conditions.
- Coroners and Justice Act 2009
- ASBO 2012 - no real prospect test.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying the subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

(b) Evaluate the extent to which the Human Rights Act 1998 protects human rights within the UK. [14]

Credit reference to:

- HRA 1998 incorporates the rights given in the ECHR into UK law, with a few exceptions.
- The HRA 1998 provides positive rights and not just residual liberties.
- Rights under the ECHR are directly enforceable in the UK without need to apply to the ECtHR in Strasbourg.
- Section 6 imposed a duty on all public authorities, including the courts, to act in a way which is compatible with Convention rights.
- Section 2 imposes an obligation upon the courts to take account of Strasbourg jurisprudence.
- Section 3 requires that all UK legislation must be interpreted in a way which is compatible with Convention rights as far as is possible to do so.
- The courts have no power to overrule or refuse to apply primary legislation if it proves impossible to interpret it in a way which is compatible with Convention rights.
- The higher courts have power to issue a declaration of incompatibility under s.4.
- Section 10 provides a fast-track procedure whereby legislation which is not compatible can be amended.
- The government must include a statement that all proposed legislation is compatible with Convention rights, or state that it is not compatible but that the government intends to proceed with the Bill anyway: s.19.
- Evaluation: e.g., -
- HRA 1998 reflects the limitations as the ECHR, e.g., only really protects civil and political rights; doesn't provide the kinds of rights people need in today's society such as right to housing, income, etc.
- Only really protects people from actions of state and public authorities - the narrow scope of public authorities - today, the need for protection is often against powerful private institutions like the banks.
- The powers of the courts are circumscribed so that in the last analysis, government is not constrained by the HRA 1998.
- Alternatively, the powers of the courts allow them too much scope to interfere with the will of democratically elected bodies, e.g., cases such as R v A., A and X v Sec. of State for the Home Department; Re MB.
- The HRA 1998 cannot prevent any government from acting in violation of the rights it enshrines or even abolishing the HRA 1998 itself.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO2
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation, making a convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way, making a limited synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way, making some basic synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.