

GCE

Law

H418/03: The nature of law and human rights

A Level

Mark Scheme for June 2023

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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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MARKING INSTRUCTIONS**PREPARATION FOR MARKING
RM ASSESSOR**

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: *RM Assessor Assessor Online Training; OCR Essential Guide to Marking*.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are posted on the RM Cambridge Assessment Support Portal <http://www.rm.com/support/ca>
3. Log-in to RM Assessor and mark the **required number** of practice responses (“scripts”) and the **number of required** standardisation responses.

YOU MUST MARK 10 PRACTICE AND 10 STANDARDISATION RESPONSES BEFORE YOU CAN BE APPROVED TO MARK LIVE SCRIPTS.

MARKING

1. Mark strictly to the mark scheme.
2. Marks awarded must relate directly to the marking criteria.
3. The schedule of dates is very important. It is essential that you meet the RM Assessor 50% and 100% (traditional 40% Batch 1 and 100% Batch 2) deadlines. If you experience problems, you must contact your Team Leader (Supervisor) without delay.
4. If you are in any doubt about applying the mark scheme, consult your Team Leader by telephone or the RM Assessor messaging system, or by email.
5. **Crossed Out Responses**
Where a candidate has crossed out a response and provided a clear alternative then the crossed out response is not marked. Where no alternative response has been provided, examiners may give candidates the benefit of the doubt and mark the crossed out response where legible.

Rubric Error Responses – Optional Questions

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM assessor, which

will select the highest mark from those awarded. *(The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.)*

Multiple Choice Question Responses

When a multiple choice question has only a single, correct response and a candidate provides two responses (even if one of these responses is correct), then no mark should be awarded (as it is not possible to determine which was the first response selected by the candidate).

When a question requires candidates to select more than one option/multiple options, then local marking arrangements need to ensure consistency of approach.

Contradictory Responses

When a candidate provides contradictory responses, then no mark should be awarded, even if one of the answers is correct.

Short Answer Questions (requiring only a list by way of a response, usually worth only one mark per response)

Where candidates are required to provide a set number of short answer responses then only the set number of responses should be marked. The response space should be marked from left to right on each line and then line by line until the required number of responses have been considered. The remaining responses should not then be marked. Examiners will have to apply judgement as to whether a 'second response' on a line is a development of the 'first response', rather than a separate, discrete response. *(The underlying assumption is that the candidate is attempting to hedge their bets and therefore getting undue benefit rather than engaging with the question and giving the most relevant/correct responses.)*

Short Answer Questions (requiring a more developed response, worth two or more marks)

If the candidates are required to provide a description of, say, three items or factors and four items or factors are provided, then mark on a similar basis – that is downwards (as it is unlikely in this situation that a candidate will provide more than one response in each section of the response space.)

Longer Answer Questions (requiring a developed response)

Where candidates have provided two (or more) responses to a medium or high tariff question which only required a single (developed) response and not crossed out the first response, then only the first response should be marked. Examiners will need to apply professional judgement as to whether the second (or a subsequent) response is a 'new start' or simply a poorly expressed continuation of the first response.

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there, then add a tick to confirm that the work has been seen.

7. Award No Response (NR) if:

- there is nothing written in the answer space

Award Zero '0' if:

- anything is written in the answer space and is not worthy of credit (this includes text and symbols).

Team Leaders must confirm the correct use of the NR button with their markers before live marking commences and should check this when reviewing scripts.

8. The RM Assessor **comments box** is used by your team leader to explain the marking of the practice responses. Please refer to these comments when checking your practice responses. **Do not use the comments box for any other reason.**

If you have any questions or comments for your team leader, use the phone, the RM Assessor messaging system, or e-mail.















9. *Assistant Examiners will send a brief report on the performance of candidates to their Team Leader (Supervisor) via email by the end of the marking period. The report should contain notes on particular strengths displayed as well as common errors or weaknesses. Constructive criticism of the question paper/mark scheme is also appreciated.*

10. For answers marked by levels of response: Not applicable in F501

- To determine the level** – start at the highest level and work down until you reach the level that matches the answer
- To determine the mark within the level**, consider the following

<i>Descriptor</i>	<i>Award mark</i>
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

11. 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

12. Subject Specific Marking Instructions

Section A

1. 'The rule of law is seen as an essential principle within our legal system'. Discuss the extent to which you agree that the rule of law is central to our legal system.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may** include:

- Describe the rule of law according to Professor Dicey in 'An Introduction to the Study of the Law of the Constitution 1885':
 - No punishment without law
 - No man is above the law
 - Judicial decisions of the courts protect the rights of citizens
- Describe the origins of the rule of law from writers such as Aristotle and Plato
- Describe the influence that the rule of law had on other countries such as its influence on the American Bill of Rights 1791 and the French Declaration of the Rights of Man and the Citizen 1789
- Describe examples of cases where the rule of law was upheld or enforced - *Entick v Carrington*
- Explain modern concepts of the rule of law, showing its specific relevance to human rights, equality, fair trials and dispute resolution as explained by Tom Bingham in *The Rule of Law*
- Link to Articles 5 & 6 of the European Convention on Human Rights (ECHR)

Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

- Discuss the importance of the rule of law:
 - No punishment without law – this links to the legal principle of *habeas corpus* which states that a person cannot be detained without the authorisation of a court. The Habeas Corpus Amendment Act 1679. Guantanamo Bay 2001-2009 where suspected terrorists were held without charge
 - No man is above the law – this provides a safeguard to prevent dictatorship and arbitrary use of power
 - The rule of law applies to all, regardless of class or wealth and includes the King/Queen (chapters 39 and 40 of the Magna Carta 1215)
 - Judicial decisions of the courts protect the rights of citizens – Dicey thought that judge-made law was the fairest system
 - The Act of Settlement 1701 protects the tenure of judges and ensures their independence from pressure when deciding cases
- Discuss the reasons why the rule of law is seen as fundamental in the English legal system
- Discuss whether the rule of law is still important today e.g. the detention of suspected terrorists, Article 5 ECHR etc
- Credit any recent relevant examples of the rule in practice such as *Miller v the Prime Minister*

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question.	7-8	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. There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.	10-12
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question.	5-6	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. There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.	7-9
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response is partially developed. There will be some reference to statutes and case law, where appropriate to the question.	3-4	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. The information has some relevance and is presented with limited structure. The information is supported by limited evidence.	4-6
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes and case law is limited.	1-2	Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. 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.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

2. *It is much harder for a multicultural society, reflecting a diversity of views, to arrive at a moral consensus.’ Discuss how effectively the legal system of England and Wales can adapt to changes in morality, in the light of the above statement.*

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.
Additional guidance	The ‘indicative content’ is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers may include:

- Describe the difference between laws and morals - define legal rules e.g. John Salmond, John Austin, H. Hart or Karl Llewellyn and definitions of morals e.g. Durkheim or Philip Harris
- Describe the nature of moral values and how they change over time e.g. the changes in the law relating to gay rights
- Describe how different sections of society have different moral values (pluralism)
- Explain how the law enforces moral values e.g. examples of human rights, common law examples, statutory examples
- Explain the diversity of moral views in a pluralist society
- Use examples of controversial laws made by parliament and judges e.g. abolition of the death penalty, the decisions in *Re A*, *Re S*, *R v Brown*
- Explain how morality changes over time e.g. marital rape was not a crime until 1991
- Describe the main points of the Hart/Devlin debate using examples of laws supporting Devlin and laws which support Hart
- Describe the Fuller v Hart debate
- Refer to the theories of law and morals e.g. Natural Law theorists (Aristotle, Aquinas, Fuller) and Positivists (Bentham), including the overlap between law and morals, the divergence of laws and morals

Credit any other relevant point(s).

AO3 Indicative content

Answers may include:

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

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question.	7-8	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. There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.	10-12
Level 3	Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question.	5-6	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. There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.	7-9
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response is partially developed. There will be some reference to statutes and case law, where appropriate to the question.	3-4	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. The information has some relevance and is presented with limited structure. The information is supported by limited evidence.	4-6
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes and case law is limited.	1-2	Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. 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.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

3. Advise Amari, Ben and Casey as to whether they can use Article 5 to assist their cases.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

Article 5 ECHR: Right to liberty and security. Outline the scope of the protection:

- No-one is to be deprived of their liberty unless it is for one of the lawful reasons set out in Article 5(1)(a) – (f). These include detention after conviction 5(1)(a), for non-compliance with a lawful obligation 5(1)(b), on public health grounds or to detain persons of unsound mind 5(1)(e) and detention to prevent those unlawfully entering the country 5(1)(f) – *Saadi v UK*
- Article 5(4) sets out the further rights a person has to challenge a deprivation of liberty speedily in a court and the right to periodic review – *Stafford v UK*
- Article 5(5) sets out the right to compensation where the deprivation has been in contravention of Article 5

Detention is possible under a Terrorism Prevention and Investigation Measure (TPIM) created by the Terrorism Prevention and Investigation Measures Act 2011 - *SoS for the Home Department v JJ*, *SoS for the Home Department v E*. Features of a TPIM regime:

- No longer than a two-year period, can be extended
- Can include tagging and overnight residence requirement
- Those under control can use the internet but may be subject to restrictions on who they meet and where they can go
- Foreign travel may be restricted

Meaning of deprivation:

- European Court of Human Rights key judgments including - *Guzzardi v Italy*
- Deprivation depends on the circumstances and is a matter of 'degree and intensity'
- Deprivation must be in accordance with the national law and not arbitrary
- There must be a connection between the original conviction and the continued detention - *Stafford v UK*

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Amari's continued detention:

- This would be covered by Article 5(1)(f) which allows for the detention of asylum seekers during the period that their claims are being processed
- The claim must be processed speedily in order for this to be lawful - Article 5(4)
- It is unlikely that six months would meet this threshold and the detention could be seen to be unlawful - *Saadi v UK*
- Amari has a right to periodic review – *Stafford v UK*

The restrictions placed on Ben:

- TPIMs replaced the older Control Order regime. Restrictions placed under the TPIM regime must be proportionate to the risk posed and must not completely restrict the ability of the individual to conduct their personal affairs
- The regime Ben is under looks severe as he is very heavily restricted
- He has a 16-hour daily curfew and is also restricted as to where he is able to go and whom he can associate with. This level of restriction was found to be excessive in the case of *SoS V JJ* where similar restrictions were held to be a deprivation
- The measures do not allow for Ben to continue to conduct his personal affairs

Casey's cancelled parole hearing and continued incarceration:

- Under Article 5(1)(a) detention after conviction is lawful
- As a prisoner serving a life sentence, Casey is entitled to an appropriate review to ensure that the detention is still lawful
- The parole hearing is cancelled due to staffing shortages but this would not be seen as a sufficient reason to detain Casey for a full extra year
- The continued detention would be seen as unreasonable and excessive - *Stafford v UK*

Reach any sensible conclusions

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> • 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 case law 	7-8	<ul style="list-style-type: none"> • 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. 	10-12
Level 3	<ul style="list-style-type: none"> • 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 case law. 	5-6	<ul style="list-style-type: none"> • 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. 	7-9
Level 2	<ul style="list-style-type: none"> • 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 case law 	3-4	<ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. • Some appropriate legal terminology is used. 	4-6
Level 1	<ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. • Minimal legal terminology is used. 	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

4 Advise Nina whether her treatment by the police when she was arrested and during her subsequent interview was lawful and what effect this may have on her case.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

Arrest procedures:

- Power of arrest s24 Police and Criminal Evidence Act (PACE) 1984 as amended by s110 Serious Organised Crime and Police Act (SOCPA) 2005
- Grounds of arrest – reasonable grounds D has committed, is committing or will commit an offence – s24 PACE
- Information given on arrest – fact of arrest (no longer at liberty) and why as well as necessity reason - s28 PACE 1984 - *Christie v Leachinsky*
- Guidance on exercise of power of arrest and necessity tests – Code G PACE
- Caution on arrest and record of arrest – Code C
- Search on arrest – s32 PACE 1984

During an interview:

- Right of access to a solicitor - s58 PACE 1984 – can be refused by a senior officer where they consider that allowing consultation with a solicitor will lead to interference with evidence, witnesses or hinder the recovery of property – *R v Samuel*
- Right to inform someone of the fact of arrest - s56 PACE 1984
- Right to have an appropriate adult present in the case of a mentally vulnerable adult
- Caution and right to silence s34 Criminal Justice and Public Order Act (CJPOA) 1994 & Code C
- Physical conditions of the interview and welfare of the detainee (breaks/refreshments) - 12.8 Code C (Revised)
- Exclusion of confession evidence - confessions obtained by oppression are unreliable and will be excluded as evidence - s76(2)(b) PACE
- Exclusion of other evidence obtained unfairly - s78 PACE 1984

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Nina's arrest

- Grounds of arrest:
 - Seems to be based on previous convictions which is not enough in isolation
 - Seems to lack an objective basis
 - Reasonable suspicion cannot be inferred from silence
 - The arrest lacks reasonable suspicion
- Process of arrest:
 - Nina is not told that she is under arrest
 - Nina is not why she is under arrest or what offence she has committed
 - Nina is not told why the arrest is 'necessary'
 - Nina is not properly arrested as 'You know what you've done' is inadequate
 - Nina is not cautioned or reminded of her right to silence
- Effect on Nina's case: the arrest does not appear to have been lawful

Nina's interview

- Nina is wrongly denied access to a solicitor which, in the circumstances, will have a serious impact on her case
- Nina was entitled to an appropriate adult as, despite being an adult, she is vulnerable due to her learning difficulties
- The caution was not lawful as it does not use the legally required wording which reminds suspects of their right to silence
- Nina's treatment does not meet the minimum welfare standards in terms of the length of the interview without a break or the denial of refreshments
- The police appear to have used coercion and bribery to encourage Nina to confess
- Nina's confession would be seen as evidence obtained through oppression
- Effect on Nina's case: Nina's interview was conducted unlawfully and her confession and any other evidence would be inadmissible in court

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> • 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 case law 	7-8	<ul style="list-style-type: none"> • 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. 	10-12
Level 3	<ul style="list-style-type: none"> • 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 case law. 	5-6	<ul style="list-style-type: none"> • 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. 	7-9
Level 2	<ul style="list-style-type: none"> • 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 case law 	3-4	<ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. • Some appropriate legal terminology is used. 	4-6
Level 1	<ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. • Minimal legal terminology is used. 	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

5* *The Human Rights Act 1998 has been largely successful in strengthening protection for human rights. However, there are still enough areas of concern to suggest the need for reform. Discuss the extent to which you agree with this statement.*

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

Explain the original purpose of the Human Rights Act (HRA) 1998 legislation:

- (1) 'Bringing rights home', allowing UK citizens to enforce rights under the European Convention of Human Rights (ECHR) in UK Courts
- (2) Creating and developing a 'rights culture' within the UK
- (3) Enabling UK Courts to contribute to, and help shape European Court of Human Rights (ECtHR) case law

Explain the key provisions of HRA:

- Not binding on UK courts but there is a duty to 'take into account' the decisions of the ECtHR – s2 HRA
- Legislation should be interpreted in a way which is compatible with the Convention – s3 HRA
- Declaration of incompatibility when the court determine that it is incompatible with a Convention right. No obligation for Parliament to act on this – s4 HRA

HRA provides an underpinning framework which supports devolution in Northern Ireland, Scotland and Wales

Margin of Appreciation (MoA) provides significant freedom to member states to interpret cases in line with their own social, cultural, and political traditions

Explain that the MoA is linked to the principle of subsidiarity - that States, not the ECtHR, have primary responsibility for the protection of human rights

Include any relevant cases – *Bellinger v Bellinger*, *R (Anderson) v Secretary of State for the Home Department*, *A v Secretary of State for the Home Department*

Explain any remedies under the HRA:

- Damages can be awarded where a public authority acts unlawfully – s8 HRA
- Power to amend legislation subject to a declaration of incompatibility

Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

Discussion of any controversial features of the HRA:

- The burden on judges to interpret legislation in a way which is compatible with the ECHR has been argued to upset the constitutional balance between the judiciary and parliament
- Newspaper owners have complained about the 'chilling effect' on press freedom arising from HRA cases which have begun to develop a right to privacy. Abolishing the right would not necessarily affect the availability of the ECHR for UK citizens. Rights under the ECHR would still apply
- Abolition of the HRA would affect the guarantees given under the devolution settlement in the Good Friday Agreement in Northern Ireland with a potential impact on the political stability of Northern Ireland
- Arguments to repeal the HRA and replace it with a British Bill of Rights

A government commission, the Independent Human Rights Act Review (IHRAR), recently recommended:

- Amending section 2 HRA to clarify the priority of rights protection by making UK legislation, common law and other case law the first port of call before ECtHR case law is taken into account
- Maintaining the approach taken by the UK courts towards the Margin of Appreciation – described as 'principled' and conscious of their constitutional position

Reach any reasonable conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	<ul style="list-style-type: none"> 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 case law 	7-8	<ul style="list-style-type: none"> 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. <p>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</p>	10-12
Level 3	<ul style="list-style-type: none"> 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 case law. 	5-6	<ul style="list-style-type: none"> 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. <p>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</p>	7-9
Level 2	<ul style="list-style-type: none"> 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 case law 	3-4	<ul style="list-style-type: none"> 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. <p>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</p>	4-6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <p>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.</p>	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

- 6 Advise Henry whether his Article 10 rights have been breached by the injunction and the closure of his website, explaining what grounds could have been used to justify such action.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include

- Article 10 of the European Convention on Human Rights covers both the right to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers
- Scope of Article 10: includes artistic expression, political, journalistic. May take the form of newspapers, films, painting, radio and television
- Freedom of expression by way of protest is included - *Steel v UK*
- Article 10(2) restrictions: national security, public safety, prevention of disorder, protection of health or morals, protection of reputation/rights of others, preventing disclosure of confidential information, maintaining authority and impartiality of the judiciary
- Restrictions permitted where prescribed by law
- High and low value forms of expression
- Margin of appreciation - *Handyside v UK*
- Case law examples may include:
 - artistic expression - *Otto Preminger-Institut v Austria*
 - national security - *Observer and The Guardian v UK*
 - public have a right to be properly informed - *Sunday Times v UK*
 - press freedom - *Mosley v News Group Newspapers*
 - journalists revealing sources - *Goodwin v UK*
- s12(4) Human Rights Act special focus on respecting freedom of speech in relation to journalistic, artistic and literary material

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Application to the injunction against Henry's podcasts and website:

In relation to the treatment for obesity:

Henry could argue that the information should be in the public domain as the public have a right to know the dangers of any potential treatment (the right to receive information as well as give information)

However, the courts would have to take a balanced view as to whether this was worth broadcasting as it may well deter a legitimate treatment

The protection of health and morals is one of the legitimate reasons for restricting information but Henry's claims may well support the protection of health. It would depend on the quality of the claim

Was there any evidence that it caused cancer? If so, then the injunction may well be seen as not lawful

Revealing a public health issue through investigative journalism would be seen as a high value form of expression, less able to be limited easily

In relation to the climate protest article:

Consider the relative merits of both sides of the argument

Credit any sensible use of the margin of appreciation in making the decision

Consider whether banning such a discussion would be seen as excessive use of power or as proportionate

The issue of climate change is seen as very serious and generally acknowledged as a pressing environmental issue. Would this be enough to justify encouraging school children to drop out of education and to become involved in civil disobedience?

Consider whether this could be restricted on the grounds of health and morals or potential public disorder

In relation to the revelations about the government minister:

If true, this could involve issues of national security

The consequences could be serious

Consider whether this information should be in the public domain as it is potentially high value political information and whether the public safety/national security aspect would merit it being banned

Consider the alternative argument that a minister who has been bribed would also represent a significant threat to security and would also be in breach of other laws, a fact which the public should be aware of

Credit an argument which recognises the cumulative effect of these different strands to the broadcasts and how impractical it would be to simply ban one aspect of the podcasts

Credit any sensible argument which shows balanced understanding of each argument

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> 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 case law 	7-8	<ul style="list-style-type: none"> 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. 	10-12
Level 3	<ul style="list-style-type: none"> 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 case law. 	5-6	<ul style="list-style-type: none"> 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. 	7-9
Level 2	<ul style="list-style-type: none"> 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 case law 	3-4	<ul style="list-style-type: none"> Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used. 	4-6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used. 	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

7 Advise Ivan whether the laws on obscenity would apply to his film **and** whether Orla could bring a claim against him in defamation based on the content of the diary.

Assessment objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

Obscenity:

- Obscene Publications Acts (OPA) 1959 and 1964
- OPA 1959 s2(1) – offence to publish an obscene article 'for gain' (as amended by OPA 1964 including 'gain for another')
- 'Likely to deprave and corrupt'
- Wide meaning of article 'containing or embodying matter to be looked at or read or both' - includes sound record, film, picture or pictures
- Publication also has a wide meaning including publishing data on a website - *Perrin*
- Common law position. No need to prove an intent to deprave and corrupt - *Hicklin*
- Similar approach taken under the Act – *R v Penguin Books* (the *Lady Chatterley's Lover* case)
- 'To deprave' meaning to make morally bad, to pervert or corrupt morally
- The idea of what is obscene is based on the article – not on the author - *Shaw v DPP*

Defences (obscenity):

- No reasonable cause to suspect - s2(5) OPA 1959
- Public good – s4(1A) OPA 1959 - relates to films and means in the interest of drama, opera, ballet, or any other art or literature or learning
- Consider 'outraging public decency' as an alternative

Defamation:

- Defamation Act (DA) 2013
- Explain the meaning: two forms - libel (in permanent form including broadcasts and films) and slander (transient e.g. spoken, conduct or gestures)
- Key elements of a claim - the statement must: be defamatory (meaning that an ordinary person would think worse of the claimant as a result); identify the complainant; and be published to a third party
- Claimant must show serious harm

Defences (defamation):

- Truth - s2 DA 2013
- Honest opinion - s3 DA 2013 - was the opinion one which could have been held by an honest person on the known facts at the time?
- Public interest - s4 DA 2013
- Innocent dissemination – available to internet agencies
- Privilege – absolute and qualified

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

The Obscene Content of the film:

- The film, which would be considered an article under the OPA, has been made for profit as well as enhancing the reputation of the film maker. This would satisfy the idea of a 'gain'
- We are told that the material has been described as 'disturbing' and containing images of 'graphic sexual content'
- This would suggest that it may indeed have the capacity to deprave and corrupt
- There is no need to prove that Ivan's aim was to deprave but simply that this is the overall effect of showing these scenes
- Ivan will argue, as a defence, that his film is for the public good under the OPA and that the disturbing scenes are for dramatic effect and in the interest of art
- His deliberate exposure of inappropriate material in a public space on a Saturday afternoon would be seen as a publication likely to deprave

The content of Ivan's published diary:

- A potential claim in defamation for libel
- Orla is clearly identifiable from the material in the diary
- The diary is in published form and widely available
- The claims made against Orla in the diary would cause ordinary person to think worse of Orla if they read them in the diary as she is presented as an abusive person both physically and emotionally
- The main defence that Ivan would need to prove against the claim would be that the imputation is substantially true under s2 DA
- Ivan appears to have witnesses who have seen the bullying behaviour which may support his defence

Reach any sensible conclusion in both scenarios

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> • 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 case law 	7-8	<ul style="list-style-type: none"> • 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. 	10-12
Level 3	<ul style="list-style-type: none"> • 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 case law. 	5-6	<ul style="list-style-type: none"> • 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. 	7-9
Level 2	<ul style="list-style-type: none"> • 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 case law 	3-4	<ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. • Some appropriate legal terminology is used. 	4-6
Level 1	<ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of case law is limited. 	1-2	<ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. • Minimal legal terminology is used. 	1-3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

8* As per Question 5*

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1-2	8	0	0	12	20
3 or 6	8	12	0	0	20
4 or 7	8	12	0	0	20
5* or 8*	8	0	12	0	20
Total	32	24	12	12	80

**AO2 elements 1a and 1b will be awarded jointly.

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