

GCE

Law

H418/03: The nature of law and human rights

A Level

Mark Scheme for June 2022

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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 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 RM50% 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 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:

Descriptor	Award mark
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

1. 'The courts of England and Wales are courts of law, not courts of morality'. Discuss the challenges faced by judges in separating law from morality.

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:

- Definitions of legal rules - e.g. John Salmon, John Austin, Herbert (HLA) Hart or Karl Llewellyn
- Definitions of morals - e.g. Emile Durkheim or Philip Harris
- Characteristics of legal and moral rules in relation to their origins, enforcement, ability to change and develop, certainty, and application
- Explain theories of law and morals - e.g. Natural law theorists (Aristotle, Aquinas, Fuller) and Positivists (Bentham), the overlap between law and morals, the divergence of laws and morals
- The legal enforcement of moral values in Crime, Contract, Tort and Human rights law
- Controversial areas where law and morality often clash; outraging public decency, legalising cannabis for medical use, assisted suicide, the death penalty, body modification, sado-masochism and consent, necessity and homicide e.g. Brown, Wilson, Inglis, Gilderdale, Pretty, Nicklinson, Re A
- How morality changes over time - e.g. marital rape was not a crime until 1991
- The range of standards within a plural society making it very difficult or impossible for the law to please everyone

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

- Discuss the difficulty of judges reaching a moral consensus in a plural society
- Consider how politicians avoid passing controversial laws that will divide society and could change the way people vote
- Discuss the use of Private Members' Bills as a way to pass controversial laws without the political parties having to state their position
- Discuss with examples the difficulties faced by judges in trying to keep the law up to date with the views of society in an environment where morality usually moves at such a fast pace
- Discuss the role of judges making moral decisions when they come from a narrow social background
- Consider criticisms of the judiciary being 'out of touch'. Debates around sexuality and consent, drug legalisation and the assisted suicide debate
- Discuss the strengths and weaknesses of the views of Devlin's desire for the law to uphold a common morality to ensure society does not disintegrate
- Compare with the utilitarian approach of Hart and his view of the centrality of 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 challenges judges face in trying to keep morality separate from the law and conclude how effectively they do so

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. 'Justice is a concept which is difficult to define but is easily identified in practical examples'. Discuss the meaning of justice in light of this 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:

1. Definitions of justice: Aristotle, Aquinas, Bentham, Mill, Marx, Perelman
2. Show how context affects the meaning of justice using examples from your full course of study
3. Theories of Law and Justice: Natural Law theories (Aristotle, Aquinas, Fuller) and Positivist theories (Bentham, Hart and Austin), John Rawls, Marxism, Nozick, Rule of Law etc
4. Use examples of formal/procedural justice – legal institutions such as the police, courts, judiciary, juries, and appeals - e.g. the use of legal aid to make the law accessible and how this has been affected in practice by LASPO 2012
5. Use examples of substantive justice – legal rules - e.g. fault and defences in criminal law, fault in tort law, rights and freedoms in the Human Rights Act and fairness in contract law
6. Use examples of distributive justice - the fair allocation of resources - e.g. wealth, power, rights, resources - e.g. anti-discrimination laws, minimum wage and reallocation of wealth through taxation and the welfare state
7. Use examples of corrective justice - sentencing aims such as retribution in criminal law and remedies in tort and contract

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

1. Discuss the struggle to create a common definition of justice that is shared by all members of society. Perelman's view in De la Justice that this is not in fact possible because justice is a subjective idea
2. Discuss the varied theories of law and justice and the struggle to create justice in a society
3. **Discuss examples of procedural justice**
 - The struggles faced by the criminal justice system in the miscarriage of justice cases: Birmingham Six, Guildford Four, and more recently the Post Office workers case and the Horizon computer system
 - The findings of the Runciman Commission and the Criminal Cases Review Commission
 - The Stephen Lawrence case and the findings of the McPherson Report
 - Evaluation of the system of 'trial by your peers'
4. **Discuss examples of substantive justice**
 - Discussion of any legal rule and whether it achieves justice - e.g. M'Naghten rules on insanity, Majewski rules on intoxication
5. **Discuss examples of distributive justice**
 - How the law struggles to create justice for everyone regardless of class, wealth, gender, race or disability. Discuss how this can lead to inequality - e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, institutional racism in the police force following the murder of Stephen Lawrence, BLM movement
6. **Discuss examples of corrective justice**
 - Discussion of the high re-offending rates.
 - Inequality of bargaining power in civil cases

Reach any sensible conclusion

Credit any other relevant point(s).

	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 Layla whether she will be able to use Article 8 of the ECHR to challenge the publication of the article and photographs of her daughter, the allegations about her tax **and** the Registrar's decision.

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:

- An explanation of the rights protected by Article 8 including any relevant restrictions
- Article 8 is a qualified right which protects four elements of personal autonomy: family life, private life, home and correspondence
- Rights are subject to the limitations in Article 8(2): in the interest of national security, public safety, in the interest of economic well-being or health and morals, prevention of crime or disorder
- Wide, inclusive definition of private life as given by ECHR: *Pretty v UK*, *Peck v UK*
- Aspects include; the physical and psychological integrity of a person, sex life and gender, personal data, reputation and name
- Define family life: *Lebbink v Netherlands*, *Kroon v Netherlands*
- Family interpreted in a wide sense to include 'biological and social reality' rather than merely legal formality. It depends on close family ties and is a matter of fact and degree. Includes foster relations and adoptive relations
- Explain the importance of names to identity and family: *Johansson v Finland*
- Explain the limitations on naming – potential of subjecting the child to ridicule or whimsical names
- Explain the competing interest of Article 10 in relation to the publication of the article
- The concept of the 'public interest' vs the privacy of the person
- *Campbell v MGN*, *Weller v Associated Newspapers*, *Sir Cliff v BBC*
- Special regard and protection to be given towards the rights of children not to be exposed to adverse publicity in such cases

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Publishing the article about Mia

- Consider whether there is a genuine 'public interest' in the story as opposed to an interested public
- Discuss the fact that the pictures were taken at a private rehabilitation clinic
- Discuss the age and vulnerability of Mia (a teenager) and that allowing publication would clearly cause distress and potentially exacerbate the condition of her mental health
- Consider also the impact of publication on Layla
- Was there a reasonable expectation of privacy in this case?
- Consider the form of the publication
- Photographs have an immediacy which are much starker than merely publishing the details or facts
- Was there a potential restriction which the newspapers could rely on? Extremely unlikely
- Conclude that the publication was a breach of Layla's human rights

Publishing allegations about Layla's tax affairs

- Consider whether it is in the public interest to publish this information
- Layla is a celebrity TV personality and so 'in the public eye' – she relies upon her reputation to make a living
- Evading tax may be a criminal offence and therefore it may be considered to fall under the legitimate reasons to publish – that it may expose possible criminal behaviour
- The facts about her tax affairs do not directly impact anyone else other than herself
- Conclude that publication is likely to be seen as lawful and not in breach of Layla's rights under Article 8

Layla and the Registrar

- Consider that the right to name a child is an intensely personal right which belongs to the family and parents
- The chosen name has a special, personal meaning for the parent in this case, reflecting Layla's healthy lifestyle persona
- Consider whether the chosen name can be refused due to its potential impact on the child in later years
- Consider whether such a name would expose the child to ridicule and therefore should not be allowed
- Conclude that it is likely that the name would be lawfully refused without breaching Article 8

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 Tom whether the hospital's actions amount to a breach of confidence **and** whether his employer has breached the Regulation of Investigatory Powers Act 2000.

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:

- An explanation of the elements of breach of confidence:
 - Information which was obtained in a way which gives rise to a duty of confidence
 - It must have the 'quality of confidence'
 - It must be used in an unauthorised way
 - The claimant must suffer a detriment from the use
- Defences include:
 - Information already in the public domain
 - Information was not confidential
 - Public interest in disclosure
- HRH Prince of Wales v Associated Newspapers, Mosely v News Group Newspapers
- Surveillance law as contained in the Regulation of Investigatory Powers Act 2000
- This includes the grounds/authority/mechanisms for challenge of the use of surveillance
- S32(2)(a) allows for the use of intrusive surveillance if the Secretary of State considers it *necessary*
 - (a) in the interests of national security;
 - (b) for the purpose of preventing or detecting serious crime; or
 - (c) in the interests of the economic well-being of the United Kingdom.
- The power must be used proportionately
- Investigatory Powers Act 2016 – regulatory framework for surveillance up-dated
- Including oversight, judicial approval for interception warrants, appeals, phone hacking, and monitoring procedures
- Halford v UK

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

Tom and the hospital

- Medical records between patient and doctor would satisfy the concept of 'quality of confidence'
- Tom would have a reasonable expectation of privacy in relation to these records
- There would be a clear duty on the doctor not to disclose the data
- The disclosure would represent a breach
- It could be argued that the data has been disclosed in order to further Tom's treatment but this was done without his consent and must be considered to be unauthorised
- The health authority could try to argue that it was in the public interest to disclose the information although this does not seem to be supported by the facts

Tom and his employer

- This would be seen as unlawful unless it was a proportionate measure and used under one of the lawful reasons in the statute
- The most likely reason would seem to be under s32(2)(a) – that it was in the national interest to know whether Tom was suffering from some kind of mental illness, although there would have been other ways of legitimately finding this out and whether it was right to hack his private phone would be questionable
- The fact that Tom works as a senior diplomat would lend weight to the argument that it was important to discover whether he was able to work as quickly as possible as he could be considered a security risk otherwise

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 freedoms contained in Article 11 are vital in a properly functioning democracy, but they are all too easily restricted. Discuss the extent to which you agree that this statement is accurate.*

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:

- Outline the scope and nature of Article 11, including relevant cases
- Consists of 3 rights: peaceful assembly, freedom of association and the right to join trade unions
- Aspects of peaceful assembly - DPP v Jones (Margaret), Plattform 'Ärzte für das Leben' v Austria, Cisse v France, Appleby v United Kingdom
- Meaning of association - McFeeley v United Kingdom, Redfearn v United Kingdom
- Trade unions - National Union of Belgian Police v Belgium, including the right not to join - Young, James and Webster v United Kingdom
- Article 11 is a qualified right and therefore subject to limitation
- Article 11(2) restrictions: prescribed by law, necessary in a democratic society, legitimate aim:
 - in the interests of national security or public safety
 - for the prevention of disorder or crime
 - for the protection of health or morals
- Explain the importance of the concept of 'proportionality' in determining whether the right has been lawfully restricted - R (Laporte) v Chief Constable of Gloucestershire
- Explain the link between Article 11 and Article 10 and how protest is also seen as an aspect of freedom of expression – Hashmann v Harrup, Steel v UK
- Explain the doctrine of the margin of appreciation in relation to Article 11
- Explain the link between democracy and the right to peaceful protest and association
- Refer to the wide range of powers available under the Public Order Act 1980 to assist in policing such demonstrations
- Refer to any recent developments in relation to curbing disruptive public assembly and protest as contained in the Police, Crime, Sentencing and Courts Bill/Act such as extending police powers to deal with public protest and creating a new statutory criminal offence of public nuisance

Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

- Discuss the importance of Article 11 in relation to Article 10. Restricting either of these rights impacts the other
- Discuss the fact that protest based on freedom of speech can be both offensive and annoying to members of the public but is a fundamental right within a democracy and that heavily restricting such rights can be a sign of an authoritarian regime
- Discuss the positive obligations on the police created by Article 11 and the difficulties created by this, such as the financial costs of policing demonstrations and the possibility of counter-demonstrations
- Discuss the recent rise in protests such as in relation to BLM, G20, anti-fracking, climate change protests and the importance of allowing people to express their strongly held views
- Discuss the challenges posed to society by such events
- Discuss police tactics such as 'kettling' and whether these are always a proportionate response
- Discuss whether the range of legitimate reasons for limiting the right to protest are justified

Reach any sensible 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 Kofi whether any of his rights under Article 6 have been breached.

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:

- Meaning of a fair trial under Article 6(1)
- Elements of a fair trial:
 - A determination of a civil right or obligation or a criminal charge
 - Independent and impartial tribunal or court
 - Within a reasonable period of time
 - In public
 - Fair
- Additionally, under Article 6(2):
 - Presumption of Innocence – Woolmington, burden on prosecution to prove guilty beyond a reasonable doubt
 - Right to silence implied – Brown v Stott
- Minimum rights under 6(3):
 - 6(3)(a): The right to be informed of the accusation promptly, in a language the accused understands
 - 6(3)(b): To have adequate time and facilities to prepare a defence. Including access to a lawyer, especially if detained before trial, to obtain expert evidence and to call witnesses. R v Samuel, R v Alladice
 - 6(3)(c): The right to defend oneself in person or through legal assistance of his/her own choosing or, if lacking means to pay for legal assistance, to be given it free (legal aid) when in the interests of justice to do so (especially where liberty was at stake - Benham v UK)
 - 6(3)(d) the right to examine and have examined witnesses - R v Davis
- Judicial independence from political interference – Act of Settlement 1701. Constitutional Reform Act 2005 s.3(1)
- Public process. Secret trials are seen as open to corruption and against natural justice. They are, however, allowed under Article 6(1) where excluding the public is in the interest of national security, such as in R v Incedal and Rarmoul-Bouhadjar a trial partially held in secret
- Burden of proof on prosecution
- Right to legal representation
- Concept of 'equality of arms'
- Exclusion of unfair evidence
- Attendance and the right to participate - V and T v UK
- Right against self-incrimination - Murray v UK
- Inferences from silence

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- His treatment suggests unfairness in the process leading up to the trial
- The charge is so serious that, if convicted, a custodial sentence would be the most likely outcome
- Denial of access to a solicitor on such serious charge would be seen as potentially very prejudicial to Kofi's case
- Evidence collected during these interrogations could be seen as highly prejudicial and the judge ought to have considered excluding such evidence from the trial
- Discuss the national security aspect of the trial. This would be a powerful lawful reason to not publish all details of the prosecution case as it could endanger the public
- The newspaper story using Kofi's image would seriously undermine his case prior to the trial. It raises issues about whether he is able to access an impartial and independent tribunal as the jury may well have been influenced by such a high-profile story in a national publication
- The denial of full disclosure of the evidence – in the form of emails – suggests an imbalance between the prosecution and defence a lack of equality of arms which would also suggest unfairness
- The use of an anonymous witness could also be argued to be prejudicial to Kofi's ability to fully examine the witness and would be damaging to the defence case
- The judge's failure to publish a full judgment with full reasons for the conviction would affect Kofi's chances of challenging the conviction on appeal

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 Charlie, Zac and Ling whether the police have exercised their powers of stop and search and arrest lawfully.

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:

- Police powers of stop and search:
 - ss1 and 2 of PACE 1984
 - Power to stop and search any person or vehicle where they have 'reasonable grounds for suspecting that he will find stolen or prohibited articles'
 - Must not be on the basis of personal factors. It must rely on intelligence or information about, or some specific behaviour by, the person concerned
 - s60 of the Criminal Justice and Public Order Act 1994
 - Right to search people and vehicles in a defined area during a specific time period where they believe:-
 - Serious violence will take place and it is necessary to use this power to prevent such violence
 - A person is carrying a dangerous object or offensive weapon, or
 - Serious violence has taken place and a dangerous instrument or offensive weapon used in the incident is being carried
- Power of Arrest
 - s24 PACE as amended by SOCPA 2005
 - s28 PACE 1984 requirements of a valid arrest: must be informed of the fact and grounds of arrest s28(1) and s28(3)
- Possibility of suing for false imprisonment where arrest is unlawful

Credit any relevant cases relating to police and protests, eg. R (Laporte) v Chief Constable of Gloucestershire

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Charlie's search

- It would appear that the search undertaken against Charlie was not based on reasonable grounds but rather on the personal bias of PC Davies
- The correct protocol was not followed in relation to either form of search
- The grounds for the search remain unspecified and the police officer did not correctly identify himself
- Grabbing Charlie could amount to a battery

Zac's detention

- This appears to have been done informally, rather than as an arrest
- None of the correct procedures on arrest are followed such as explaining the grounds of arrest and booking Zac into the custody suite. There also does not appear to have been any attempt to inform Zac of his rights, such as the right to a solicitor or to have someone informed. He does not appear to have been correctly cautioned
- The arrest appears to be unlawful, in which case, it is highly likely that Zac could claim false imprisonment

Ling's treatment on the coach

- The police are within their rights to search the coach under the blanket power of s60 CJPOA if they believe that serious violence might take place or that anyone on the coach is carrying a dangerous object or offensive weapon
- The fact that the search reveals none of the above would suggest that preventing the coach from proceeding is a disproportionate use of their powers

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

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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