



GCE MARKING SCHEME

LAW
AS/Advanced

SUMMER 2015

INTRODUCTION

The marking schemes which follow were those used by WJEC for the Summer 2015 examination in GCE LAW. They were finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conferences were held shortly after the papers were taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conferences was to ensure that the marking schemes were interpreted and applied in the same way by all examiners.

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

WJEC regrets that it cannot enter into any discussion or correspondence about these marking schemes.

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GCE LAW

PAPER LA1 (AS)

UNDERSTANDING LEGAL VALUES, STRUCTURES AND PROCESSES

Answer *two* questions

- Q.1 (a) Explain the relationship of the European Court of Justice with UK Courts. [14]**

Credit reference to:

- Examples of cases decided by the ECJ that have had a particular impact on the UK.
- The fact that the ECJ provides more authoritative rulings, for example the position in respect of the Merchant Shipping Act 1988
- Credit shall be given for relevant and accurate citation

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

| Marks | AO1 |
|-------|---|
| | Knowledge and Understanding |
| 11-13 | Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform. |
| 7-10 | Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism. |
| 3-6 | Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms. |
| 0-2 | Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law. |

(b) Analyse the role played by the European Commission in deciding EU Law. [11]

Credit reference to:

- 28 commissioners were supposed to act independently of their national origin
- Each commissioner heads a department with special responsibility for one area of EU policy such as economic affairs, agriculture or environment
- Assumptions relate to promoting union policy
- The Commission is a guardian of the Treaties and can initiate action through the ECJ
- Credit will be given for relevant citation

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

| Marks | AO2 |
|--------------|--|
| | Skills |
| 8-9 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
| 6-7 | Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation. |
| 4-5 | Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question. |
| 0-3 | Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response. |

Q.2 (a) Explain why there are unmet legal needs.

[14]

Credit reference to:

- The problem of advice deserts
- Civil Legal Aid
- The role of paralegals
- The significance of the third sector
- New developments and efficiency gain sought by the Government in the provision of legal services

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

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| Knowledge and Understanding | |
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| 0-2 | Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law. |

(b) Discuss the sources of funding available to access justice in England and Wales. [11]

Credit reference to:

- Role of the Legal Aid Agency and the means test including, for example the challenges in respect of criminal legal aid
- Civil and Criminal Legal Aid
- The various advice schemes
- Alternative methods of funding
- Conditional fee arrangements

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| 1 | Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from communication of meaning. |

| Marks | AO2 |
|---------------|--|
| Skills | |
| 8-9 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
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| 0-3 | Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response. |

Q.3 (a) Explain the relationship between law and morality.

[14]

Credit reference to:

- Relevant cases, for example Debbie Purdy
- Sharia law and wills, for example the role of the Law Society and the approach of judges in recognising this private law
- Hart v Devlin debate
- The limits of law
- Credit will be given for relevant discussion of policy and also legal philosophical authors

| Marks | AO3 |
|-------|--|
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(b) Discuss the impact on the Human Rights Act 1998 on the English and Welsh legal system. [11]

Credit reference to:

- Incorporation of ECHR
- HRA 1998 Sections 2,3,4,6,10,19,7
- Relevant citation

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| Marks | AO2 |
|---------------|--|
| Skills | |
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Q.4 (a) Explain the structure, powers and appellate functions of all courts in England and Wales. [14]

Credit reference to:

- Criminal courts and the hierarchy, including rights of appeal
- The civil courts, hierarchy and rights of appeal
- Operation of the criminal and civil courts

| Marks | AO3 |
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(b) Discuss the advantages and disadvantages of Alternative Dispute Resolution.

[11]

Credit reference to:

- ADR offers an opportunity to avoid litigation with all the disadvantages that this can bring
- Formality versus informality
- Timeliness
- Cost
- Expertise of the arbitrator
- Limited period
- Disadvantages include privacy, the law of precedent, increasingly costly
- The human rights dimension which promotes a right of access to the courts and not just a fair trial
- The view of Hazel Genn
- Candidates will be rewarded for appropriate citation

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Q.5 (a) Explain the role of the jury in England and Wales.

[14]

Credit reference to:

- The jury is seen as the bastion of liberty
- The attitude of jury's has been known to mitigate the harshness of the criminal law
- Examples of jury verdicts which are extraordinary, for example, that of Clive Ponting in the UK
- Role in criminal cases, civil case and Coroner's Court

| Marks | AO3 |
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(b) Discuss the extent to which the jury is a genuine representation of a cross section of society in England and Wales. [11]

Credit reference to:

- Criminal Justice Act 2003
- Candidates are summoned at random though much depends upon where they live as the electoral role is used as part of this process
- Eligibility – discussion and candidates will be rewarded for accurate and appropriate citation
- Jury Vetting
- Challenging
- Relevant citation e.g. R V Ford; R V Khan R V Abdroitov

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| Marks | AO2 |
|--------------|--|
| | Skills |
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Q.6 (a) Explain the characteristics of the Common Law.

[14]

Credit reference to:

- The distinction between the common law and equity and its relationship today
- Development of the common law and equity
- Judge made law – stare decisis

| Marks | AO3 |
|--------------|--|
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(b) Discuss the development of the Common Law.

[11]

Credit reference to:

- The significance of the Norman Conquest
- Forms of action
- Position of the King
- Inflexibility
- Credit shall be given for relevant citation particularly of historic material
- Development of equity to counter the problems within the common law

| Marks | AO3 |
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| Marks | AO2 |
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| | Skills |
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GCE LAW

PAPER LA2 (AS)

UNDERSTANDING LEGAL REASONING, PERSONNEL AND METHODS

Answer *two* questions.

Q.1 Study the following and answer the questions based on it.

“A range of factors – the expansion of the regulatory state, the rapidly changing nature of technology, the growth of EU legislation-have all contributed to a significant increase in the volume, technicality and complexity of delegated litigation in recent years. It has also been widely asserted that the use of delegated legislation has increasingly drifted into areas of principle and policy rather than technical areas of operational detail. Yet very little is currently known about how decisions are made within Government about the delegation process....”

[Source: Lifting the Lid on Delegated Legislation, *Hansard Society*, January 2013]

(a) Explain the types of delegated legislation. [14]

Credit reference to:

- Scale: much more than primary legislation
- Orders in Council S2(2) ECA
- SI e.g. Limited Liability Partnership Act 2002
- Bye Laws
- Court Rule Committee
- Regulation by professional bodies
- Measures and devolution history, for example in Wales

| Marks | AO3 |
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| Marks | AO1 |
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(b) Discuss the advantages and disadvantages of delegated legislation. [11]

Credit reference to:

- Time
- Specialisation
- Erosion of constitutional role of Parliament
- Democratic deficit
- Note: controls on delegated legislation

| Marks | AO3 |
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| Marks | AO2 |
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Q.2 Study the following and answer the questions based on it.

“This is a significant day for this House, and a sad one too, but it is also an important day for British justice, for the British justice system, and for this country: its history and its future. It is significant because the move of the Lords of Appeal in Ordinary from the Palace of Westminster brings to an end a hugely important part of this House’s history and role: the judicial work of this House. It is sad for the same reason, of course: because this House will lose the advantages of having in and around the House people of such calibre as the current 12 Lords of Appeal in Ordinary and their predecessors, who are still in the House. It is, however, enormously important because of what they are going from this House to be: the first 12 Justices of the new United Kingdom Supreme Court – the new apex of the British justice system.”

[Source: Baroness Royall of Blaisdon *H L Hansard*, 21st July 2009, col 1507]

(a) Explain the need for the Supreme Court to replace the House of Lords. [14]

Credit reference to:

- Constitutional Reform Act 2005
- Perceived problems in previous appointments
- Structure and procedure of Supreme Court
- The role of the Lord Chancellor

| Marks | AO3 |
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(b) Assess the social composition of the judiciary and its significance. [11]

Credit reference to:

- Relevant statistics particularly higher court gender
- Importance of composition particularly with Judicial Review e.g. HRA
- Views of Griffiths

| Marks | AO3 |
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| 1 | Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning. |

| Marks | AO2 |
|--------------|--|
| | Skills |
| 8-9 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
| 6-7 | Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation. |
| 4-5 | Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question. |
| 0-3 | Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response. |

Q.3 Study the text below and answer the questions based on it.

“It is a principle of construction of the United Kingdom statutes... that the words of a statute passed after the Treaty has been signed and dealing with the subject matter of the international obligations of the United Kingdom, are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligation and not be inconsistent with it.”

[Source: *Garland v British Rail Engineering Limited* (1982)]

(a) Explain the effect of EU Law on the interpretation of statutes. [14]

Credit reference to:

- The *Van Colson* principle
- “Copy out” principle of application of direct use in English Law
- Credit will be given for relevant citation of statute and also case law
- Purposive approach

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

| Marks | AO1 |
|-----------------------------|---|
| Knowledge and Understanding | |
| 11-13 | Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform. |
| 7-10 | Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism. |
| 3-6 | Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms. |
| 0-2 | Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law. |

- (b) **Using your knowledge of statutory interpretation, explain how a court might approach the interpretation of this section in the light of the facts set out below.** [11]

Protection of Fish in the Celtic Sea (fictitious) Act 2014

Section 1 makes it an offence to fish in the Celtic sea without a licence.

Section 2 provides that “a licence is granted to all fishing boats so long as they have been adopted for private use and enjoyment and no licence shall be granted to commercial fishing vessels”.

David owns a fishing trawler which he operates in the North Sea. While visiting his friend Ernie in Tenby he agrees to take him out on a special cruise to include some fishing in the Celtic Sea. In order to celebrate Ernie’s 45th birthday, they agree not simply to use some rods but to cast some nets in order to catch fish for his special birthday party in Tenby when he expects 150 of his friends to be present. Whilst fishing in the Celtic Sea, the vessel is boarded by the Royal Navy and David is arrested under Section 1 of the Act. Advise David.

Credit reference to:

- Application of different rules to this scenario
- Application of various ways of interpretation of the statute
- Discussion of the purpose of the act
- Credit will be given for relevant citation

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

| Marks | AO2 |
|--------------|--|
| | Skills |
| 8-9 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
| 6-7 | Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation. |
| 4-5 | Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question. |
| 0-3 | Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response. |

Q.4 Study the text and answer the questions based on it.

“On principle it seems to me that, while this court shall regard itself as normally bound by a previous decision of the court, nevertheless it should be at liberty to depart from it if it is convinced that the previous decision was wrong. What is the argument to the contrary? It is said that, if an error has been made, this court has no option but to continue the error and leave it to be corrected by the House of Lords. The answer is this: the House of Lords may never have an opportunity to correct the error; and thus it may be perpetuated indefinitely, perhaps forever.”

[Source: Lord Denning, *Davis v Johnson* (1978)]

(a) Explain the extent to which the Court of Appeal is bound by its decisions. [14]

Credit reference to:

- Practice Statement of the House of Lords 1966
- Civil cases are usually bound by ones where the Court of Appeal has to follow its own decisions according to the principles in *Young v Bristol Aeroplane*
- Criminal cases approach
- Significance of the “leapfrog” and accessibility of case law

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

| Marks | AO1 |
|-------|---|
| | Knowledge and Understanding |
| 11-13 | Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform. |
| 7-10 | Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism. |
| 3-6 | Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms. |
| 0-2 | Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law. |

(b) Discuss the arguments for and against judicial law making.

[11]

Credit reference to:

- Speed
- Judicial decisions deal with real situations
- Precedent operates outside the party political arena
- Perceived weaknesses of judicial law making including the process is haphazard; judges are ill equipped for the work of law making; constitutional restraints on judicial law making; public policy; moral issues; the relevance of parliamentary action and inaction
- Credit will be given for relevant and accurate citation of case law and other statutory material

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

| Marks | AO2 |
|--------------|--|
| | Skills |
| 8-9 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
| 6-7 | Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation. |
| 4-5 | Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question. |
| 0-3 | Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply to the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response. |

LAW - PAPER LA3 (A2)

**UNIT 3: UNDERSTANDING SUBSTANTIVE LAW:
FREEDOM, THE STATE AND THE INDIVIDUAL**

OPTION 1: CONTRACT AND CONSUMER LAW

Answer two questions.

Q.1 Study the text below and answer the questions based on it.

Arran went to buy a dishwasher. He walks into a branch of Nomit Limited and asks for Claire to give him advice. She tells him that the best dishwasher is a flusher machine as it has a dish wash sequence of 30 minutes and a relatively low temperature of 30° Celsius. He accepts the advice and buys the machine. When the dishwasher was delivered he discovered that it took 60 minutes to complete the sequence and had a water temperature of over 60° Celsius. As a result his electricity bill was twice that he expected. He now wishes to reject the machine.

(a) In the light of reported case law and other sources of law, advise Arran.

[14]

Credit reference to:

- Liability for breach of condition of description
- Misrepresentation
- What type of misrepresentation was Arran making
- Rescission and also rejection
- Credit will be giving for relevant citation

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

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

- (b) **Explain the significance of statutory interpretation in the development of the law with reference to the above scenario.** [11]

Credit reference to:

- The approaches to statutory interpretation
- The co-existence of the common law and statute
- Misrepresentation Act 1967
- The fiction of fraud under the misrepresentation act and the significance of statutory interpretation
- Credit will be given for relevant citation

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

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

Q.2 Study the text below and answer the questions based on it.

Robin is an antiques dealer. He negotiated with Edmund the sale of an Edwardian armchair for £2,000. Edmund agreed to buy it because he thought it was a rare Victorian armchair. He asked Robin to arrange for the armchair to be re-upholstered. During this process Robin discovered that the armchair was in fact an extremely rare Georgian chair and was worth over £50,000. Robin then refused to sell the chair to Edmund.

(a) In the light of reported case law and other sources of law discuss the legal position. [14]

Credit reference to:

- Common mistake
- Is the contract therefore void?
- Unilateral mistake
- Mutual mistake
- Credit shall be given for relevant citation

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

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

(b) Explain the methods available to Edmund outside of litigation in resolving this dispute.

[11]

Credit reference to:

- The significance of Civil Procedure Rules and Pre-Action Protocols
- Discussion of alternative dispute mechanisms
- Advantages of disadvantages of alternative dispute mechanisms

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

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

Q.3

Study the text below and answer the questions based on it.

Bruce is eager to start a commercial driving school for lorry drivers and wishes to buy a demonstration lorry for £55,000. He agrees with Elite Finance a loan of £55,000 over a period of 5 years with monthly instalments of £1,100.00 to include interest. After he had paid £22,000, Bruce experienced financial difficulties because of the downturn in the economy which had meant that there were less pupils who wished to be trained in the commercial driving school. Bruce asked Elite Finance for a “payment holiday” for 12 months as otherwise he could not pay and also he requested a waiver of all interest during the 12 month “payment holiday”. Elite Finance agreed to this. However, when John a new finance manager joined the Elite Finance Company 4 months later he demanded that the payments resume including interest.

(a) In the light of reported case law and other sources of law, advise Bruce. [14]

Credit reference to:

- Part payment rule
- Promissory estoppel
- Shield v Sword dilemma
- Performance of an existing duty
- Candidates will be rewarded for relevant citation

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

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

- (b) **Explain the doctrine of precedent in the development of law in the above scenario.** [11]

Credit reference to:

- The significance of case law and the doctrine of precedent
- Hierarchy of courts
- Relevance of case law
- The importance of creative judge making as seen, for example, in Lord Denning who developed the law in this area
- Candidates will be rewarded for relevant citation

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

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

Q.4

Study the text below and answer the questions based on it.

On Wednesday Jane Limited offers to sell 100 tonnes of grain to Cwm Farmers Limited at £750 per tonne. The offer states: "Please telephone or email an acceptance by noon on Thursday. Delivery will take place next Tuesday". Cwm Farmers fax an acceptance at 10am the following day. However, at 10.30am they discover that they could buy the grain elsewhere at £500 per tonne. Immediately they email a withdrawal of the acceptance. Unfortunately the email was accidentally deleted by an employee of Jane Limited who then delivered the grain the following Tuesday and are now demanding payment.

(a) In the light of reported case law and other sources of law advise Jane Limited. [14]

Credit reference to:

- Communication of acceptance
- Postal rule
- Email communication
- Regulation 11(2) of the Electronic Commerce (EC) Directive and Regulations 2002, SI(2013) where it is assumed that communications over the internet takes place once the recipients "are able to access them"
- Candidates will be rewarded for relevant citation

| Marks | AO3 |
|------------|--|
| 1 | Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning. |
| 0 | Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning. |
| AO2 | |
| Marks | Skills |
| 11-13 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
| 7-10 | Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
| 3-6 | Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question. |
| 0-2 | Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response. |

(b) Explain the role of law reform bodies in promoting reform in the above scenario.

[11]

Credit reference to:

- Discussion of the role of the Law Commission and the significance of agreeing a programme for law reform
- Identification of other law reform pressure groups and bodies
- The distinction between the work of the Law Commission and pressure groups
- The relevance of the postal rule and law reform and the fact that the situation in respect of internet communication is still uncertain

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

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

LAW - PAPER LA3 (A2)

**UNIT 3: UNDERSTANDING SUBSTANTIVE LAW:
FREEDOM, THE STATE AND THE INDIVIDUAL**

OPTION 02: Criminal Law and Justice

Q.1 Study the text below and answer the question based on it.

Harry owed money to Arthur, a ruthless loan shark with a reputation for violence. Harry was unable to pay, and Arthur was threatening to have Harry beaten up. Harry decided that the only way out of his trouble was to kill Arthur. However, as he was driving along a quiet road, Harry saw a man who looked like Arthur walking along the road ahead of him. Harry seized his chance, stopped the car, and struck the man with a heavy torch. As the man collapsed, Harry realised to his dismay that his victim was not Arthur but Arthur's younger brother, James. Convinced that James was dead, Harry fled the scene leaving James lying in the roadway, where he was hit by another car driven by Karen. Karen immediately phoned the emergency services, and James was taken to hospital, where he was placed on life support. Tests appeared to show that James was brain dead, and as he was carrying an organ donor card, his heart was transplanted into another patient. It later transpired that the tests had not been properly carried out, and that there was a small chance that James might have recovered.

(a) In the light of reported case law and other sources of law, consider whether Harry might be criminally liable for the death of James. [14]

Credit reference to:

- Elements of homicide: actus reus and mens rea.
- Transferred malice: Latimer.
- Principles of causation: factual causation and legal causation; cases such as White, Dalloway and Pagett.
- Coincidence of actus reus and mens rea: the "continuing act" principle: cases such as Thabo Meli, Church, Le Brun, Fagan, A-G's Ref. (No.4 of 1980).
- Novus actus interveniens: when the chain of causation is broken by the actions of a third party; whether the chain is broken by Karen: Pagett.
- Medical negligence as a novus actus interveniens: Smith, Jordan, Cheshire.
- When death occurs in law: Malcherek and Steel; Airedale NHS Trust v Bland.

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

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

(b) Explain the process of appeal from the Crown Court.

[11]

- Appeals from the Crown Court may be made to the Court of Appeal (Criminal Division): Criminal Appeal Act 1995.
- Appeal may be against conviction, sentence or both.
- Leave to appeal must be obtained from either the trial judge or the Court of Appeal. For an appeal against conviction the defendant must either obtain a certificate from the trial judge, stating that the case is fit for appeal, or have his/her application for leave heard by (usually) a single judge of the Court of Appeal (Criminal Division).
- The procedure for hearing an appeal in the Court of Appeal (Criminal Division) does not involve a rehearing of the case, but rather a review of the lower court's decision. Fresh evidence can be considered where the evidence is capable of belief the evidence could provide a ground for allowing the appeal, the evidence would have been admissible at the trial, and there is a reasonable explanation as to why it was not adduced at the original trial. Under the Criminal Appeals Act 1995 the court can direct the CCRC to investigate and report on any matter which is relevant to the determination of a case being considered by the court.
- The Court of Appeal (Criminal Division) can allow the appeal, dismiss it, or order a new trial.
- Under the Criminal Appeal Act 1968, as amended by the 1995 Act, an appeal against conviction should be allowed if the court considers that the conviction is "unsafe".
- An appeal against sentence will only be allowed if the sentence is wrong in principle or manifestly severe. The court cannot impose a different sentence that is more severe than the sentence against which the defendant is appealing.
- However, under the Criminal Justice Act 1988 the Attorney-General can refer a case to the Court of Appeal if the original sentence appears to be too lenient: the court may quash the original sentence and pass a more appropriate one.
- Both the defendant and the prosecution may appeal to the Supreme Court on a point of law, provided that either the Court of Appeal or the Supreme Court gives permission, and the Court of Appeal certifies that the case involves a matter of law of general public importance.
- Appeals by way of case stated from the Crown Court to the High Court were introduced by the Access to Justice Act 1999. (The Law Commission in 2007 recommended that the procedure be simplified by having all appeals from the Crown Court heard by the Court of Appeal (Criminal Division)).
- The Criminal Appeal Act 1995 set up the Criminal Cases Review Commission – not a court, but a body with power to bring a case to the Court of Appeal (Criminal Division) where the case was originally heard by the Crown Court (or to the Crown Court if it was originally heard by the magistrates' court).

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

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

Q.2 Study the text below and answer the question based on it.

Andy was the manager of a call centre which sold financial products over the phone. His call staff were not very successful in persuading potential customers to buy their products, so Andy embarked on a training program to make them tougher and more aggressive. Andy listened in while one of the callers, Daisy, struggled to persuade a potential customer, Clara, to buy insurance. After a few minutes Andy grew exasperated, and shouted into the phone: "We've got your number, and we know where you live, so pay us your money!" Clara was so terrified that she suffered a nervous illness which required psychiatric treatment. Meanwhile, Andy had decided that the entire call staff needed to be toughened up. He ordered them to assemble in the car park, where he had created a pit of hot, glowing coals, and told them that they must each walk across the hot coals in bare feet to demonstrate their toughness and commitment to the company. The oldest member of the call staff, 64 year old Jack, removed his footwear as instructed, but then refused to walk across the pit. Andy shouted at him, "Do it, or you're sacked!" Jack reluctantly complied, and suffered minor burns to his feet. Andy then ordered Daisy to walk across the coals. Daisy stood trembling on the edge of the pit. Andy pushed her from behind to make her start walking. Daisy ran a few steps and then tripped and fell onto the coals, suffering severe burns and permanent scarring to her face and body.

- (a) In the light of reported case law and other sources of law, consider whether Andy may have committed any offences against Clara, Jack and Daisy. [14]**

Marking scheme

- Assault and battery at common law: summary offences – Criminal Justice Act 1988, s.39.
- Actus reus of assault is any act which causes the victim to apprehend the immediate infliction of unlawful force: *Logdon v DPP*. The mens rea is intention or recklessness.
- Actus reus of battery is infliction of unlawful force, and the mens rea is intention or recklessness. It is not necessary that there should first be an assault: the victim need not apprehend the infliction of violence, as in *DPP v K (acid in hand dryer)*.
- Assault can be committed without physical contact, as in *Smith v Chief Superintendent of Woking Police Station*: it can be committed by words, threatening letters as in *Constanza*, or even silent phone calls as in *Ireland*; *Burstow*. The requirement that the victim must apprehend immediate unlawful violence has been interpreted liberally.
- Offences Against the Person Act 1861: sections 47, 20 and 18.
- Elements of assault and battery: actus reus and mens rea.
- Elements of aggravated assaults under s.47, s.20 and s.18 of the OAP Act 1861.
- Section 47: actual bodily harm – actus reus is an assault which causes actual bodily harm, any injury calculated to interfere with the health or comfort of the victim (*Miller*) – under the CPS Charging Standards it includes temporary loss of consciousness, minor cuts and grazes and scalds, broken bones without complications. Mens rea is intention to commit assault/battery or recklessness. Foresight of the degree of harm caused is not necessary: *Roberts*; *Savage*, *Parmenter*.

- Section 20: actus reus is unlawful wounding or unlawful infliction of grievous bodily harm. GBH means serious harm: Smith. There does not have to be an actual wound in order for an injury to count as grievous bodily harm, but candidates are likely to note that a wound must break the inner and outer skin: C v Eisenhower. Mens rea – intention or recklessness – D must foresee a degree of harm, but not necessarily the degree of harm which occurred: Mowatt, Savage and Parmenter.
- Section 18: actus reus is wounding or causing grievous bodily harm. Mens rea requires an intention to wound or cause gbh, or to resist or prevent a lawful arrest.
- Andy may have committed assault against Clara, possibly amounting to s.47 actual bodily harm: Chan Fook. He will have committed a battery by pushing Daisy, and may be liable under s.20, but probably not s.18 as it can be argued that he does not intend to cause her serious harm.
- Andy might argue that Jack consented to walking on the coals. Candidates should be given credit for discussion of validity of consent. Cases may include A-G's Reference (No.6 of 1980) – public policy and social usefulness; Brown, Jones, Aitken, Olugboja, etc.

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

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

(b) Explain the role of the jury in a criminal trial.

[11]

- Historical role.
- Bushells Case (12670). R v Wang (2005).
- Verdict - majority, unanimous.
- Composition of jury: Crown Court.
- Role in either way and indictable offences.
- Part of their role to maintain secrecy, Contempt of Court Act 1981: Frail, Davey & Beard.

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

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

Q.3 Study the text below and answer the question based on it.

Detective Constable Fish was on duty in plain clothes when he noticed an untidy-looking young woman with dreadlocks walking rapidly along the street while talking animatedly into a top-of-the-range mobile phone. DC Fish tapped her on the shoulder and said, "Keep your voice down." The young woman replied, "Sorry, but I'm a doctor and I have to take this call". DC Fish thought this was so unlikely that he was instantly suspicious. He seized the phone and then subjected the young woman to a thorough search. In the woman's handbag he found a wallet full of cash and credit cards in the name of Dr Rosa Lee. He also found an identity tag, issued by the local hospital, bearing a photo which in DC Fish's opinion looked nothing like the young woman. Suspecting that the handbag and phone had been stolen, he arrested the young woman and took her to the police station, where she was immediately placed in a cell. Eight hours later, she was visited for the first time by the custody officer, who brought her some tea and sandwiches. The young woman asked the custody officer if she could contact the hospital where she worked. The custody officer told her that detainees were not allowed to contact anyone without permission from a senior police officer. No senior officers were available, so the young woman spent a total of 38 hours in custody after which she was charged with theft.

(a) In the light of reported case law and other sources of law, consider the legality of the actions of the police. [14]

Credit reference to:

- Police and Criminal Evidence Act 1984, as amended.
- Police powers to stop and search: PACE ss.1-3 and Code A.
- Need for reasonable suspicion that the officer will find stolen or prohibited articles: s.1
- Code A: need for a proper basis for suspicion; a stop and search should not be carried out just because of the suspect's appearance, ethnicity, etc.
- Procedural requirements of a valid search: ss. 2 and 3; Osman v DPP.
- Power of arrest: PACE s.24 and Code G + Serious Organised Crime + Police Act 2005.
- Grounds for arrest: reasonable suspicion that the suspect has committed, is committing, or is about to commit any offence, and reasonable belief that the arrest is necessary for one or more of the reasons given in s.24.
- Procedure on arrest: suspect must be informed of arrest and the reason (PACE s.28) and should be cautioned.
- Role of custody officer; rights of suspect when brought to the police station; Code C.
- Rights of suspect during detention: PACE s.56 – right to have someone informed of detention; s.58 – right to legal advice; when these rights can be delayed.
- Detention reviews: PACE s.40.
- Time limits on detention: PACE s.41 - 44

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

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

(b) Explain the powers of the police to grant bail.

[11]

- Police and Criminal Evidence Act 1984, ss.37 and 38: powers of police to grant bail pending further enquiries or following charge.
- Bail should be granted when a suspect has been charged with an offence (s.38) unless: there is doubt about the name or address of the suspect; or detention is necessary to protect the suspect from himself or others; to protect others from the suspect; there is a danger that the suspect may not answer to bail, or may interfere with witnesses or the administration of justice.
- Coroners and Justice Act 2009 says the police may not grant bail if the charge is murder.
- Bail can be granted after a suspect has been arrested but not charged (s.37) if the custody officer believes that there is sufficient evidence to charge the suspect or sufficient evidence to justify holding the suspect while the police continue their enquiries.
- Bail conditions: police may grant bail subject to conditions: Criminal Justice and Public Order Act 1994 – examples of conditions.
- The Police (Bail and Detention) Act 2011 provides retrospectively that the police can keep someone on bail without charge for as long as they consider necessary – reverses Greater Manchester Police v Hookway 2011.

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

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

Q.4 Study the text below and answer the question based on it.

Sixteen year old Freya moved to a new school, where she became the victim of a group of bullies who picked on Freya because of her red hair. The group was led by Katie and her twin brother David, who nicknamed Freya “the ginger freak” and encouraged the other students to taunt her. Freya sought help from her teacher, but the only advice she received was that she must learn to stand up for herself. One afternoon as Freya was leaving the school to go home, she was surrounded by Katie and David and their friends. Freya was pushed to the ground and held down by David, who knelt on her chest to stop her from getting up. Katie began to cut off locks of Freya’s hair, using a large pair of scissors borrowed from the Art Room. The group of students became more excited and began to chant: “Kill the ginger freak!” Katie handed the scissors to David, who held them above his head with the blades pointing downwards, as though he was preparing to stab Freya. For a moment, Freya genuinely believed that David was about to kill her. Using all her strength, she pushed David off her, and kicked him hard in the stomach. David collapsed with internal injuries, and died later that night.

(a) In the light of reported case law and other sources of law, consider whether Freya might have any defence if she is charged with the murder of David. [14]

Credit reference to:

- Defence and defence of another at common law; prevention of crime: Criminal Law Act 1967, s.3 – according to Cousins, there is no difference between the requirements of the two defences.
- Self defence has been codified in s.76 of the Criminal Justice and Immigration Act 2008, but the section does not purport to change the common law, but only to provide clarity as to its application (it was motivated by media demands for a more lenient approach to prosecution where householders use violence against burglars).
- Self defence is a complete defence leading to acquittal.
- The defendant must honestly believe that the force was necessary: Palmer.
- The force used must be reasonable in the circumstances – an objective test to be decided by the jury.
- In assessing whether the force was reasonable, the jury “should not use jewellers’ scales” (Read v Wastie). In Palmer, it was said that if D had only done what he honestly and instinctively thought was necessary this would be the most potent evidence that the force was reasonable.
- There is no duty to retreat: this is merely a factor to be considered when deciding whether the force used was reasonable (amendment to s.76 by LAPS0 2012).
- Force cannot be reasonable if it is not necessary: Palmer, Clegg.
- If self defence fails, Freya may seek to rely on the partial defence of loss of control: sections 54 and 55 of the Coroners and Justice Act 2009 – reduces murder to manslaughter.
- Qualifying trigger – fear of serious violence from V towards D or another (s.55(3)); things said or done which constituted circumstances of an extremely grave character and caused D to have a justifiable sense of being seriously wronged.
- A person of D’s sex and age and in the circumstances of D would be likely to act in the same way: s.54(1)(c).
- The loss of control no longer needs to be sudden: it can be the culmination of a long process of provocation.

| | |
|--------------|--|
| Marks | |
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| 0 | Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning. |

| | AO2 |
|--------------|--|
| Marks | Skills |
| 11-13 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
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(b) Explain how the Crown Prosecution Service decides whether or not someone should be prosecuted. [11]

- The decision whether to prosecute is made using the “Full Code Test” contained in the Code for Crown Prosecutors, issued by the Director of Public Prosecutions under s.10 of the Prosecution of Offences Act 1985. Revised version reissued January 2013.
- This consists of two tests, the evidential test and the public interest test, which must be applied in that order. If the evidential test is not passed, then the case should not be proceeded with at that time. If the evidential test is passed, the Crown Prosecutor should go on to consider the public interest test. Only if both tests are passed should proceedings be brought.
- Evidential test – is there a realistic prospect of conviction, i.e., would a court be more likely than not to convict. The CP must consider two issues: can the evidence be used in court, and is it reliable.
- Whether evidence can be used in court – is it likely to be excluded because of the way it was obtained; is it hearsay; does it relate to the bad character of the accused.
- Whether evidence is reliable – is it consistent with an innocent explanation; are there doubts about the reliability of a confession; is the identity of the suspect likely to be questioned; are there doubts about the reliability of any witnesses; does a witness have any ulterior motive; does a witness have convictions which cast doubt on his/her reliability; is there a need to gather more evidence.
- If it would be helpful in assessing a witness’s reliability, an appropriately trained Crown Prosecutor may conduct a pre-trial interview with the witness.
- Public interest test – it will usually be in the public interest to prosecute unless the prosecutor is satisfied that the public interest is better served by not bringing a prosecution or by offering an out-of-court disposal.
- Public Interest test now includes prosecutors considering a number of questions including: how serious is the offence committed? What is the impact on the community, etc.
- Examples of factors tending in favour of prosecution: e.g., offence likely to result in a significant sentence; committed with a weapon; committed by a group; committed against someone serving the public; committed against a vulnerable person; the accused’s previous record, etc.
- Factors tending against prosecution: sentence likely to be small; prosecution would have a bad effect on the victim; offence was the result of a genuine mistake; accused has made reparation; accused suffers from significant physical or mental ill-health, etc.
- The prosecutor may take account of the views of the victim and his/her family. However, the prosecutor does not act for the victim or his/her family, and must form an overall view of the case.

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

| AO1 | |
|-------|--|
| Marks | Knowledge and Understanding |
| 8-9 | Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform. |
| 6-7 | Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism. |
| 3-5 | Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content <i>making a limited synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms. |
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LAW - PAPER LA3

UNIT 3: UNDERSTANDING SUBSTANTIVE LAW: FREEDOM, THE STATE AND THE INDIVIDUAL

OPTION 03: FREEDOM OF THE INDIVIDUAL & PROTECTION OF HUMAN RIGHTS

Answer two questions

Q.1 Study the text below and answer the questions based on it.

A local authority decided to merge two secondary schools: Sweet Meadow, which was located in an affluent area, and Hilltop, which served an area of mainly social housing. The plan was opposed by parents of both schools. On the morning that the decision to go ahead with the merger was announced, the leader of the Sweet Meadow parents, Nessa, quickly organised a protest march from the school to the council offices. At Hilltop, a similar march was organised by Wendy. The two groups kept in contact by mobile phone, and coordinated the marches so that both would arrive outside the council offices at the same time. As the Hilltop marchers were coming within sight of the council offices, Sergeant Lewis arrived with a police van full of officers, and told Wendy that he was banning the march, as the marchers did not have prior permission to march from the police. He arrested Wendy for taking part in a banned procession, and ordered the other marchers to disperse or face immediate arrest. Meanwhile, the Sweet Meadow march had been halted by Inspector Jones, who surrounded the marchers with officers in riot gear, and ordered them to stand still until the Hilltop marchers had been cleared from the street. When Nessa protested, Inspector Jones arrested her for taking part in a banned assembly.

(a) In the light of reported case law and other sources of law, consider whether the police were acting within their powers. [14]

Credit reference to:

- Public Order Act 1986 and Criminal Justice and Public Order Act 1994.
- Requirement to give prior notice of a procession: s.11 of the POA 1986.
- Under s.13, the chief constable may take steps to have processions banned within the area for up to 3 months. Such a ban applies to all processions, or processions of a particular class: there is no power to ban a particular procession. The chief constable has to apply for a ban to the district council, which has the power to issue the ban subject to the approval of the Home Secretary.
- The chief constable must believe on reasonable grounds that, because of the particular circumstances existing in his police area, the power to impose conditions under s.12 will not be sufficient to prevent serious public disorder.
- Power of police to impose conditions on processions: s.12(1) of the POA 1986. Conditions may be imposed in advance by the chief constable, and the senior officer present at the scene may impose conditions if any of the “four triggers” is satisfied i.e., – where the senior officer present at the scene reasonably believes that the procession may result in serious public disorder, serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is intimidation.

- Conditions which can be imposed: the senior officer can impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation that is feared. There is no requirement that the officer's decision be based on reasonable grounds.
- There is no list of conditions that can be imposed, but the section specifically mentions that they may include the route to be followed, and a condition not to enter a given public place.
- Organisers of the procession under s.12(4) and those who take part under s.12(5) commit an offence if they refuse to comply with a condition.
- Power to impose conditions on assemblies are contained in s.14 and are virtually the same as in s.12.
- S.14 only applies to static assemblies: DPP v Jones 2002, so cannot be used to impose conditions on movement – but in Jones the court held it could sever any condition which was ultra vires and leave the other conditions intact.
- There is no power for the senior officer at the scene to ban a march, so Sergeant Lewis is acting outside of his powers in purporting to ban the march, and Wendy should not be convicted of taking part in a banned procession. However, the order to disperse may be treated as a condition validly imposed under s.12.
- There is no power for the senior officer present at the scene to ban an assembly. An order to remain on a given spot might be a valid condition under s.14, as stated in Austin and Saxby.
- The organiser and participants in an assembly commit an offence by refusing to comply with a condition: s.14 (4) and (5).
- Under s.14A-C, inserted by the CJPOA 1994, assemblies which are classed as trespassory may be the subject of an advance ban. The assembly here could qualify as trespassory – it is on the highway (s.14A(9)), and one of the grounds on which an assembly can be banned is that there is reason to believe that it may result in serious disruption to the life of the community. Once a ban is in force, it is an offence knowingly to organise or participate in a banned assembly. However, Nessa could not be guilty of taking part in a banned assembly unless a ban had already been imposed and the ban notified to those taking part.
- The power to ban lies with the chief constable, subject to approval by the Home Secretary in London and the local authority elsewhere.
- Convention rights: the rights to freedom of expression (Art. 10) and freedom of assembly (Art.11) must be taken into account by a court.

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

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

(b) Explain how the Crown Prosecution Service decides whether or not someone should be prosecuted. [11]

Credit reference to:

- CPS established by the Prosecution of Offences Act 1985.
- Role of CPS - to prosecute offenders in the Crown Court (Crown Advocate) and Magistrates' Court (Crown Prosecutor).
- Test used in decision to prosecute - Full Code Test - section 10. Prosecution of Offences Act 1985. 2 tests - evidential and public interest.
- Evidential Test - is the evidence reliable and can it be used in court (admissible)?
- If a case does not pass this test then it does not proceed.
- If a case does pass the evidential stage it proceeds to the public interest test.
- Examples of public interest test questions.

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

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

Q.2 Study the text below and answer the questions based on it.

Minerva, a well-known health writer and columnist with the Sunday Probe, read an article in an eminent scientific journal which claimed that inadequate mothering caused serious mental underdevelopment in baby rats. Convinced that this vindicated her belief that mental disability in human children was caused by career women not spending enough time with their children, Minerva wrote a major article for the Sunday Probe, under the title “Crimes Against Children”, in which she claimed that children with severe learning difficulties were the victims of neglectful mothers. To illustrate her article, Minerva included a photo of Penny Peace, a popular MP and cabinet minister, holding her severely disabled daughter Rachel. The editor of the Sunday Probe, Huxley Chuff, passed the article for publication. When the article was published, Penny was dismissed from her job in the Cabinet, deselected as an MP by her local party, and vilified in the popular press. In fact, Penny’s daughter Rachel had been born with the rare genetic disorder known as Rett syndrome, which causes profound mental disability in girls.

(a) In the light of reported case law and other sources of law, consider whether Penny could sue for defamation. [14]

Credit reference to:

- Candidates should refer to the Defamation Act 2013. Answers purely on the basis of pre-DA 2013 law should be credited as far as possible.
- Meaning of defamation: *Sim v Stretch*, *Byrne v Dean* – statement likely to lower the claimant in the eyes of right thinking members of society.
- Defamation Act s.1 imposes a requirement of serious harm to the reputation of the claimant. A statement is not defamatory unless its publication has caused, or is likely to cause, serious harm to the claimant’s reputation. Almost certainly the damage to Penny’s reputation would be considered serious.
- Candidates may cite cases on what can amount to defamation, e.g., *Cassidy v Daily Mirror*, *Charlesworth v NGN* on the impact of photos, etc.
- Elements of defamation: the statement must be defamatory; it must refer to the claimant, and it must have been published.
- Reference to the claimant – candidates may cite cases like *Hulton v Jones* or *O’Shea v MGN* – for a mistaken identity case to succeed now, the claimant would have to show serious harm to his/her reputation.
- Defences – pre-Defamation Act 2013 –
- Justification – has to be shown that the statement is substantially true.
- Fair comment – rebranded “honest comment” in *Spiller v Joseph* – now replaced with “honest opinion” under the DA 2013.
- Reynolds defence – publication in the public interest – *Reynolds v Times Newspaper* – now replaced with defence of Publication on a matter of public interest, under s.4 of the DA 2013.
- Post Defamation Act 2013 –
- Defence of justification has been abolished and replaced by the defence of Truth: s.2, which is substantially the same as the old defence.

- Honest opinion under s.3 – imposes 3 conditions similar to the Spiller criteria – the statement must be a statement of opinion; the statement must indicate the basis for that opinion, and it must be the case that an honest person could have held that opinion on the basis of any fact which existed at the time the statement was published, or anything asserted as a fact in a privileged statement before the statement was published.
- The defence fails if the defendant did not hold that opinion.
- A publisher who is not the author will not have the defence if he knew or should have known that the author did not hold that opinion.
- Publication on a matter of public interest: s.4 – it is a defence to show that the statement was on a matter of public interest and that the defendant reasonably believed that it was in the public interest to publish the statement – this may help Huxley and the Sunday Probe.
- The DA 2013 also creates a defence under s.6 to cover statements made in peer-reviewed scientific or academic journals. This would not apply here, as the Daily Probe is not such a journal, but it would not be irrelevant for a candidate to refer to it.

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

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

(b) Explain how the right of freedom of expression is protected under the law in England and Wales. [11]

Credit reference to:

- European Convention on Human Rights: nature of the Convention; how rights are enforced.
- Article 10: everyone has the right to freedom of expression.
- Article 10(2) makes the right to freedom of expression a qualified right - recognises that freedom of expression carries with it duties and responsibilities.
- Nature of qualified right - restrictions imposed on it by public authorities are permissible if they are in accordance with law and necessary in a democratic society for certain legitimate purposes.
- Purposes for which freedom of expression may be restricted: national security; territorial integrity; public safety; prevention of disorder or crime; protection of health or morals; protection of the rights and reputation of others; prevention of disclosure of confidential information; to maintain the authority and impartiality of the judiciary.

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

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

Q.3 Study the text below and answer the questions based on it.

Andrew, a senior civil servant in the Ministry of Defence, was given the task of calculating how far it might be possible to reduce the Government's expenditure upon the armed forces. It was made clear to him that the Government regarded the matter as highly confidential. Andrew strongly disagreed with the policy of cutbacks, and believed that it ought to be discussed openly in Parliament. He therefore approached an Opposition front-bench MP, Sir Stoneleigh Shovell, and asked him to raise the matter of defence cutbacks as discreetly as possible the next time an opportunity arose. However, Sir Stoneleigh was so incensed by the prospect of further cutbacks that he sent a furious e-mail to Martha Mutton, the editor of the Daily Slur, urging her to publish the story in her newspaper.

- (a) In the light of reported case law and other sources of law, consider whether Andrew, Sir Stoneleigh and Martha may have committed any offence. [14]**

Credit reference to:

- Official Secrets Act 1989 – protected category: defence (s.2).
- Andrew is a Crown servant under s.12 of the OSA 1989, so she may be liable under s.2 for making a damaging disclosure of any information etc. to which he has access by virtue of being a Crown servant.
- The information here clearly falls within the list of possible effects which make a disclosure likely to be damaging for the purpose of s.2.
- Sir Stoneleigh is not a Crown servant, but may commit an offence by disclosing information received in confidence from a Crown servant under s.5(1)(a)(i) or s.5(1)(a)(ii).
- Martha has not committed any offence merely by receiving the information, but if she publishes it she may commit an offence under s.5(1)(a)(i) or s.5(1)(a)(iii).
- Defences – under s.7(4) it would be a defence for Sir Stoneleigh to prove that at the time of the alleged offence, he believed that he had lawful authority to make the disclosure in question and had no reasonable cause to believe otherwise. Whether the defence would succeed would depend on whether he reasonably believed he was being authorised to disclose the information to a newspaper.
- Awareness of likelihood of damage – by virtue of s.2(3) it would be a defence for Andrew to prove that he did not know, and had no reasonable cause to believe, either that the information was within the relevant category, or alternatively that the disclosure would be damaging. The first clearly would not apply, but Andrew might claim that he had no reason to believe that his particular disclosure, to a respected MP, would be damaging.

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

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

(b) Explain how a jury would be selected if any of them were to be tried in the Crown Court. [11]

Credit reference to:

- Mode of jury selection: random list of potential jurors generated by computer at the Central Summoning Bureau from the electoral register; summonses sent out to confirm that the individual is not in a disqualified category; jury for a particular case chosen by random ballot; first 12 names called out are sworn in.
- Qualification for jury service: 18-70, resident in UK for at least 5 years since 13th birthday, not within a disqualified category.
- Criminal Justice Act 2003: only the over-65s and members of the armed forces are exempt. Those who are disqualified: anyone who has been sentenced at any time to 5 or more years' imprisonment; or in the past 10 years has served any part of a sentence of imprisonment, or had a suspended sentence or a community order.
- People who suffer from mental illness or handicap and are being treated regularly may not serve. The judge can discharge anyone who is not fit to serve through physical disability (blind or deaf) or does not have sufficient understanding of English.
- Summoning officer has a discretion to excuse anyone or allow them to defer their service to another time for good reason.
- Jury vetting: routine police check to exclude those disqualified because of a criminal record; in exceptional cases the Attorney-General may authorise vetting of background and political views.
- A jury must be random; a judge may not attempt to create a racial balance on a jury: R v Ford.

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

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

Q.4 Study the text below and answer the questions based on it.

Liam visited his grandmother, who gave him a box of freshly laid eggs to take home to his mother. Liam soon became fed up with carrying the box, so he put the eggs into the large outer pockets of his coat. PC Keen noticed the bulges in Liam's pockets, and thought they looked suspicious, so he stopped Liam and searched him. When PC Keen was feeling inside Liam's pocket he broke some of the eggs. His hand was covered in egg yolk, which dripped all over his uniform as he withdrew it. Liam said "Oops," causing some passers-by to laugh. Annoyed, PC Keen marched Liam to the nearby police station. The custody officer asked PC Keen what Liam had been arrested for. PC Keen replied, "Just shove him in a cell, and I'll sort him out when I've cleaned myself up." Liam was placed in a cell and left there for eight hours. Liam asked if he could phone his mother, but the custody officer told him he would need permission from a senior officer. No senior officers were available, so Liam was left sitting in his cell. Eighteen hours later, Superintendent Slack came on duty, and asked what Liam was being held for. Nobody seemed to know, so Superintendent Slack told the custody officer to charge Liam with disorderly conduct and release him on bail.

(a) In the light of reported case law and other sources of law, consider the legality of the actions of the police. [14]

Credit reference to:

- Police and Criminal Evidence Act 1984, as amended.
- Police powers to stop and search: PACE ss.1-3 and Code A.
- Need for reasonable suspicion that the officer will find stolen or prohibited articles: s.1.
- Code A: need for a proper basis for suspicion; a stop and search should not be carried out just because of the suspect's appearance, ethnicity, etc.
- Procedural requirements of a valid search: ss. 2 and 3; *Osman v DPP*.
- Power of arrest: PACE s.24 and Code G.
- Grounds for arrest: reasonable suspicion that the suspect has committed, is committing, or is about to commit any offence, and reasonable belief that the arrest is necessary for one or more of the reasons given in s.24.
- Procedure on arrest: suspect must be informed of arrest and the reason (PACE s.28) and should be cautioned.
- Role of custody officer; rights of suspect when brought to the police station; Code C.
- Rights of suspect during detention: PACE s.56 – right to have someone informed of detention; s.58 – right to legal advice; when these rights can be delayed.
- Detention reviews: PACE s.40.
- Time limits on detention: PACE s.41.

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

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

(b) Explain the powers of the police to grant bail to Liam.

[11]

Credit reference to:

- Police and Criminal Evidence Act 1984, ss.37 and 38: powers of police to grant bail pending further enquiries or following charge.
- Bail should be granted when a suspect has been charged with an offence (s.38) unless: there is doubt about the name or address of the suspect; or detention is necessary to protect the suspect from himself or others; to protect others from the suspect; there is a danger that the suspect may not answer to bail, or may interfere with witnesses or the administration of justice.
- Coroners and Justice Act 2009 says the police may not grant bail if the charge is murder.
- Bail can be granted after a suspect has been arrested but not charged (s.37). If the custody officer believes that there is sufficient evidence to charge the suspect or sufficient evidence to justify holding the suspect while the police continue their enquiries.
- Bail conditions: police may grant bail subject to conditions: Criminal Justice and Public Order Act 1994 – examples of conditions.
- The Police (Bail and Detention) Act 2011 provides retrospectively that the police can keep someone on bail without charge for as long as they consider necessary – reverses Greater Manchester Police v Hookway 2011.

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

| Marks | AO1 Knowledge and Understanding |
|-------|--|
| 8-9 | Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform. |
| 6-7 | Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism. |
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| 0-2 | Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content <i>making some basic synoptic connections</i> with the basic elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a basic understanding of the practical application of the law. |

GCE LAW - PAPER LA4

UNDERSTANDING LAW IN CONTEXT: FREEDOM, THE STATE AND THE INDIVIDUAL

OPTION 1: CONTRACT & CONSUMER LAW 1254/01

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

SECTION A

Q.1 Evaluate the extent to which the law ensures that a debtor can actually afford the credit being offered to him or her by a consumer lender. [25]

Credit reference to:

- Powers under Section 55(B) requires a test of assessment of credit worthiness.
- Pre-contract disclosure.
- General cancellation right under Section 66(A) Consumer Credit Act 2006.
- Credit will be given for relevant citation.

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

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

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

Q.2 Evaluate the extent to which the Consumer Credit Act 2006 has strengthened the position of vulnerable consumers through its alternative dispute resolution mechanism. [25]

Credit reference to:

- Financial Services and Market Act 2000.
- Financial Ombudsman Services can award substantial compensation.
- Financial Ombudsman Jurisdiction is not a court of law so there is no opportunity of declaring an agreement to be unenforceable.
- The relationship between the Financial Ombudsman Services with the court remedies.
- Judicial review and a challenge of determinations by the Financial Ombudsman.

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

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

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

Q.3 Evaluate the effectiveness of the law in the light of the closure of the Office of Fair Trading. [25]

Credit reference to:

- The OFT closed on 31st March 2014 with responsibilities being passed to a number of bodies.
- Competition and Markets Authority deals with competition and consumer protection.
- Financial Conduct Authority regulates the financial services industry.
- The role of the Trading Standards Institute.
- The Citizens Advice Bureau has responsibility for consumer education.
- Candidates will be given credit for knowledge of developments in 2014.

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

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

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

Q.4 Critically discuss the approach adopted in regulating exemption clauses under English and Welsh Law. [25]

Credit reference to:

- Common law and exclusion clauses.
- UCTA 1977.
- UTCRR 1999.
- Candidates will be rewarded for relevant citation including citing and applying specific sub-sections of legislation.

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

| | AO2 |
|-------|--|
| Marks | Skills |
| 11-13 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
| 7-10 | Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation. |
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| Marks | AO3 |
|-------|--|
| 3 | Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional. |
| 2 | Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning. |
| 1 | Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning. |
| 0 | Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning. |

SECTION B

Answer **one** question.

Q.5 Study the text below and answer the questions based on it.

“Damages are normally concerned to compensate the victim of a wrong. They are designed to make good, as far as possible, the pecuniary or non-pecuniary loss suffered by the victim by putting him or her in to as good a position as if no wrong had occurred.”

[Source: Law Commission, *Sixth Programme of Law Reform: Damages*]

(a) Explain the way in which contractual rights are perceived more in terms of their breach rather than their performance. [11]

Credit reference to:

- The claimed method for assessing damages as appropriate (measure).
- Remoteness of damages.
- Non-pecuniary losses are recoverable in certain circumstances.
- The duty to mitigate loss.
- The need to quantify losses.
- Any agreed damages clause is not valid where it is a penalty provision.
- Credit will be given for relevant citation.

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

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

(b) Evaluate the significance of Equity in the development of Contract and Consumer Law in England and Wales. [14]

Credit reference to:

- Equitable jurisdiction in the context of mistake and rescission.
- Equity and the development of promissory estoppel.
- Improper pressure and illegality.
- Equitable remedies.
- Credit will be given for accurate citation.

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

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

Q.6. Study the text below and answer the questions based on it.

“Paying for goods or services by credit card is now a major part of daily life with many people preferring this method of payment to using cash or cheques. An advantage of using a credit card is that, under Section 75 of the Consumer Credit Act 1974, customers who have a claim against a supplier for breach of contract or misrepresentation will generally have an equal claim against the card issuer.”

[Source: *Financial Ombudsman News*, Issue 31, September 2013]

(a) Explain the connected lender liability provisions under the Consumer Credit Act. [11]

Credit reference to:

- Section 56.
- Despite viewed as a flawed provision Section 75 is still in force.
- EU Consumer Credit Directive of 2008/48/EC implemented in Section 75A.
- Credit will be given for relevant citation and also and understanding of the rules and appropriate statutory provisions.

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

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

(b) Evaluate the significance of human rights in the development of the consumer credit law in England and Wales. [14]

Credit reference to:

- The application of the Human Rights Act.
- The relationship between Human Rights and Consumer Credit Law, for example, declarations of incompatibility.
- The concept of unfair relationships and human rights.
- Credit will be given for appropriate citation and also the concept of agreements being improperly executed.
- Reform of consumer credit law.

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

| Marks | AO2 |
|--------|---|
| Skills | |
| 11-13 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |
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LAW – PAPER LA4 (A2)

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

OPTION 2: CRIMINAL LAW & JUSTICE

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

SECTION A

Q.1 “Bail should only be refused to people who present a real danger to public safety.” Discuss. [25]

Credit reference to:

- Bail Act 1976, s.4: the presumption of entitlement to bail.
- Police and Criminal Evidence Act 1984, s.38: power of custody officer to grant bail from the police station following charge.
- Circumstances in which bail need not be granted: Bail Act 1976 Schedule 1 (e.g., defendant is likely to fail to surrender, commit further offences or interfere with witnesses or the administration of justice).
- Circumstances in which police bail may be refused: s.38 – e.g., where the custody officer has reasonable grounds to believe that the name or address given by the suspect may not be genuine; where the custody officer has reasonable grounds to believe that the suspect will commit further offences, interfere with witnesses or the administration of justice; where detention is necessary for the suspect’s own protection or for the protection of others; where the charge is murder (Coroners and Justice Act 2009).
- Factors to be taken into account when considering whether bail should be granted.
- Modification of the general presumption in favour of bail – e.g., bail can only be granted in exceptional circumstances where the defendant is charged with murder, manslaughter or rape, or where previously charged with a specified serious offence or where the offence was committed while already on bail (Criminal Justice and Public Order Act 1994 s.25 as amended by Crime and Disorder Act 1998).
- Right of the prosecution to appeal against grant of bail: Bail Amendment Act 1993.
- Powers of police and courts to impose bail conditions.
- Powers of arrest for breach of bail conditions.
- Evaluation of when it is appropriate to refuse bail; bail bandits, cases of Hogans and Weddell.

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

| | AO2 |
|--------------|--|
| Marks | Skills |
| 11-13 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation. |
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| Marks | AO3 |
|--------------|--|
| 3 | Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional. |
| 2 | Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning. |
| 1 | Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning. |
| 0 | Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning. |

Q.2 To what extent does the Crown Prosecution Service, as it exists at present, live up to the ideals which led to its creation? [25]

Credit reference to:

- Background and reasons for the establishment of the CPS (e.g., Justice Report, Phillips Commission).
- Prosecution of Offences Act 1985.
- Role of the CPS within the criminal justice system: taking the decision whether to prosecute; advising the police; conducting prosecutions in the magistrates' courts and Crown Court.
- Early problems and proposals for reform: Glidewell Report, Narey review, Denman Report.
- Major reforms: the Narey fast-track system; establishment of Criminal Justice Units; closer collaboration with the police.
- Present structure of the CPS: 13 areas corresponding to police areas, each headed by a Chief Crown Prosecutor.
- Roles of the Attorney-General and Director of Public Prosecutions.
- Recent reforms, e.g., full advocacy rights; establishment of CPS Direct; CPS has taken over charging in all but minor cases.
- Use of trained but not legally qualified staff in magistrates' courts.
- Establishment of CPS Inspectorate.
- Evaluation: the importance of having an independent prosecution service; whether the CPS has made the system fairer and more efficient; whether current reforms and cutbacks are undermining the ideals behind the establishment of the CPS.

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

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

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

Q.3 To what extent has the attitude of the courts towards intoxication as a defence been guided by considerations of policy? [25]

Credit reference to:

- Intoxication is not a defence in itself, but can be used to support a claim that D lacked the relevant mens rea.
- Distinction between voluntary and involuntary intoxication -
- Intoxication is voluntary when it results from D knowingly taking alcohol and/or drugs. D need not know the precise nature or strength of the substance: Allen.
- Intoxication is involuntary when D becomes intoxicated through no fault or knowledge of his own. Includes the situations where D takes the drug under medical advice, or takes a non-dangerous drug which would not normally cause unpredictability or aggressiveness, e.g., Hardie.
- Distinction between crimes of basic and specific intent: DPP v Majewski.
- Basic intent: crimes which can be committed with anything other than intention as the mens rea, e.g., involuntary manslaughter, offences against the person other than s.18 of the Offences Against the Person Act 1861.
- Specific intent: crimes which require intention as their mens rea, e.g., murder.
- Effect of voluntary intoxication: provides a complete defence to a crime of specific intent where it prevents D from forming that intention: DPP v Beard. But if it can be proved that D had the required specific intention despite his intoxication, he can still be convicted of that offence: DPP v Beard.
- The “dutch courage” concept: where D voluntarily intoxicates himself to get up the courage to commit a crime of specific intent, he can still be convicted of that crime: A-G for Northern Ireland v Gallagher.
- Voluntary intoxication cannot provide a defence to basic intent crimes, as the courts treat becoming voluntarily intoxicated as a reckless course of conduct which is sufficient to fulfill the mens rea requirement of any offence of basic intent: Majewski.
- Involuntary intoxication can provide a defence to a crime of specific intent, and also to a crime of basic intent, as involuntary intoxication is not regarded as reckless and therefore does not satisfy the mens rea requirement of crimes of basic intent.
- However, if it can be proved that D did in fact have the required mens rea of an offence despite his involuntary intoxication, he can be convicted of that offence: Kingston.
- Intoxication and mistake – D cannot rely on voluntary intoxication in relation to a crime of specific intent if he acted under a mistaken belief in the need for self-defence: O’Grady.
- Evaluation: policy of not allowing people to escape liability merely because they weaken their own self-control through voluntary intoxication; policy that people who actually do form the mens rea of an offence should not be let off just because their inhibitions are weakened, as in Kingston; need to protect innocent people from drunken mistakes in situations like O’Grady, etc.
- Candidates may refer to reform proposals such as a new offence of dangerous intoxication, or whatever may transpire between now and 2015.

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

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

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

Q.4 “The main principle guiding the courts when determining whether an offence is one of strict liability is the need to protect society as a whole against the risks of everyday life.” Discuss. [25]

Credit reference to:

- Nature of strict liability; distinction between strict and absolute liability, e.g., Larsonneur, Winzar.
- General presumption that mens rea is required; e.g., Sweet v Parsley; Gammon Ltd v A-G for Hong Kong.
- The principles set out by Lord Scarman in Gammon as to when the presumption of mens rea can be displaced. (It is not expected that candidates should be able to recite these, but they are set out below for the convenience of markers.)
- (1) There is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence;
- (2) The presumption is particularly strong where the offence is “truly criminal” in character;
- (3) The presumption applies to statutory offences, and can be displaced only if it is clearly or by necessary implication the effect of the statute;
- (4) The only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern: public safety is such an issue;
- (5) Even where the statute is concerned with such an issue (i.e., social concern) the presumption of mens rea stands unless it can also be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.
- Illustration of the Gammon principles with examples of case law, e.g., Callow v Tillstone, Sweet v Parsley, DPP v B(A minor), Smedleys v Breed, LBC of Handsworth v Shah, Storkwain, Alphacell v Woodward.

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

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

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

SECTION B

Answer **one** question from this section.

Section B

Q.5 Study the text below and answer the questions based on it.

“In a pamphlet released by the Howard League for Penal Reform, top legal expert Andrew Ashworth, who is the Vinerian Professor of Law at Oxford University, and who advised the judiciary on sentencing between 1999 and 2010, said that jail should be reserved for offenders who commit crimes of a violent, sexual or threatening nature. Fines and community sentences would be more effective for others, and reduce the prison population of England and Wales by almost 6,000, he said. But the government said it had ‘no intention’ of changing the law.”

[Sourced from BBC News, 14 August 2013]

(a) Explain the role of guidelines in the sentencing of adult offenders. [11]

Credit reference to:

- Role of the Sentencing Council: produces sentencing guidelines which must be followed by courts in England and Wales.
- Coroners and Justice Act 2009: following sentencing guidelines is obligatory unless it would be contrary to the interests of justice.
- Court of Appeal guidelines.
- Principles: sentencing should reflect the seriousness of the offence and the circumstances of the offender. Sentencing guidelines set out for individual offences, the range of seriousness and the appropriate range of sentences. The courts should approach sentencing in steps: determine the seriousness of the offence, determine the range of possible sentences; consider the circumstances of the individual offence and the offender.
- General guidelines are issued as to what factors should be taken into account by the courts.
- Candidates may discuss the philosophies of punishment – if so, they should be credited.

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

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

(b) Evaluate the process by which magistrates are selected.

[14]

Credit reference to:

- Appointment of magistrates amended by the Courts Act 2003.
- Lay magistrates are appointed by the Lord Chancellor on the recommendation of Local Advisory Committees. District judges are appointed by the Judicial Appointments Committee. Vacancies are advertised and individuals may apply on their own initiative.
- Magistrates must be between 18-65 on appointment and must retire at 70. The Courts Act 2003 abolishes the 15 miles residential requirement, but magistrates must still come from the local area.
- Magistrates must be of good character and show six key qualities: good character, understanding and communication, social awareness, maturity, sound judgment, commitment and reliability.
- The Auld Review recommended that magistrates should be more representative of the community.
- Magistrates are obliged to undergo initial training and attend “training days” thereafter: 12 hours of basic training every 3 years.
- Evaluation: to what extent are magistrates representative of the community; do they have sufficient understanding of the law; inconsistencies in sentencing between benches; do magistrates provide “second class justice on the cheap”.

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

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

Q.6 Study the text below and answer the questions based on it.

It seems hardly credible that any modern system of criminal justice would leave the most serious offences to be defined by judges on a case by case basis, yet this is how the law relating to homicide has developed in England and Wales. Instead of the apparently more logical approach of having “degrees” of homicide, to reflect the wide range of moral culpability found in real-life cases, we have two separate offences of murder and manslaughter whose common element is causing the death of a human being. And yet it works. Somehow, through a long line of cases, the courts have succeeded in creating a morally acceptable framework which is broad enough to punish people who kill from genuine wickedness, while permitting relative leniency towards people who kill through carelessness or stupidity. It may be doubted whether Parliament itself could have achieved as workable a result.

(a) Explain the elements of crime in relation to murder and manslaughter.

[11]

Credit reference to:

- Mens rea as the mental element in an offence – the “guilty mind”.
- Mens rea usually required in more serious offences.
- Mens rea is usually taken to consist of intention or recklessness, although many offences require only negligence or no mental element (sometimes called blameless inadvertence).
- How the courts have approached intention: cases such as Hyam, Moloney, Hancock v Shankland.
- Direct and oblique intention: Nedrick, Woollin.
- Basic and specific intent: Majewski.
- Recklessness – subjective (Cunningham recklessness).
- Actus reus: the elements of the definition of an offence apart from the mens rea – wider than the concept of an action.
- Generally, an actus reus will not exist unless the required mens rea is present.
- An actus reus may consist of an omission if there is a duty to act, e.g., Pittwood, Stone v Dobinson, Gibbins and Proctor.
- Candidates may offer a range of examples from statute or case law, and should be credited appropriately.

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

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

(b) Evaluate the advantages and disadvantages of judicial precedent as a method of developing the law. [14]

Credit reference to:

- Meaning of precedent: doctrine of stare decisis: judges must follow the decisions of higher courts and in some cases courts at the same level.
- Hierarchy of the courts: who binds who – Supreme Court bound by its own decisions, subject to the Practice Statement of 1966 which allowed the House of Lords to depart from its own previous decisions; Court of Appeal bound by Supreme Court and its own previous decisions, apart from the exceptions in *Young v Bristol Aeroplane* (the Civil and Criminal Divisions do not bind each other); High Court bound by Supreme Court and Court of Appeal; Crown Court bound by all courts above it and not bound by its own decisions; magistrates courts and county courts bound by courts above and not by own decisions.
- Distinction between binding and persuasive precedent.
- Ratio decidendi and obiter dicta.
- Following, distinguishing, reversing and overruling.
- Advantages of precedent: enables the courts to create new law (original precedent) when necessary, e.g., classic examples like *Donoghue v Stevenson*, etc.; examples of criminal law development such as homicide.
- The binding of lower courts by decisions of higher courts ensures that the most qualified judges have the greatest authority; precedent creates certainty in the law; provides more detail than statutes; adds flexibility to the law.
- Disadvantages: creates huge volume and complexity of law; rigidity in the sense that courts may be bound by precedents which are out of date or clearly unjust; the techniques of avoidance can result in narrow and illogical distinctions; development of case law depends on the accident of a case on a particular topic coming to court.

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

| Marks | AO2 |
|-------|---|
| | Skills |
| 11-13 | Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy. |

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

LAW – PAPER LA4 (A2)

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

OPTION 3: FREEDOM OF THE INDIVIDUAL AND PROTECTION OF HUMAN RIGHTS

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

SECTION A

Q.1 To what extent would the protection of human rights in the United Kingdom be affected if the Human Rights Act 1998 were abolished? [25]

Credit reference to:

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

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

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

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

Q.2 “The Equality Act 2010 cannot guarantee protection against every kind of discrimination, but it sends a clear message that the most blatant forms of discrimination are no longer tolerated.” Discuss. [25]

Credit reference to:

- Equality Act 2010 – main effects of the Act.
- Codifies and simplifies previous legislation, e.g. the Race Relations Act 1975, Sex Discrimination Act 1976, etc.
- Increases the range of characteristics on the basis of which it is unlawful to discriminate.
- Protected categories – sex, race/ethnicity, religion, age, disability, sexual orientation, gender reassignment, marital status, pregnancy and maternity.
- Meaning of direct discrimination, with examples from case law.
- Meaning of indirect discrimination, with examples from case law.
- Discrimination on the basis of presumed characteristics.
- Discrimination on grounds of association (e.g., carers).
- Candidates may also refer to some or all of the following, which should also be credited -
- Victimisation.
- Harassment.
- Post-employment discrimination (e.g., refusing a reference).
- Remedies: Employment Tribunal can now make recommendations going beyond the instant case.
- Enforcement: candidates may note that state legal funding is not available to claimants.

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

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

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

Q.3 Critically evaluate the extent of the protection given to freedom of religion in the law of England and Wales. [25]

Credit reference to:

- The Human Rights Act 1998 gives effect to Art.9 of the ECHR, which provides for freedom of thought, conscience and religious belief.
- Art.9(2) qualifies the right to manifest one's religious beliefs by permitting restrictions in the interests of public safety, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others.
- Candidates may refer to special provisions and exemptions to protect religious freedom, e.g., exemption from slaughter regulations for production of kosher and Halal meat; exemption of Sikh men from wearing motorcycle helmets and safety helmets; provision for faith schools; requirement for employers to make reasonable provision to allow employees to observe religious festivals under the Equality Act 2010, etc.
- Candidates may refer to cases involving religious dress and ornamentation, e.g., *Mandla v Dowell Lee*, *R(on the application of Shabina Begum) v Head Teacher and Governors of Denbigh School*, *Ali v Head Teacher and Governors of Lord Grey School*, etc.
- Protection from discrimination on grounds of religion – Equality Act 2010 includes religion or belief within the nine protected categories.
- Religiously aggravated offences – the Crime and Disorder Act 1998, s.28 and s.29, increases the maximum penalty for offences against the person where D demonstrates racial or religious hostility, or is motivated by racial or religious hostility. Section 32 adds two racially or religiously aggravated offences to the Protection of Harassment Act 1997: racially or religiously aggravated harassment, and putting someone in fear of violence. Section 30 adds the offence of racially or religiously aggravated criminal damage. Section 31 adds racial or religious aggravation to the Public Order Act 1986, s.4, s.4A and s.5. (Candidates are not expected to provide details of religiously aggravated offences: this list is just to assist examiners in case they do.)
- Offences of stirring up religious hatred – the Racial and Religious Hatred Act 2006 adds Part IIIA (sections 29A-29N) to the Public Order Act 1986. This has the effect of creating six offences relating to stirring up religious hatred, which are similar but not identical to previously existing offences of stirring up racial hatred.
- The Public Order Act 1986, s.29J, provides that nothing in Part IIIA prohibits or restricts discussion, criticism, expressions of antipathy or dislike, ridicule, insult or abuse of particular religions.
- The common law offence of blasphemy has been abolished by the Criminal Justice and Immigration Act 2008, s.79.

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

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

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

Q.4 Consider whether the legal controls over the use of secret surveillance by the police are strong enough to protect the privacy of innocent people. [25]

Credit reference to:

- Art.8 of the ECHR gives a right to private and family life – a qualified right which can be restricted, inter alia, for the prevention of disorder or crime.
- Candidates may mention the background to current legislation regulating surveillance; cases such as *Malone v UK*, *Khan v UK*, *Govell v UK*, *Halford v UK*.
- Candidates should refer to the Police Act 1997 and the Regulation of Investigatory Powers Act 2000.
- Police Act 1997, Part III, gives police power to enter premises and plant surveillance devices without a warrant (the “bug and burgle” power).
- Section 93 gives power to enter premises without a warrant and interfere with wireless telegraphy.
- Section 92 gives absolute immunity against criminal prosecution or civil suit for any action authorised under the Act.
- Authorisation can be given by the Chief Constable or Assistant Chief Constable (s.94).
- Basis for authorisation: that the authorising officer believes the action to be necessary because it will be of substantial value in the prevention or detection of serious crime, and that the action is proportionate (s.93(2)).
- “Serious crime” is widely defined as crime which involves the use of violence or results in substantial gain, or is conduct by a large number of persons in pursuit of a common purpose. The offence must be one for which a person over 21 with no previous convictions could expect a sentence of 3 years or more.
- Authorisation should normally be in writing, but may be given orally in urgent cases by the Chief Constable. A written authorisation lasts 3 months; one issued orally lasts 72 hours, and either can be renewed in writing for a further 3 months without limit on the number of renewals.
- Procedures under the Police Act 1997 are supervised by the Surveillance Commissioners, headed by the Chief Surveillance Commissioner (a senior judge). The Chief Surveillance Commissioner reviews actions taken and makes an annual report to Parliament. This can be edited by the Prime Minister before it is presented.
- Every authorisation must be notified to a Commissioner.
- Prior approval must be obtained from a Commissioner if the property is a dwelling house, a hotel bedroom or office premises, or if the action is likely to reveal matters which are subject to legal privilege, confidential personal information or confidential journalistic information. Prior approval can be dispensed with in urgent cases.
- Regulation of Investigatory Powers Act 2000, Part II, provides the legal basis for actions not covered by the PA 1997, and also deals with covert surveillance.
- Covert surveillance is defined (s.26) to include monitoring, observing and listening to people’s movements, conversations or other activities, recording anything monitored, etc., and the use of electronic surveillance devices.
- Section 26 draws a distinction between directed surveillance and intrusive surveillance.
- Directed surveillance is surveillance conducted for the purposes of a particular operation which is likely to result in obtaining private information about a person. Directed surveillance can be authorised by a superintendent, or in urgent cases, by an inspector.

- Intrusive surveillance involves placing surveillance devices in residential premises or a private vehicle. It requires authorisation from a chief constable under a system similar to the authorisation procedure under the Police Act 1997. Authorisation lasts for 3 months and can be renewed indefinitely.
- Powers to conduct directed surveillance are given to a wide range of bodies including the Department of Social Security, Department of Trade and Industry, and also to local authorities.
- There is a tribunal, the RIPA Tribunal, which hears complaints. It is the only body which has jurisdiction in proceedings brought under the HRA 1998, and ousts the jurisdiction of the ordinary courts. The Tribunal can only consider whether authorisation was validly given, and not whether the action itself was justified. It can give no reasons for its decision, and there is no appeal.
- In theory, the Tribunal has power to order the cessation of surveillance and destruction of such material already obtained as is not needed by the police. However, most targets are not aware they are under surveillance, and it is impossible to show that surveillance was undertaken without authorisation. It is believed that no complaint from a member of the public has ever succeeded.

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

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

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

SECTION B

Answer **one** question.

Q.5 Study the text and answer the questions based on it.

One of the lessons of the Leveson Inquiry is just how difficult it is to preserve the freedom of the press – vital in any modern, democratic society – and at the same time, to protect the privacy of individual citizens. It has often been said that there is no right to privacy in the law of England and Wales. However, the courts have gone some way towards protecting individual privacy through the development of breach of confidence. This is an example of judicial law-making at its best. Here, the system of judicial precedent has produced principles of law which are both robust and flexible. This suggests that in certain areas at least, judicial precedent may have some advantages over legislation.

(a) Explain how breach of confidence can be used to protect privacy. [11]

Credit reference to:

- Absence of a specific right to privacy in the law of England and Wales: *Kaye v Robertson*.
- Art.10 of the ECHR gives the right to freedom of expression, and the ECtHR has frequently affirmed the high importance which it attaches to freedom of the press, e.g., *Goodwin v UK*.
- Art.8 of the European Convention on Human Rights: “Everyone has the right to respect for his private and family life, his home and his correspondence”.
- The courts have extended the original tort of breach of confidence (used to protect commercial secrets) to provide some protection for personal privacy. Examples of cases : *Prince Albert v Strange*; *Argyll v Argyll*; *Stephens v Avery*; *Douglas v Hello!*; *Campbell v MGN*; etc.
- Expansion of breach of confidence: the courts have dropped the requirement to find a specific relationship of confidence between the parties. A duty of confidence will arise whenever the person subject to the duty knows, or ought to know, that the claimant can reasonably expect his privacy to be protected: Lord Woolf in *A v B and C*; Lord Goff in *A-G v Guardian Newspapers (No.2)*.
- *Venables v News Group Newspapers*: confidence can arise independently of any relationship between the parties – injunctions imposed to protect the claimants’ rights under Art.2 and Art.3.
- Well informed candidates may also include such points as the following, and should be appropriately credited.
- Section 12(4) of the HRA 1998 states that UK courts must have particular regard to the Convention right to freedom of expression, and where the material in question is journalistic, literary or artistic material, to the extent to which is in the public interest for it to be published, and any relevant privacy code.
- The ECtHR has accepted that Art.8 can prevail against media intrusion in *Spencer v UK* (1998) and *Von Hannover v Germany* (2005). (In *Spencer*, the Court ruled that contracting states are obliged to provide a measure of protection to the right of privacy of an individual affected by others’ exercise of their right to freedom of expression. In *Von Hannover v Germany* the ECtHR ruled there was an infringement of the privacy of Princess Caroline of Monaco by publication of photos of her in the German press. The photos did not contribute to any debate in the public interest, and so the right to privacy prevailed over the right of the press to freedom of expression under Art.10.) These decisions are ones which the courts of England and Wales ought to take into account under the HRA 1998, s. 2.

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

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

(b) Evaluate the advantages and disadvantages of judicial precedent.
[14]

Credit reference to:

- Meaning of precedent: doctrine of stare decisis: judges must follow the decisions of higher courts and in some cases courts at the same level.
- Hierarchy of the courts: who binds who – Supreme Court bound by its own decisions, subject to the Practice Statement of 1966 which allowed the House of Lords to depart from its own previous decisions; Court of Appeal bound by Supreme Court and its own previous decisions, apart from the exceptions in *Young v Bristol Aeroplane* (the Civil and Criminal Divisions do not bind each other); High Court bound by Supreme Court and Court of Appeal; Crown Court bound by all courts above it and not bound by its own decisions; magistrates courts and county courts bound by courts above and not by own decisions.
- Distinction between binding and persuasive precedent.
- Ratio decidendi and obiter dicta.
- Following, distinguishing, reversing and overruling.
- Advantages of precedent: enables the courts to create new law (original precedent) when necessary, e.g., development of breach of confidence, *Donoghue v Stevenson*, etc.; the binding of lower courts by decisions of higher courts ensures that the most qualified judges have the greatest authority; precedent creates certainty in the law; provides more detail than statutes; adds flexibility to the law.
- Disadvantages: creates huge volume and complexity of law; rigidity in the sense that courts may be bound by precedents which are out of date or clearly unjust; the techniques of avoidance can result in narrow and illogical distinctions; development of case law depends on the accident of a case on a particular topic coming to court.

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

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

Q.6 (a) Study the text and answer the questions based on it.

The idea seems to have grown up that there is something distasteful and perhaps even “un-British” about the notion of fundamental human rights. Those sections of the Press which claim to reflect the public mood seem to find difficulty with the notion that there is a basic level of decent treatment to which everyone is entitled, simply by virtue of being human. Admittedly, the idea that everyone is equally valuable becomes hard to maintain when resources are limited and distinctions are made between the deserving and the undeserving. However, it was in just such a climate of austerity that the European Convention on Human Rights was created, and its high ideals are just as relevant today.

(a) Explain the purpose of the European Convention on Human Rights. [11]

Credit reference to:

- Origins and nature of the ECHR: Treaty of Rome produced by the Council of Europe and signed in 1950 in the wake of World War II.
- European Court of Human Rights in Strasbourg.
- Enforcement – under Art.33, a state which is a party to the ECHR may bring an application against another state which is a party, e.g., Ireland v UK. Under Art. 34, individuals, groups of individuals or non-government organisations may bring an application alleging they are a victim of a violation by a member State.
- A judgment that a state’s laws are in contravention of the ECHR imposes an obligation upon that state under international law to bring its law into line with the ECHR.
- Content of the ECHR: examples of Articles. This is likely to be the major part of many answers, and full credit should be given to answers which are convincing.
- Limitations of the ECHR, e.g., it does not deal with political and social rights, states may derogate from the ECHR under Art.15, the majority of articles give qualified and not absolute rights.
- Significance of the ECHR in UK law: is enshrined in UK law via the Human Rights Act 1998; judges obliged to interpret the law in a way which is compatible with Convention rights and have regard to Strasbourg jurisprudence.

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

| Marks | AO1 |
|--------------|---|
| | Knowledge and Understanding |
| 8-9 | Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform. |
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| 0-2 | Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical applications of the law. |

(b) Evaluate the arguments for and against a Bill of Rights in the United Kingdom. [14]

Credit reference to:

- Almost all developed countries have a Bill of Rights.
- The Human Rights Act 1998 is just a piece of ordinary legislation which can be repealed at any time.
- The HRA 1998 is based on the ECHR, which is over 50 years old and arguably out of date.
- The ECHR does not include social, economic and political rights. Many ECHR rights are qualified in ways that allow them to be effectively circumvented by the UK government.
- The HRA 1998 does not prevent the government from passing laws which are incompatible with Convention rights.
- The HRA 1998 depends upon the willingness of the judges to uphold human rights.
- A Bill of Rights could be tailored to the needs of the UK.
- A Bill of Rights would be entrenched.
- A Bill of Rights would place permanent limits upon the actions of the executive.
- A Bill of Rights would make the government more accountable for its actions.
- A Bill of Rights would inevitably increase the power of the judiciary as they would have to interpret the provisions of the Bill.
- A Bill of Rights would necessarily be drafted in broad principles which would lead to uncertainty and increased litigation.
- A Bill of Rights would do nothing to combat social inequality and disadvantage.
- A Bill of Rights would not, by itself, give worthwhile rights to people who cannot make use of the legal system because of social disadvantage.

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

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



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