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# **GCE MARKING SCHEME**

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**SUMMER 2016**

**LAW - PAPER LA3**

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

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

**1253/03**

## **INTRODUCTION**

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

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

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

## GENERAL MARKING GUIDANCE

### General Instructions to LA3-03 Marking Scheme

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

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

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

## ***Principles of Marking*** ***(for LA3-03)***

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

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

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

## MARKING INSTRUCTIONS

### ASSESSMENT

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

### METHOD OF MARKING

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

### SAMPLE SCRIPTS

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

### EXAMINER'S REPORT

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

## LAW - PAPER 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*

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

PC Holmes and PC Watson were sitting in their police car when Rhidian walked past wearing a hoodie and with a backpack slung over his shoulder. PC Holmes said, "Let's have him," and called out to Rhidian to stop. PC Watson grabbed Rhidian's backpack, opened it and found it contained about fifty mobile phones. PC Holmes said to Rhidian, "Alright, get in the car, you're coming with us." Rhidian obeyed, and was driven to the police station. On the way, Rhidian explained that the members of the choir group he was a member of were donating their old mobile phones to raise money for the Ebola relief effort in Africa and had put Rhidian in charge of the collection. When they arrived at the police station, Rhidian asked to be allowed to contact his wife and consult a solicitor. The custody officer said that he would have to wait to contact his wife and speak to a solicitor until the police had checked out his story. Rhidian was then detained for fifty-two hours, during which time he was interviewed for lengthy periods without a break and with no food or water. At the end of that time, the police told Rhidian that he would be bailed pending further enquiries.

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

Credit reference to:

- Police and Criminal Evidence Act 1984.
- Power to stop and search: ss 1-3 and Code A.
- Reasonable suspicion: Code A – should not be based on personal factors alone.
- Requirements of a valid search: information to be given under s.2; failure renders search invalid: Osman.
- Procedure following search: s.3.
- Arrest power: s.24 as amended by SOCPA 2005, S.110, and code G police may arrest anyone who is, or is reasonably suspected to be, about to commit an offence; or in the act of committing an offence; or is guilty of committing an offence; or is reasonably suspected to be guilty of having committed an offence.
- Arrest power must only be exercised if the police have reasonable grounds to believe it is necessary (s.24(5)). The grounds are: to enable the name and address of the person to be ascertained if it is not known, or the police believe it to be false; to prevent the person causing physical injury to himself or another, suffering physical injury, causing loss or damage to property, committing an offence against public decency, or causing unlawful obstruction of the highway; to protect a child or other vulnerable person; to allow the prompt and effective investigation of the offence of the conduct or the person; to prevent any prosecution for the offence being hindered by the disappearance of the person.

- Procedural requirements of a valid arrest: should be informed of the fact he is under arrest and also the ground for arrest (s.28) and he should be cautioned.
- Treatment of suspects in police custody: Code C.
- Right to have someone informed of arrest: s.56.
- Right to legal advice: s.58.
- Time limits on detention: s.41 allows police to authorise detention up to thirty-six hours but further detention up to ninety-six hours requires authorisation by magistrates.
- Detention should be reviewed after six hours and then every nine hours by a review officer not involved in the case.

<b>Marks</b>	<b>AO3</b>
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.

	<b>AO2</b>
<b>Marks</b>	<b>Skills</b>
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 the powers of the police to grant bail to Rhidian.**

**[11]**

Credit reference to:

- Police and Criminal Evidence Act 1984, ss.37 and 38: powers of police to grant bail either pending further enquiries (s.37) or following charge (s.38). Street Bail (s.4 CJA 2003).
- 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 should 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.



<b>Marks</b>	<b>AO3</b>
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.

<b>AO1</b>	
<b>Marks</b>	<b>Knowledge and Understanding</b>
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.**

Donald works as a cleaner for a firm which has a contract to clean the offices of civil servants in a government building in Cardiff. On evening, when Donald arrived to clean the office occupied by Ian, he found Ian had gone down to the canteen to get a sandwich, leaving his computer switched on. The computer screen showed an e-mail from the Ministry of Defence in London, stating that the government had decided to close a factory in South Wales which makes military equipment for British troops in Iraq. Donald read the e-mail and realised that the closure would mean the loss of several hundred jobs in the area. When Donald got home, he told his brother Rhys, who is a Trades Union official. Rhys passed the information on to Morgan, a journalist with a weekly business magazine, who wants to publish the information in next week's edition.

- (a) Consider whether any criminal offences have been committed by Ian, Donald, Rhys and Morgan. [14]**

Credit reference to:

- The governing statute is the Official Secrets Act 1989. Prosecutions require consent of the Attorney-General. The information falls under s.2: Defence. Disclosure of the information may be "damaging" under s.2(2), as arguably it is likely to have the effect of damaging the capability of part of the Armed Forces to carry out their tasks, e.g. if the workforce takes industrial action against the closure.

**Ian**

- Ian is a Crown Servant (s.12), so he will be guilty of the offence under s.2 if he makes an unauthorised disclosure of information which he has access to by virtue of being a Crown Servant. A disclosure by a Crown servant is only made with lawful authority if it is made in accordance with his official duty (s.7) - which clearly is not the case here. Query whether he "discloses" the information to Dilys. Maybe guilty of the offence under s.8 of failing to take such care to prevent the unauthorised disclosure of the information as a person in his position may reasonably be expected to take.

**Donald**

- Donald will not be a Crown servant, but he is probably a government contractor since he is employed to provide services to people who are Crown servants (s.12). Under s.7(2), a disclosure by him would only be made with lawful authority if it was made in accordance with official authorisation, or if it was made for the purpose of his functions as a government contractor and without contravening an official restriction.
- Donald may have a defence - under s.2, it is a defence to prove that he did not know, and had no reasonable cause to believe, that the information related to defence, or that its disclosure would be damaging. Since the e-mail was from the Ministry of Defence, he may have trouble proving that he had no reasonable cause to believe it related to defence, but he may argue that he had no reason to think that telling his brother would be damaging to the Armed Forces.

### Rhys

- Rhys is neither a Crown servant nor a government contractor, so would be charged under s.5 - making a damaging disclosure of information resulting from an unauthorised disclosure. Whether he commits an offence depends on how the information was acquired. The relevant subsection would be s.5(1) (a) (i) - where the information was acquired as a result of an unauthorised disclosure at some stage by a Crown servant or government contractor. It is an offence to disclose such information without lawful authority if it is "damaging". Rhys does not have lawful authority, as under s.7 this would only be the case if he disclosed the information to a Crown servant for the purpose of his functions as such, or if he has an official authorisation to disclose it. To be guilty, he must have the required mens rea, i.e., he just needs to know or have reasonable cause to believe that the information is protected under the OSA 1989 and that the disclosure would be damaging.

### Morgan

- Morgan commits no offence simply by receiving the information, but will be guilty of the offence under s.5 (as for Rhys) if he discloses it to anyone else. No public interest defence: R v Shayler.

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 the role of the jury in deciding criminal cases.

[11]

Credit reference to:

- Jury in criminal cases present in the Crown Court.
- Role – listen to evidence, decide whether defendant is guilty or not guilty, may ask questions of the judge.
- Decision should be unanimous but judge can instruct jury to reach a majority verdict after a 'reasonable period of deliberation.
- Criminal Justice Act 2003 – there can now be trial by judge alone where jury tampering is suspected. R v Twomey (2009). Judge can order trial by judge alone.

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.**

**Tony Tackle, a famous rugby player, went to a nightclub to drown his sorrows after losing the league cup final and drank several bottles of wine. He was approached by a female fan, who asked him for his autograph. Tony signed the fan's autograph book, gave her a kiss on the cheek and posed with his arm around her while her friend took a photograph of them with a tablet computer. The fan sent a copy of the photograph to a national newspaper, the Daily Slur. The following week, the Daily Slur ran the headline 'Terrible Tackle's Cheating Try', and claimed in the article that a drunken Tackle had cheated on his wife while she was at home looking after their newborn baby.**

- (a) In the light of reported case law and other sources of law, consider whether Tony Tackle has any legal redress against the Daily Slur. [14]**

Credit reference to:

- Nature of defamation: publication of untrue, defamatory statements libel and slander.
- Elements of defamation. Defamation Act 2013.
  - Does the statement refer to the claimant? Or can it be taken to refer to the claimant?
  - Is the statement defamatory? S.1.
  - Has the statement been published?
  - Does at least one of the defences apply?
- The statement must refer to the claimant. By name or context.
- Is the statement defamatory? S.1 Defamation Act 2013.
- Definition: A statement which would tend to lower the claimant in the eyes of right thinking persons generally: *Sim v Stretch*, *Byrne v Dean*.
- Photographs and headlines must be considered in terms of its effects on the ordinary reasonable reader who reads the whole article, and not just someone who glances at it: *Charlesworth v NGN*.
- Innuendo – the phrase “Terrible Tackle’s Cheating Try” taken in conjunction with the photo at the reported conversation give an impression of a cheating husband. Cases: *Tolley v Fry*, *Cassidy v Daily Mirror*.
- The statement must be published. Repetition of a libel by the same publisher will no longer create a fresh claim for defamation (s. 8 Defamation Act 2013).
- Defences – A defendant can defend their statements on a variety of grounds. If he succeeds it does not matter whether the claimant proved the three elements because the defendant will have a defence to an action for defamation. The Defamation Act 2013 has codified and simplified the law in this area.
- The main defences are:
  - Truth - Section 2 of the Defamation Act 2013
  - Honest Opinion - Section 3 of the Defamation Act 2013
  - Responsible Publication on a Matter of Public Importance - section 4 of the Defamation Act 2013
  - Absolute Privilege
  - Qualified Privilege
  - Offer of Amends
- Section 11 of the Defamation Act 2013 provides that defamation actions will be tried without a jury unless the court orders otherwise so a judge will decide the damages as well as the verdict. Claims must usually be brought within a year of publication: there is some discretion to extend the limitation period.

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- There are two main remedies for defamation:
  - Damages
  - Injunction
- Section 12 of the Defamation Act 2013 gives the court power, if the claimant wins, to order the defendant to publish a summary of the judgment.
- Breach of confidence:
  - Has the threshold test of a reasonable expectation of privacy been passed?
  - Should the limiting factor that the information is in the public domain be applied?
  - Is the publication of the information in the public interest (the speech/privacy balancing act)?

<b>Marks</b>	<b>AO3</b>
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.

	<b>AO2</b>
<b>Marks</b>	<b>Skills</b>
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 European Convention on Human Rights protects freedom of expression. [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.

<b>Marks</b>	<b>AO3</b>
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.

<b>AO1</b>	
<b>Marks</b>	<b>Knowledge and Understanding</b>
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.**

**Cheryl, Louis and Mel organised a protest march against a new wind turbine farm that was due to be built near their homes. The route of the march passed through the town centre. As the protesters approached the town centre, PC Dermot approached Cheryl, Louis and Mel and asked them to change their route because of the Christmas market. They refused. A little while later, they reached the Christmas market entrance and found they were unable to proceed any further as it was full of shoppers. As the march came to a halt, a senior police officer advised the marchers to turn down a side street. The marchers complied, but were stopped by PC Dermot who was not aware of the senior police officer's advice and ordered the marchers to turn back. They again refused, whereupon PC Dermot arrested Louis. This infuriated Cheryl who shouted abuse at PC Dermot. Mel brandished her placard at PC Dermot and shouted "Police brutality".**

- (a) In light of reported case law and other sources of law, consider whether any public order offences may have been committed. [14]**

Credit reference to:

- Freedom of assembly; Article 11 of the ECHR - necessary and proportionate test.
- Public Order Act 1986.
- Police powers under s.12 and s14.
- Arrest powers: POA 1986, s12 and s14; s5; breach of the peace - Moss v McLaghlan, Laporte.

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 the tests that would be used by the Crown Prosecution Service when deciding whether Cheryl, Louis and Mel 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.