



GCE MARKING SCHEME

**LAW
AS/Advanced**

SUMMER 2012

INTRODUCTION

The marking schemes which follow were those used by WJEC for the Summer 2012 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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PAPER LA1

UNDERSTANDING LEGAL VALUES, STRUCTURES AND PROCESSES

Answer two questions

Q.1 (a) Explain the importance of the jury system on the law of England and Wales. [14]

Credit reference to:

- Juries have been used in the legal system for over a thousand years.
- The concept of judgement before one's peers is an inherent part of the common law system
- The independence of the jury, for example, *Bushell's case* (1670).
- The modern day use of the jury, for example, in the Crown Court and also the High Court, County Court and Coroners Courts.

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.
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(b) Discuss the role of lawyers, judges and police as jurors.

[11]

Credit reference to:

- These used to be ineligible for jury service.
- The rationale behind the Criminal Justice Act 2003.
- Many people feel that their role could lead to bias or to a legally well qualified juror influencing the rest of the jury.
- Credit reference to appropriate citation, for example, *R v Abdroikof* (2007) where the House of Lords considered appeals where a police officer or prosecutor had been one of the jury members. They held up the fact that although one of the members of the jury was a police officer, this did not of itself make a trial unfair. The test was to be applied was whether the fair minded and informed observer having considered the facts would conclude that there was a real possibility that the tribunal was biased.
- In terms of the role of judges on jury service in 2004 Lord Justice Dyson was summoned to attend as a juror. This prompted the Lord Chief Justice, Lord Woolf to issue observations to judges who are called for jury service.
- The rule of ensuring that the juror must not personally know any of the defendants. It is significant that in the summer of 2004 when a QC was summoned for jury service at the Central Criminal Court he was prevented from sitting in each case because he knew one or more people involved in each trial.

Marks	AO3
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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 fact 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 fact 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 fact 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.
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Q.2 (a) Explain what is meant by the Rule of Law.

[14]

Credit reference to:

- The rule of law represents a symbolic ideal against which proponents of widely divergent political persuasion measure and criticise the shortcomings of contemporary state practice.
- Judges hold a position of central importance in relation to the rule of law. They are expected to deliver judgements in a completely impartial manner.
- Candidates should refer to the rule of law and the concept of separation of powers.
- The amendment to the constitutional role of the Lord Chancellor.

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(b) Discuss the impact of the Human Rights Act 1998 on the legal system of England and Wales. [11]

Credit reference to:

- The Human Rights Act 1998 and the European Convention on Human Rights.
- The role of human rights and precedent and also statutory interpretation.
- The impact of the role of human rights within a modern legal system.
- Human rights affecting the principles of sentencing.
- The relationship between the rule of law, human rights and morality as pervasive concepts in the development of a modern legal system.

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Q.3 (a) Explain the Civil Court structure and appeal process.

[14]

Credit reference to:

- The main appellate courts are the Divisional Courts, the Court of Appeal and the House of Lords.
- Elaboration on the role of the Divisional Courts.
- The Court of Appeal Civil Division was set up by the Judicature Act 1873 and was intended to be the final court of appeal. However the position of the House of Lords and the final appellate court was reinstated by the Appellate Jurisdiction Act 1876.
- The Supreme Court is the final court of appeal in England and Wales. Prior to 2009 the final court of appeal was the House of Lords.
- The mechanisms available in terms of permission to appeal and the appeal routes in civil cases.

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(b) Discuss the application of equitable remedies in the civil law of England and Wales. [11]

Credit reference to:

- Discussion on the nature of the remedies and the significance of discretion.
- Injunctions.
- Specific performance.
- Rescission.
- Rectification.
- Credit shall be given for appropriate citation.

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Q.4 (a) Explain the role of the Criminal Defence Service.

[14]

Credit reference to:

- Section 12 of the Access to Justice Act.
- Duty solicitor schemes – advice and assistance representation based on a merits and means test. Choice of representative.
- The Public Defender Service. Note the evaluation of the Public Defender Service. Defendants who were charged and represented by the PDS were more likely to plead guilty in the Magistrates Court. The evaluation found that the cost effectiveness of the PDS was not as good as for private firms. During the first three years of its operation the average pace costs for the PDS ranged from between 40% to just over 90% higher than cost of private firms. In March 2007 the Government announced that four of the PDS offices would be closed as they were not cost effective.
- Funding of criminal cases will continue to be demand led.

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(b) Discuss the need to reform Legal Aid.

[11]

Credit reference to:

- The Ministry of Justice's consultation proposals for the reform of legal aid in 2011. The proposals are estimated to have accumulative impact of £395m on a budget of £2.1 bn.
- Plans to remove legal aid for welfare benefits, work, debt matters where the client's home is not at immediate risk; employment and many housing matters. In addition, all immigration matters will be taken out of the scope of legal aid where the litigant is not named.
- The impact on family cases where all ancillary relief cases and private children and family cases will be removed from the scheme.
- The role of various advice agencies including the CAB, Law Centres, Advice UK and Shelter.
- The impact of Lord Carter's proposals on legal aid, for example, best value tendering; fixed fees; revised graduated fees.

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Q.5 (a) Explain how the European Court of Justice operates.

[14]

Credit reference to

- The emphasis is on presenting cases on paper.
- The use of the Advocate General.
- Deliberations of the Judges are secret and where necessary the decision will be made by a majority vote.
- The European Court of Justice is not bound by its own previous decision.
- The Court has wide rights to study extrinsic material.
- The role of the European Court of Justice in interpreting statutes where a purposive approach is adopted.

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(b) Discuss the role of the European Commission in the development of EU law. [11]

Credit reference to:

- This consists of 27 Commissioners who are supposed to act independently of their national origin.
- Each commissioner heads a department with special responsibility for one area of Union policy such as Economic Affairs, Agriculture or the Environment.
- The functions relate to promote Union policy.
- The Commission is the guardian of the Treaties.
- The Commission is responsible for the administration of the Union and has executive powers to implement the Union's budget.

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Q.6 (a) Explain the problems with the Civil Justice system in England and Wales that led to the need for reform. [14]

Credit reference to:

- It cost too much to bring cases to court.
- The system was slow.
- Court procedures were unnecessarily complex.
- Even if an issue was decided by a court, it might be impossible to enforce the decision.
- These were not new problems. Note the significance of the Middleton review which led to the Civil Procedure Act of 1997 and the Civil Procedure Rules 1999.
- Other related reforms including legal language; forms; use of experts.
- The purpose of the civil justice system is that it is the forum of last resort. There are huge incentives in the system on the parties to settle, for example, in respect of costs; the indemnity principle; payment into court and offers to settle.

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(b) Discuss the extent to which the reforms have been successful. [11]

Credit reference to:

- The culture of litigation has changed to its cooperation between the parties now better than it was under the previous law.
- The views of Zander and whether delay has in fact been reduced.
- Case management conferences is a major success.
- A more uniform procedure across England and Wales.
- A very high rate of settlement.
- Costs increased overall because of the frontloading of costs.
- The courts are still under-resourced and the IT systems are not well developed compared to those operated by practitioners.

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PAPER LA2

UNDERSTANDING LEGAL REASONING, PERSONNEL AND METHODS

Answer two questions.

Q.1 (a) Outline what is meant by direct applicability in European law. [14]

Credit reference to:

- Treaties as a source of European law - a direct effect both vertically and horizontally if they give individual rights and are clear, for example, *Macarthys v Smith* (1979).
- Regulations are directly applicable and have direct effect both vertically and horizontally if they give individual rights and they are clear - Article 288 (TFEU).
- Directives - they are not directly applicable. They have vertical direct effect if they give individual rights and they are clear - Article 288 (TFEU).
- Directives do not have horizontal direct effect but an individual can claim against the state for loss caused by a failure to implement, for example, *Francovich v Italian Republic*.

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- (b) **Using your knowledge of statutory interpretation consider whether an offence has been committed in the situation set out below.** [11]

Petrol Conservation Fictitious Act 2009

Section 1

"Private motor cars, motorcycles and other vehicles the registration plate number of which ends with an odd number may only be driven on public roads on Mondays, Wednesdays and Fridays. Private motor cars, motorcycles and other vehicles the registration plate number of which ends with an even number may only be driven on public roads on Tuesdays, Thursdays and Saturdays."

Section 2

"Persons contravening this Act are liable to a fine and confiscation of their vehicle."

Alfred was riding his motorcycle registration number CV9 PVD from Coventry when he was arrested at 3.00am on 24th April (a Thursday). Bertie was driving his specially constructed electric car registration number AV8 CBY on a Wednesday. Cliff was driving his company car registration number B432 LWY on a Monday.

Credit reference to:

- Application of different rules for the scenario.
- Application of other aids of interpretation.
- Discussion of the purpose of the Act.

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

**The Magistracy
Justices of the Peace Appointed, by Gender 2006/7-2010/11**

			Number of JPs
Year	Men	Women	Total
2006/07	1,225	1,187	2,412
2007/08	927	972	1,899
2008/09	814	959	1,773
2009/10	759	873	1,632
2010/11	464	548	1,012

[Source: Ministry of Justice - Magistrates Recruitment and Appointments Bench]

- (a) **By reference to the data, explain the process involved in the appointment of Lay Magistrates.** **[14]**

Credit reference to:

- The apparent rough parity between male and females coming out of the statistics over the last four or five years.
- The role of Local Advisory Committees.
- The use of adverts for raising interest in the magistracy amongst a broad range of the community.
- The two stage interview process which seeks to ensure that personal attributes and aptitude for the magistracy are fully tested.

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.

Q.2 (b) By reference to the data, evaluate the training of Lay Magistrates. [11]

Credit reference to:

- The training of Lay Magistrates is supervised by the Magistracy's Committee of the Judicial Studies Board. The Committee has drawn up a syllabus of the topics which Lay Magistrates should cover in their training.
- Since 1998 magistrates training has been monitored closely.
- The framework of training is divided into four areas of competence the first three of which are relevant to all Lay Magistrates including self management; working as a member of a team; making judicial decisions. The fourth competence is for Chairman of the Bench which is managing judicial decision making, as this focuses on working with the legal adviser, managing the court and ensuring effective, impartial decision making.
- The training of new magistrates is based around an initial period followed by core training and also activities.
- The role of mentors, which includes the keeping of a personal development log.
- Training sessions which are organised and carried out at local levels in the 42 court areas. Much of the training is delivered by Justice's Clerk.
- Appraisal. During the first two years of the new magistrate sitting in court between 8 and 11 of the sessions will be mentored.
- Section 11 of the Courts Act 2003 gives the Lord Chancellor power to remove a lay justice on the ground of incapacity.
- Note the role of the Magistrate's Clerk.

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 fact 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 fact 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 fact 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 and answer the questions based on it.

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as the basis for orderly development of legal rules.

Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so."

[Source: Lord Gardiner, the Lord Chancellor Practice Statement 1966]

(a) Explain why was it necessary for the House of Lords to issue the above statement. [14]

Credit reference to:

- Relevant background to doctrine of precedent.
- Prospective overruling.
- Appropriate citation of relevant case law applying to the 1966 Practice Statement.
- The role of judges in avoiding awkward precedents.
- The significance of the Establishment of the Supreme 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	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.

Q.3 (b) Using your knowledge of the doctrine of precedent consider whether and on what grounds the Court of Appeal should depart from precedent. [11]

Credit reference to:

- Decisions by one division of a Court of Appeal will not bind the other division.
- Within each division decisions are normally binding especially for the civil division in - *Young v Bristol Aeroplane* (1944).
- *Davis v Johnson* (1979).
- Limitations of per incuriam - only used in rare exceptional cases - *Rickards v Rickards* (1989).
- Special exception for the criminal division, for example, if the law has been misapplied or misunderstood (*R. v Gould* 1968).

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 fact 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 fact 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 fact 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.

**Statistics on delegated legislation and deregulation orders
Session 2006-07**

A. Instruments laid before the House

Instruments subject to different forms of parliamentary procedure

Procedure applicable to Instruments the House	Laid before
Instruments subject to affirmative procedure:-	Made 12 Draft 193 ¹ Northern Ireland 19
Instruments subject to negative procedure:-	Made 1090 Draft 0 Northern Ireland 45 Number prayed against 19
Instruments subject in part to affirmative and in part to negative procedure 0	
Instruments not subject to parliamentary proceedings laid before Parliament:-	Made 2 Special Procedure Orders 0 Bills or Acts of Northern Ireland Assembly 0
TOTAL 1380	

¹ of which 33 were withdrawn

[Source: House of Commons Information Office]

(a) By reference to the data, explain how Parliament controls delegated legislation. [14]

Credit reference to:

- Noting that most instruments are subject to the negative procedure.
- The negative procedure become law on the date stated on them but will be annulled if either House passes a motion calling for their annulment within a certain time. In the House of Commons any member may put down a motion to annul a statutory instrument subject to the negative procedure.
- The affirmative procedure is less common than the negative procedure. Most SI's subject to the affirmative procedure are laid down in form of a draft order which is later printed and added to the numerical run of statutory instruments when it has been approved by both houses.
- Note the Legislative and Regulative Reform Act 2006.

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.

Q.4 (b) Evaluate the importance of delegated legislation.

[11]

Credit reference to:

- Orders in council.
- Statutory instruments.
- By-law.
- The role of devolution. The changing arrangements, for example, in Wales following the implementation of Part 4 of the Government of Wales Act 2006.

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 fact 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 fact 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 fact 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.

PAPER LA3

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 and answer the question based on it.

Brenda runs a small business selling sweets. She visited Samantha’s shop to purchase a computer for her business. None of the previous purchases she had made for her shop had come from Samantha. Brenda decided to buy from Samantha on this occasion as Samantha had a reputation for cheap prices. On the wall above the till in Samantha’s shop was a small but legible sign stating. “Liability for breaches of the terms implied by the Sale of Goods Act 1979 is limited to the cost of the goods. In any event there is no liability for any defect which is not reported within 2 working days of the purchase.” When she purchased the computer Brenda had not noticed the sign. Brenda took the computer back to her business and used it for a week. Unfortunately the computer proved to have a serious defect and the data which Brenda had put onto the machine was all lost. As a result Brenda’s business lost profits far in excess of the cost of the computer.

- (a) **Advise Brenda as to whether Samantha’s liability will be limited or excluded by the exemption clause.** [14]

Credit reference to:

- The application of the UCTA and in particular to exclusion of implied terms.
- The distinction between limitation clauses and exclusion clauses.
- The common law approach to the construction of exclusion clauses.
- Credit will be given to 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 fact 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 fact 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 fact 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 available sources of assistance for Brenda in funding her litigation.** [11]

Credit reference to:

- The availability of legal assistance outside of a consumer context.
- Private means.
- Conditional fees.
- Significance of legal insurance.
- Arbitration by reference to potentially trade association bodies.

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.

Anthony has an antiques business which he runs out of his old shop. He wrote to Lisa a local collector saying that he had an antique table by Thomas Burne for sale for £5,000. He stated that if she wanted to buy it she would have to let him know by noon on Saturday. On Tuesday, Lisa telephoned Anthony stating that she wanted to buy the table to add to a collection but whether it was possible for her to pay in two instalments of £2,500. Anthony said he was not interested in payments in instalments and put the phone down. On Wednesday, at a dealer's convention, Anthony sold the table to another dealer, Ian, for £5,500. Ian saw Lisa later on that day and boasted to her about the table he had bought. On Thursday Lisa posted a letter to Anthony stating that she wanted to buy the table for £5,000 with payment in one lump sum. The letter did not arrive until Monday.

(a) **In the light of reported case law and other sources of law advise Lisa.**

[14]

Credit reference to:

- The need for communication and discussion of the general rule with reference to appropriate case law.
- The postal rule and its appropriateness as a rule in the context of modern communications mechanisms.
- Relevant citation.
- The nature of agreement.

Marks	A03
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 fact 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 fact 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 fact 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 official law reform agencies 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.
- Appropriate citation of the work of the Law Commission and its focus upon reforming technical areas of law within the context of contract.
- The distinction between the work of the Law Commission and pressure groups.
- History of the Law Commission and their remit under legislation.

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.

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

Nora entered into a contract to deliver bricks to Oliver. After two weeks of making deliveries Nora realised that she miscalculated how many bricks could be carried in an average load on her lorry and because of the increase in the price of fuel she was going to lose money on the contract and go out of business. She told Oliver of her difficulties. It was very important to Oliver to get his brick deliveries from Nora because she was supplying him with a quality of brick that he needed in relation to a house building contract that he had. Reluctantly therefore he agreed to pay Nora an increase in the price of the brick. Having now completed the house that he was building he has now decided not to pay the increased price.

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

Credit reference to:

- Doctrine of promissory estoppel.
- Estoppel and its relationship with past consideration.
- Economic duress.
- Credit will 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 fact 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 fact 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 fact 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 the doctrine of precedent in the above scenario.** [11]

Credit reference to:

- The doctrine of promissory estoppel is a creature of precedent.
- Development of the doctrine of promissory estoppel within the context of case law should be fully discussed.
- The nature of what is a binding decision and the hierarchy of courts.
- Judicial activism particularly that of Lord Denning.

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.

Hilary contracted to sell Bert her specialist rally motorbike, its road trailer and other specialist racing motorbike accessories together with the wooden shed in which they were stored. They agreed that Bert would repair the wooden shed and would hire a lorry two days later to dismantle and take away the shed together with the motorbike, the trailer and the other accessories. Unfortunately later that same day the shed together with everything in it was destroyed by fire. Bert paid in advance for the motorbike and Hilary is now refusing to repay the money. Additionally when the remains of the motorbike were examined by the fire brigade it was discovered that the motorbike was a mass produced bike and was not suited to competitive rally driving.

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

Credit reference to:

- Frustration.
- Common mistake.
- The nature of frustrating events.
- Impossibility.
- The issue of misrepresentation and the differentiation between the different categories or misrepresentation.
- The limits of rescission.

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 fact 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 fact 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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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 importance of legislation and the approach taken by judges in the interpretation of statutes in the above scenario.** [11]

Credit reference to:

- Section 6 Sale of Goods Act 1979
- Section 7 Sale of Goods Act 1979
- The approach of the Sale of Goods Act as co-defined precedent and the application of case law with regard to interpretation.
- Law Reform (Frustrated Contract) Act 1943
- Misrepresentation Act 1967
- Candidates will be rewarded for appropriate 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.

PAPER LA3

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

OPTION 2: CRIMINAL LAW AND JUSTICE

Answer *two* questions.

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

Duncan planned to kill his wife, Leah, and make it look as though she had died in a car accident. Duncan mixed some of his own sleeping tablets into Leah's coffee, not realising that they were too weak to kill. Leah drank the coffee and became deeply unconscious. Thinking that he had killed her, Duncan put Leah in the family car and drove to a lonely spot in the countryside. He put Leah in the driver's seat, and pushed the car off the road. The car rolled down the hillside and flattened a tent belonging to Noel, a camper. Noel was killed, but Leah was thrown clear and was later rescued, still alive, by the emergency services. When Duncan arrived home, he received an unwelcome phone call from the hospital telling him that his wife was on a life support machine. Duncan rushed to the hospital, disconnected the life support machine and left the hospital.

- (a) In the light of reported case law and other sources of law, consider whether Duncan would be criminally liable for the deaths of Noel and Leah. [14]**

Credit reference to:

- Elements of homicide: actus reus and mens rea.
- Causation – factual and legal causation, e.g. *White, Dalloway*.
- Coincidence of actus reus and mens rea: the “same transaction” principle: *Thabo Meli, Church, Le Brun*.
- Involuntary manslaughter: unlawful act manslaughter: *Franklin, Lamb*.
- When death occurs; meaning of a “life in being”: *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	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact 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 fact 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 fact 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 Duncan is tried in the Crown Court.

[11]

Credit reference to:

- Mode of 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.

	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.

An elderly lady, Myra, went into a fast-food restaurant and bought herself a cardboard cup full of hot coffee. The restaurant was crowded, and the only seat that Myra could find was a high stool close to the counter where a queue of young people was waiting to be served. Tyrone and Percy were in the queue, both very drunk and arguing over which football team was the best. The argument became heated, and Percy punched Tyrone, causing him to stumble against Myra and knock her off her stool. Myra fell to the floor, cutting her head on the edge of the table. The coffee cup flew out of Myra’s hand and splashed hot coffee over a waitress, Sally, who received a nasty scald. Customers began screaming, and PC Mac came into the restaurant to find out what the commotion was about. Sally pointed at Tyrone and shouted, “He’s killed that old lady!” Tyrone panicked and ran for the exit. PC Mac tried to grab him, but Tyrone punched him in the stomach, causing him serious internal injuries.

(a) In the light of reported case law and other sources of law, consider whether Percy and Tyrone could be liable for any criminal offence. [14]

Credit reference to:

- Assault and battery at common law: summary offences – Criminal Justice Act 1988, s.39.
- 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 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*. 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 intention to wound or cause GBH, or to resist or prevent a lawful arrest.
- Intoxication: *Majewski*, distinction between crimes of basic and specific intention; *Kingston*.

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 fact 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 fact 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 fact 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 what sources of legal advice and funding may be available to Percy and Tyrone. [11]

- Duty solicitor scheme: free legal advice at police station.
- Duty solicitor scheme: free representation for first appearance at magistrates' court.
- Access to Justice Act 1999.
- Criminal Defence Service.
- Means and merit tests.
- Public Defender Service.

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.

Ten year old Noah's mother told his grandmother to stop giving Noah money to buy toys and sweets. The next day Noah's grandmother gave him a £20 note, but made him promise not to tell anyone who had given it to him. On his way to the shops, Noah met his best friend Kyle, and showed him the £20 note. They were seen by PC Walnutt, who was immediately suspicious and demanded to know where Noah had got so much money. Remembering his promise to his grandmother, Noah refused to tell him, so PC Walnutt took both boys to the police station and questioned them separately. It was soon clear that Kyle knew nothing about the £20 note, so PC Walnutt let him go. However, when PC Walnutt came to question Noah, he told Noah that Kyle would be in serious trouble unless Noah confessed to stealing the £20 note. Noah became very upset and signed a statement admitting that he had stolen the £20 note. Noah was then told that he would have to go to court and admit to the theft in front of the magistrates.

(a) In the light of reported case law and other sources of law, consider whether Noah's confession would be admissible in court. [14]

Credit reference to:

- Police and Criminal Evidence Act 1984, as amended.
- Admissibility of evidence: s.76 and s.78.
- Section 76: deals solely with confessions, defined in s.82(1) as including statements wholly or partly adverse to the person who made it.
- Section 72(2)(a) deals with oppression, defined as torture, inhuman or degrading treatment or the use of threat of violence (s.76(3)). In *Fulling*, telling D that her lover was having an affair, so that she confessed in order to be released, held not to amount to oppression. Oppression was found in *Beales*, where D was subjected to hectoring and bullying, and deliberate mis-statements of the evidence in order to put pressure on D.
- Section 72 (2)(b) deals with unreliability: where the confession is made in consequence of anything done or said which was likely in the circumstances to render the confession unreliable.
- Interviewing a juvenile in the absence of an appropriate adult was held likely to render a confession unreliable in *Cox*.
- Failure to comply with Code C or failure to caution before an interview can render a confession unreliable: *Doolan*.
- Failure to allow access to legal advice can make a confession unreliable: *Chung*.
- Either D or the court can raise s.76. The confession should be excluded unless the prosecution can prove beyond reasonable doubt that the confession was not obtained under oppression or in circumstances likely to render it unreliable.
- Section 78: the court has discretion to exclude any evidence if it appears that it would have such an adverse effect on the fairness of the proceedings that the court should not admit it.
- Significant and substantial breaches of PACE or the Codes or both can justify exclusion: *Samuel; Canale*.
- Bad faith or deliberate trickery by the police may justify exclusion: *Mason* (falsely telling D his fingerprints were found at the scene of the crime).

Marks	A03
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.

A02	
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 fact 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 fact 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 fact 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 magistrates are selected.

[11]

Credit reference to:

- Appointment of magistrates: Courts Act 2003.
- Magistrates are appointed on the recommendation of Local Advisory Committees. Vacancies are advertised and individuals may apply on their own initiative.
- Magistrates must be between 18 – 65 on appointment and must retire at 70. 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 judgement, commitment and reliability.
- The Auld Review recommended that magistrates should be more representative of the community.

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

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

Harry works as a cashier in an all-night garage. One evening while Harry was helping a heavily pregnant customer put air in her tyres, a battered Landrover pulled up on the forecourt. Harry recognised the driver as Evan, a local farmer who has recently gone bankrupt and was known to be mentally unstable. As Evan got out of the Landrover, Harry saw that he was carrying a shotgun. Evan pointed the shotgun at Harry's customer and said to Harry: "I want everything you've got in the till. Otherwise this lady and her baby are going to die." Believing that Evan was insane enough to carry out that threat, Harry unlocked the till and gave Evan the money. Instead of leaving with the cash, Evan said: "Now I'm going to shoot the lady. And then I'm going to shoot you." At this, Harry lunged at Evan, wrestled the shotgun from Evan's grasp, and shot him dead.

- (a) In the light of reported case law and other sources of law, consider whether Harry would have any defence if he were to be charged with murder. [14]**

Credit reference to:

- Self defence and defence of another at common law; prevention of crime: Criminal Law Act 1967, s.3. Harry may have to rely on the common law defence, since Evan is insane and not criminally liable for his actions – according to *Cousins*, there is no difference in the requirements of the defences.
- Self defence is a complete defence.
- 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.
- Force cannot be reasonable if it is not necessary: *Palmer, Clegg*. It could be argued that once Harry had seized the gun it was not necessary to use fatal force against Evan.
- 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: s.54(1)(c).

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 fact 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 fact 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 fact 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 which would be used by the Crown Prosecution Service when deciding whether or not to prosecute Harry. [11]

Credit reference to:

- 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. This is currently the 6th edition, issued February 2010.
- 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.
- 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 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.

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.

Ryan Hacker is a journalist who writes for *Celebrity Trash*, a weekly magazine with a broad popular readership. He was approached by a minor soap star, Rose Blush, who told him that she was having an affair with a famous footballer and offered to reveal the man's identity in return for £10,000. At first Ryan refused to believe Rose, and told her to go away. However, shortly afterwards Ryan heard a rumour that Premier club Duckpool United's striker, Odie Neal, was dating an actress behind his wife's back. This convinced Ryan that he had stumbled upon a good story, so he persuaded his editor to print a photo of Odie and his wife which had been digitally altered to make it appear that the woman in the photo was Rose. The text which accompanied the photo was headlined, "Oh, Oh, Odie!" and strongly suggested, without actually stating as a fact, that Odie and Rose were in love. On the day that the magazine appeared, the Opposition spokesman for sport, Terry Cotter, commented in Parliament on the low state of morals among British sportsmen, and repeated his comments in a television interview in which he referred to Odie by name. Both Odie and Rose have since strongly denied that there was ever any relationship between them.

- (a) In light of reported case law and other sources of law, consider whether Odie might have an action in defamation against *Celebrity Trash* and Terry Cotter. [14]**

Credit Reference to:

- Nature of defamation: publication of untrue, defamatory statements; libel and slander.
- Elements of defamation.
- Is the statement defamatory? - 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: *Charlesworth v NGN*.
- Innuendo - the statement that two people are in love would not itself be defamatory, but could be so if one of them is married to someone else: *Cassidy v Daily Mirror*.
- The statement must refer to the claimant.
- The statement must be published.
- Defences - justification, fair comment on a matter of public interest; absolute privilege; qualified privilege: *Reynolds v Times Newspapers* - standard of responsible journalism.

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 fact 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 fact 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 fact 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 civil cases.

[11]

Credit reference to:

- Trial by jury in civil actions is now very rare - less than one per cent.
- There is a qualified right to jury trial under the Supreme Court Act 1981 in cases of defamation, malicious prosecution, false imprisonment and fraud.
- The judge may refuse to grant jury trial even in these cases if he/she is of the opinion that the trial would involve prolonged examination of documents or accounts, or any scientific or local investigation which cannot conveniently be made with a jury.
- In all other cases, jury trial is at the discretion of the court. In *Ward v James*, the Court of Appeal stated that personal injury cases should be tried by a judge alone unless there were special circumstances.
- The role of the jury is to hear the evidence and arguments from both sides, and reach a finding in favour of the claimant or defendant.
- Candidates may refer to the role of the coroners' jury.

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.

An explosion occurred at an American-owned factory in Wales, in which several workers were killed. With feelings running high in the local community, the chief constable instructed his officers to prevent any public gatherings from taking place. Some of the victims' relatives and friends set out in a spontaneous procession to walk to the factory. Most carried flowers to place outside the gates, but some were carrying American flags which they had defaced with messages protesting about the safety at the factory. They were stopped by a group of police officers under the command of Inspector Jones, who ordered them to turn back. When they refused, they were held behind a cordon of police for two hours until police vans arrived, and then driven sixty miles to Cardiff where they were kept in police cells until the next day. As news of what had happened to the victims' relatives spread, local people began to gather on the road outside the factory to protest. Inspector Jones positioned some of his officers half a mile from the factory to turn away others who were attempting to join them. A television news crew arrived, and was also turned away. The protestors outside the factory were arrested and charged with taking part in a trespassory 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; breach of the peace powers.
- Section 13: ban on public processions requires the chief constable to apply to the local council which has power to issue the ban, subject to approval by the Home Secretary.
- Section 12: power to impose conditions on processions; the "four triggers" - serious public disorder, serious damage to property, serious disruption to life of community, intimidation. The senior officer may impose such conditions as appear to him necessary to prevent the consequences which is feared: may include conditions as to the route to be followed or prohibiting the procession to enter a certain public place (e.g. a road).
- Refusal to comply with a condition is an offence: s.12(5) for which the police may arrest if they believe it necessary: PACE 1984, s.24. The police can presumably also use the common law power to arrest and detain because of anticipated breach of the peace: *Austin and Saxby*.
- Right of freedom of expression: Art.10 of the ECHR - police action must be for a legitimate aim and proportionate: *Percy*.
- *Laporte* - police must only do what is necessary to preserve the peace - not justified in forcibly returning the protestors to London.
- Section 14: chief constable may seek a ban on trespassory assemblies issued by the local authority - no other power to prohibit assemblies. Under s.14, police may impose conditions upon assemblies (same triggers as for s.12).
- Breach of the peace powers: *Howell*, apprehended breach of the peace: *Moss v McLachlan, Laporte, Austin and Saxby*.
- Right of freedom of assembly: Art.11 of the ECHR - police actions must be for a legitimate aim and proportionate (but considerable leeway allowed: *Austin and Saxby*).

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 fact 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 fact 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 fact 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]

Credit reference to:

- Police and Criminal Evidence Act 1984, ss.37 and 38: powers of custody officer to grant bail.
- 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.

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.

Imogen works in the photocopying room of H.M. Treasury. One day she was told to photocopy a file which contained details of a secret treaty made between the British government and the government of the United States of America, outlining their joint plans for dealing with any future financial crisis. Realising that the treaty might be contrary to EU law, Imogen passed a copy of the file to the Opposition treasury spokesman, Fiscal Bunce, who planned to raise the matter in Parliament. However, before he could do so, Fiscal inadvertently left his briefcase containing the file in the back of a taxi, where it was found and opened by Rodney, a freelance journalist. Rodney showed the file to Martha Mutton, the editor of the Daily Digger, who intends to publish an article about it in tomorrow's edition.

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

Credit reference to:

- Official Secrets Act 1989.
- Categories of protected information: s.3, international relations.
- Imogen: unauthorised disclosure by a crown servant.
- Possible defences: that the disclosure is not damaging within the terms of s.2; that Imogen had no knowledge or reasonable cause to believe that the information was within a restricted category or that the disclosure would be damaging.
- Rodney: offence of disclosing information acquired as a result of unauthorised disclosure by a Crown servant: s.5(1)(a)(i).
- Possible defences: no knowledge or reasonable cause to believe that the disclosure was unauthorised or could be damaging.
- Martha: no offence of merely receiving protected information, but would commit the offence under s.5 if she publishes the information.
- Possible defences: as for Rodney.
- No defence of public interest.

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 fact 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 fact 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 fact 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 meaning of Parliamentary sovereignty.

[11]

Credit reference to:

- Parliament is the highest source of UK law. Laws made by Parliament cannot be struck down or overridden by any other source of legal authority.
- Sovereignty of Parliament is a fundamental constitutional principle.
- Parliament can pass law with any content, subject only to political constraints.
- Parliament is elected, so the theory of democracy holds that it represents the will of the electorate, unlike the judiciary which is appointed.
- The judiciary are obliged to uphold any law passed by Parliament.
- Limits to the supremacy of Parliament -
- EU law can take precedence over a UK statute: *Factortame* case.
- Judicial decisions on the extent of ministers' powers, e.g. *ex p. Anderson*. Courts may interpret statutes so as to limit the effect they were intended to have, e.g. *Re A and others*.
- Devolution of some powers to parliaments of Scotland and Northern Ireland.
- Influence of ECHR through the HRA 1998.

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 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.

A charity shop was having a "buy one, get one free" sale. Holly bought a pair of jeans, but could not find anything else in the shop which fitted her. The friendly manageress pointed to a rack of teeshirts which was on display outside the shop, and suggested that Holly might like to take one of those. Holly thanked her, and as she was leaving the shop she stuffed one of the teeshirts into her backpack. This action was witnessed by the local community police officer, PC Sterne, who was appalled by what looked like a flagrant theft from a charity shop. PC Sterne ran after Holly, snatched the backpack, and marched Holly to the nearby police station, where she was put straight into a cell. Eight hours later Holly was taken from the cell to have her fingerprints taken, along with a sample of her DNA. Holly took the opportunity to explain that the manageress had given her permission to take the teeshirt, but the police said that she would have remain in the cell until they could check her story. Holly asked if she could phone her boyfriend and speak to a solicitor, but was told that she would have to wait until the police had completed their enquiries. No further enquiries were made, and after spending a total of 37 hours in police custody Holly was charged with theft and subsequently convicted in the magistrates' court.

(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.
- Power of arrest: PACE s.24 and Code G.
- Role of custody officer; rights of suspect when brought to the police station; Code C.
- Fingerprints and non-intimate samples: PACE s.60 and s.65.
- 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.
- Time limits on detention: PACE s.41
- Detention reviews: PACE s.40.

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 fact 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 fact 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 fact 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 process of appeal from the magistrates' court.

[11]

Credit reference to:

- Magistrates Court Act 1980, as amended by the Criminal Appeals Act 1995, s.142 - magistrates can rectify an error where it would be in the interests of justice to do so. The case is retried before a different bench, and the sentence may be varied.
- Appeal as of right to the Crown Court against conviction/sentence.
- Only appeals against sentence can be made if the defendant pleaded guilty.
- Appeal must be made within 28 days of conviction.
- Appeal is heard by a circuit judge sitting with 2-4 magistrates who were not involved in the original trial. Each vote carries the same weight but if the votes are evenly divided, the circuit judge has the casting vote.
- Appeal takes the form of a re-hearing.
- The court can either confirm the verdict or sentence of the original magistrates, or substitute its own decision. It can impose any sentence that the original magistrates could have imposed, and may increase as well as reduce the original sentence.
- Appeal by way of case stated to the Divisional Court. The magistrates, or the Crown Court when hearing an appeal from the magistrates' court, may be asked by the prosecution or defendant to state the case for consideration by the Divisional Court.
- The Divisional Court can also hear applications for judicial review to decide whether the case has been heard according to the rules of natural justice.
- Appeals by way of case stated are heard by up to three judges of the Queen's Bench Division of the High Court.
- The court can confirm, reverse or vary the magistrates' decision; give their opinion on the relevant point of law, or make such other order as it sees fit, including ordering a re-hearing.
- If an appeal has already been made to the Crown Court, either side can appeal against the Crown Court's decision by way of case stated, but a party who has already appealed to the High Court by way of case stated may not then appeal to the Crown Court.
- Further appeal on a point of law may be made directly to the Supreme Court, but only if the Divisional Court certifies that the case involves a point of law of general public importance, and either the Divisional Court or the Supreme Court grants permission for the appeal to be heard.

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.

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 Consider the impact of Human Rights legislation in consumer law. [25]

Credit reference to:

- Human rights as a source of English and Welsh law and as the principle for declaring legislation as being incompatible.
- *Wilson v Secretary of State for Trade and Industry* (2003) and the Human Rights even of finance companies.
- Failure to abide by consumer credit regulations leading to the unenforceability of credit.
- Reform introduced by the Consumer Credit Act 2006.
- Human right as a source and pervasive theme in developing 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.

	A02
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 fact 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 fact 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 fact 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	A03
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 significance of damages as a remedy for providing redress in consumer transactions. [25]

Credit reference to:

- Definition of loss.
- The rule of mitigation.
- The need to approach loss from the point of view of compensation.
- Categories of damages and claims.
- The interaction between civil law and criminal law.
- Other type of relief, for example, specific performance.
- Candidates will be rewarded for appropriate 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 fact 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 fact 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.3 Evaluate the significance of the reforms to consumer law brought about by the Enterprise Act 2002. [25]

Credit reference to:

- The Enterprise Act 2002 is an immense piece of legislation covering both competition law and consumer law enforcement.
- New approval scheme for codes of practice.
- New injunction regime.
- OFT role.
- Part 8 of the Act and specific rules for breaches of domestic and community law.

	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 fact 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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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 Evaluate the extent to which the law promotes good quality as an obligation in the supply of goods to consumers. [25]

Credit reference to:

- The common law position which is that of caveat emptor.
- Theory of freedom of contract and development of welfare principles – from status to contract to status.
- Rise of standard form contracts.
- The emergence of consumerism as a political imperative.
- Consumer protection legislation.
- Relevant citation and application of statutory provisions.

	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.
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Marks	Skills
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SECTION B

Answer **one** question.

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

“Consumers are finding it too hard to win compensation for misleading and aggressive trading practices and the law must be reviewed, the Law Commission said today.

Opening a consultation on the matter, the commission said that routes to redress for ripped-off consumers are ‘difficult’ and ‘far from clear’, and many victims of scams are ‘among the most vulnerable in society’.

It said that reform will be ‘limited and cautious’, but has proposed introducing a new Consumer Act to cover private law actions between consumers and businesses.

Business-to-business transactions will not be covered.

Under the existing law, governed by the Consumer Protections from Unfair Trading Regulations 2008, consumers do not have a right to compensation, and must rely on ‘complex’ and ‘confusing’ private law actions, the commission said.

David Hertzell, the Law Commissioner leading on the project for England and Wales, said: ‘The Law Commission believes consumers should have a clear right to redress for misleading and aggressive commercial practices.’

[Source: The Law Society Gazette April 2011]

(a) Explain what is meant by the “complex” and “confusing” private law actions in respect of unfair trading practices. [11]

Credit reference to:

- The UCPD was implemented by the Consumer Protection from Unfair Trading Regulations 2008.
- Reference to the OFT guidance on Consumer Protection from Unfair Trading Regulations.
- When is a practice unfair and reference to the regulations.
- Reference to misleading adverts in the context of the consumer protection regulations.

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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(b) Evaluate the options available to the consumer to enforce rights without going to court. [14]

Credit reference to:

- Codes of Practice and the role of the Office of Fair Trading.
- The role of new consumer councils.
- Ombudsman schemes.
- Arbitration.
- ADR.
- Legal assistance and conditional fees including a discussion of before the event insurance opportunities.

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

‘Do I need a credit licence?’

The OFT cannot tell you if you need a licence, or which categories you need.

You are likely to need a credit licence if you:

- Sell goods or provide service on credit
- Hire or lease out goods for more than three months
- Lend money
- Arrange credit for others
- Offer hire purchase terms
- Collect debts or purchase debts
- Help people with debt problems
- Advise people of, or help them find information on, their credit standing
- Administer agreements (but do not collect debts).

Even if you don't charge for your services or are non-profit making, or you don't do these activities all the time, you may still need a licence.

You are not likely to need a credit licence if you are:

- Only planning to accept credit cards issued by other businesses
- Only deal with limited companies.”

[Source: Office of Fair Trading website]

(a) Explain the role of a credit licence in the development of consumer law.

[11]

Credit reference to:

- Licensing of consumer credit business was at the heart of the Consumer Credit Act 1974.
- Reference to the CCA 1974 where there are six categories of licence.
- The role of the OFT.
- Reform under the Consumer Credit Act which were intended to clarify the definitions of credit business and hire business.
- Nine categories of business under the Consumer Credit Act 2006.
- The fitness test in applying for a licence.
- Powers of the OFT enhanced under the CCA 2006.

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.
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Marks	AO1
	Knowledge and Understanding
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(b) Evaluate the role of European law in promoting consumer confidence in the internal market of Europe. [14]

Credit reference to:

- The role of European law in promoting product liability, distance selling, sale and supply of goods to consumers, unfair terms in respect of commercial practices.
- Relevant citation in consumer law should be rewarded.
- An understanding of the EU context and substantive European law including sources of law, for example, directives and regulations.
- The general framework for EU activities in favour of consumers and the five year strategy relating to the need to empower Europe's consumers and to enhance the economic and non-economic welfare of Europe's consumers in terms of price, choice, quality and affordability.
- The European contract law movement, for example, the green paper from the Commission on *policy options for the progress towards a European contract law for consumers and businesses* (2011).

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
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PAPER LA4

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 "The Crown Prosecution Service is now fulfilling the role which was originally intended for it." Discuss. [25]

Credit reference to:

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

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Q.2 To what extent do the courts accept that circumstances of necessity can provide a defence to a criminal charge? [25]

Credit reference to:

- Statutory provision for necessity, e.g., Road Traffic Regulations Act 1984 permits emergency vehicles to break the speed limit.
- Doubt as to whether there is a defence of "pure" necessity, i.e., necessity to break the law as the lesser of two evils: *Dudley v Stevens*.
- Situations where courts have been readier to accept necessity, e.g., cases concerning medical treatment, such as *Bourne, Re F, Bournemouth Community and Mental Health Trust, Re A* (conjoined twins).
- Defence of duress of circumstances as a type of necessity: *Willer, Conway, Martin*.

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Q.3 To what extent is the presumption in favour of a right to bail offset by rules which allow bail to be refused in appropriate circumstances? [25]

Credit reference to:

- Bail Act 1976, s.4 - 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.
- Power 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
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**Q.4 "The law relating to insanity and automatism is in serious need of reform."
Discuss. [25]**

Credit reference to:

- Law relating to insanity: M'Naughten Rules.
- Elements of insanity: disease of the mind, cases such as *Kemp, Bratty*; defect of reason, e.g., *Clarke*; knowledge that the act is wrong: *Windle*.
- Automatism: an act done without any control of the conscious mind (*Bratty*); concussion, sleepwalking.
- Distinction between sane and insane automatism: internal and external causes: *Quick, Sullivan, Hennessy*.
- Evaluation: M'Naughten rules outdated; do not correspond to modern medical opinion; illogical results that follow from the distinction between insane and non-insane automatism and the distinction between internal and external causes.

	AO1
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Marks	Skills
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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 from this section.

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

"The Law Commission considered a suggestion that the presumption in favour of mens rea should be displaceable only by an express provision requiring some fault other than recklessness, or stating that no fault is required. But, said the Commission, 'We do not think that this would be appropriate. We are mindful of the "constitutional platitude" pointed out by Lord Ackner in Hunt [1987] AC 352 at 380, that the courts must give effect to what Parliament has provided not only "expressly" but also by "necessary implication". If the terms of a future enactment creating an offence plainly implied an intention to displace the presumption ... the courts would no doubt feel obliged to give effect to that intention."

- (a) **Explain when, according to Lord Scarman in *Gammon Ltd v A-G of Hong Kong*, the presumption in favour of mens rea can be displaced in favour of presumption that Parliament intends an offence to be one of strict liability.** [11]

Credit reference to:

- Nature of strict liability.
- 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.
- 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*.

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 approaches to statutory interpretation used by the courts in England and Wales. [14]

Credit reference to:

- Approaches to statutory interpretation: literal rule; golden rule, mischief rule, purposive approach.
- Examples of case law, e.g. - literal rule: *Fisher v Bell*, *London and North East Railway v Berriman*; *Whitley v Chappell*, *Harris*.
- Golden rule, e.g., *River Wear Commissioners v Anderson*; *Sigsworth*, *Alder v George*, *Dupont Steels v Sirs*, *Allen*.
- Mischief rule - what was the law before the statute; what changes were necessary; how did Parliament set out to improve the law. Cases, e.g., *Smith v Hughes*, *Magor and St Mellons RDC v Newport Corporation*.
- Purposive approach - the court looks at the purpose of the statute and interprets it in the light of that purpose. Cases, e.g., *Maunsell v Olins*, *Royal College of Nursing v DHSS*, *Eastbourne BC v Stirling*, *R v R and Others*, *R v Goodwin*.
- The purposive approach in the context of the Human Rights Act 1998: judges obliged to interpret statutes in a way compatible with Convention rights.
- Evaluation: advantages and disadvantages of each 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	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 fact 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 fact 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 fact 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.

"Consistency in sentencing is vital, but so is a measure of discretion. Judges and magistrates must take account of the difference in gravity between offences which fall within the same broad category. Just as importantly, they must take account of the culpability of the individual offender. The present sentencing guidelines aim to preserve the necessary element of discretion while at the same time ensuring that the same approach to sentencing is maintained throughout the courts in England and Wales."

(a) Explain the use 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 importance of the Rule of Law.

[14]

Credit reference to:

- Meaning of rule of law.
- Reference to A.V. Dicey and possibly other theorists, e.g., Lon Fuller, Joseph Raz.
- Aspects of the rule of law which are significant for justice: governments are subject to the law; members of the government and its agents are bound to obey the law in the same way as ordinary citizens are bound; there should be no punishment unless a crime has been committed; no retroactive legislation; no arbitrary arrest; everyone is entitled to a fair trial, 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.

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 fact 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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PAPER LA4

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** "The introduction of a Bill of Rights would be a major step forward in the protection of human rights and civil liberties within the United Kingdom." Discuss. [25]

Credit reference to:

- Lack of a written constitution setting out the rights of people in the UK.
- Almost all developed countries have a Bill of Rights.
- The Human Rights Act 1998 is a piece of ordinary legislation which could be repealed by any government.
- The HRA 1998 is based on the ECHR, which is 50 years old and does not provide for social, economic or political rights - arguably out of date, and inadequate to reflect the needs of the UK.
- 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.

	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.
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	AO2
Marks	Skills
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Q.2 To what extent does the law prevent the police from abusing their powers to conduct secret surveillance? [25]

Credit reference to:

- Police Act 1997: s.92 - police not liable for actions authorised under the Act; s.93 - authorisation requirements.
- Circumstances in which surveillance can be authorised.
- Role of the authorising officer: authorisation in an emergency.
- When authorisation must be given or confirmed by Surveillance Commissioner.
- RIPA 2000 - directed and intrusive surveillance.
- Authorisation under RIPA.
- Role of Surveillance Commissioner.
- Role of RIPA tribunal.

	AO1
Marks	Knowledge and Understanding
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	AO2
Marks	Skills
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Q.3 "The Equality Act 2010 makes it clear that discrimination is no longer to be tolerated in the law of England and Wales." Discuss. [25]

Credit reference to:

- Equality Act 2010 - codifies and clarifies previous legislation.
- Protected categories - sex, race/ethnicity, religion, age, disability, sexual orientation, gender reassignment, marital status, pregnancy, 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).
- Victimisation.
- Harassment.
- Post-employment discrimination.
- Remedies: Employment Tribunal can now make recommendations going beyond the instant case.

	AO1
Marks	Knowledge and Understanding
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	AO2
Marks	Skills
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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.

Q.4 Consider whether the right to privacy of ordinary people is sufficiently protected by the law relating to breach of confidence. [25]

Credit reference to:

- No specific right to privacy in UK law: *Kaye v Robertson*.
- ECHR Art.8 - right to private and family life.
- Elements of breach of confidence.
- Examples of case law, e.g., *Albert v Strange*, *Stephens v Avery*, *Argyll v Argyll*, *Douglas v Hello!*, *Campbell v MGN*, etc.
- Remedies: injunction.
- Development of "super injunctions" - cases such as Ryan Giggs.
- Cost of obtaining a remedy - a law for the rich.

	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.
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	AO2
Marks	Skills
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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.

SECTION B

Answer **one** question.

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

The Human Rights Act stand for something greater than the mere bringing home of the 1950 European Convention that its legislative promoters at the time (with shrewd modesty) declared it to be. These days it is at the very centre of what it means to be progressive in Britain, in politics as much as law. It is the flagship for a way of thinking, a bold assertion of international identity that is rooted in a shared belief in the dignity of all. To attack the HRA is not just to assault the rights set out within it: it is to challenge a set of beliefs that all those committed to human progress now find best expressed in the language of human rights.

(a) Explain the impact of the Human Rights Act 1998 upon the law of England and Wales. [11]

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: the HRA 1998 has/has not had an impact on the culture of human rights in the UK.

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	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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(b) Evaluate the approaches to statutory interpretation used by the courts.

[14]

- Approaches to statutory interpretation: literal rule; golden rule; mischief rule; purposive approach.
- Examples of case law, e.g. - literal rule: *Fisher v Bell*, *London and North East Railway v Berriman*; *Whitley v Chappell*, *Harris*.
- Golden rule, e.g., *River Wear Commissioners v Anderson*; *Sigsworth*, *Adler v George*, *Dupont Steels v Sirs*, *Allen*.
- Mischief rule - what was the law before the statute; what changes were necessary; how did Parliament set out to improve the law. Cases, e.g., *Smith v Hughes*, *Magor and St Mellons RDC v Newport Corporation*.
- Purposive approach - the court looks at the purpose of the statute and interprets it in the light of that purpose. Cases, e.g. *Maunsell v Olins*, *Royal College of Nursing v DHSS*, *Eastbourne BC v Stirling*, *R v R and Others*, *R v Goodwin*.
- The purposive approach in the context of the Human Rights Act 1998; judges obliged to interpret statutes in a way compatible with Convention rights.
- Evaluation: advantages and disadvantages of each 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.
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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 fact 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 fact 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 fact 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 question based on it.

"As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, sceptics and the unconcerned."

Kokkinas v Greece (1994) 17 EHRR 397, para 31.

(a) Explain how freedom of religion is protected in the law of England and Wales. [11]

Credit reference to:

- Art.9 of the ECHR: the right to freedom of thought, conscience and religion.
- Art.9(2): qualifies the right to manifest one's religion or 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.
- Protection from discrimination on grounds of religion: Equality Act 2010.
- Particular exemptions on religious grounds, e.g., exemption from wearing motorcycle helmets or safety hats for Sikhs; exemption from slaughter regulations for production of kosher or Halal meat.
- Blasphemy abolished by the Criminal Justice and Immigration Act 2006, s.79.
- Religiously aggravated offences.
- Offences relating to religious hatred: the Racial and Religious Hatred Act 2006 added Part IIIA to the Public Order Act 1986.
- 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 a religion.

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 the European Convention of Human Rights. [14]

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 organizations may bring an application alleging they are a victim of a violation by a member state.
- Issue of a judgement 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.
- 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.
- Horizontal and vertical effect: application can only be brought against a member state, but indirect horizontal effect may follow from the obligation for the law of a state to comply with the ECHR.
- 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
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 fact 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 fact 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 fact 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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