



GCE MARKING SCHEME

**LAW
AS/Advanced**

JANUARY 2013

INTRODUCTION

The marking schemes which follow were those used by WJEC for the January 2013 examination in GCE LAW. They were finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conferences were held shortly after the papers were taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conferences was to ensure that the marking schemes were interpreted and applied in the same way by all examiners.

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

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

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GCE LAW

PAPER LA1 (AS)

UNDERSTANDING LEGAL VALUES, STRUCTURES AND PROCESSES

Answer *two* questions

Q.1 (a) Explain the development of Equity. [14]

Credit reference to:

- Define the concept of Equity.
- Outline the origins of the system of Equity.
- Examine defects in the common law – expense, delay, corruption.
- Trusts.
- 1873-75 Legislation.

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 extent to which Equity has a role in modern law. [11]

Credit reference to:

- The advantages of Equity.
- The irony of modern Equity being slow and rule bound.
- Examples given of the application of Equity today including equitable remedies.

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

Marks	AO2
	Skills
8-9	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given 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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Q.2 (a) Explain what is meant by the Rule of Law.**[14]**

Credit reference to:

- A general definition of the Rule of Law.
- The views of Dicey.
- Outline historical criticisms of Dicey.

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(b) Discuss the relevance of the Rule of law in contemporary society. [11]

- The emergence of a core meaning within the idea of the Rule of Law.
- The use of discretionary power.
- Note the views of Raz and also Hayek.
- Examples given in contemporary society of breaches of the Rule of Law.

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Q.3 (a) Explain the powers of the European Court of Justice.**[14]**

Credit reference to:

- Detail the role and powers of the ECJ.
- Description of structure and operation.
- Note the way references can be made to the ECJ from domestic courts under Article 267.

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(b) Discuss the relationship of the European Court of Justice with UK Courts.

[11]

Credit reference to:

- Examples of cases decided by the ECJ that have had a particular impact on the UK e.g. *Marshall -v- Southampton and West Hampshire AHA* (1993).
- The fact that the ECJ provides for authoritative rulings e.g. the position in respect of the Merchant Shipping Act 1988.

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Q.4 (a) Explain the existing criminal appeal structure in England and Wales. [14]

Credit reference to:

- Changes in criminal appeals.
- Recommendations from the Runciman Commission and the Auld Report.
- The general principles that emerge from the appeal structure relate to the opportunity for a litigant to have more than one occasion to put his case; the opportunity to reconsider a problem in the light of new evidence.
- Appropriate legislation e.g. the Criminal Appeal Act 1968.

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Q.4 (b) Discuss the advantages and disadvantages of the availability of bail.[11]

Credit reference to:

- By December 2009 the Criminal Cases Review Commission had received over 12,000 applications and had dealt with about 11,500 of these. The Commission had referred 442 cases to the Court of Appeal – 407 of these had been heard and the convictions quashed in 287.
- Some cases have attracted a lot of publicity, for example, the *Sally Clark* case in 2003 and also that of *Sion Jenkins* in 2004.
- Candidates should refer to the membership, function and powers of the Commission.
- The Commission is not an appeal court.

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Q.5 (a) Explain the changes to the application of Bail in the English and Welsh legal system. [14]

Credit reference to:

- Discussion of the background to key legal changes in 1993-94.
- Explanation of the current legal framework.
- Section 27 of the Criminal Justice & Public Order Act 1994 – extension of police powers in relation to bail.
- The Bail Act 1976 and the presumption of bail.

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Q.5 (b) Discuss the advantages and disadvantages of the availability of bail.[11]

Credit reference to:

- Advantages.
- Disadvantages.
- Relevant legislation and case law.
- Section 25 of the Criminal Justice & Public Order Act 1994 and the denial of bail where there has been an earlier conviction for murder etc.
- Appeals and repeated applications.
- The Bail (Amendment) Act 1993.

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Q.6 (a) Explain the role of the Civil Procedure Rules.

[14]

Credit reference to:

- The background to the development of the CPR.
- Criticisms of the CPR.
- The role of Judges and active case management.
- Reference to appropriate citation.
- The three tracks (?).

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Q.6 (b) Discuss the ways in which litigants are encouraged to settle claims early in civil proceedings.

[11]

Credit reference to:

- The nature of settlement.
- Fear of costs and uncertainty of outcome.
- Part 36 payments.
- The three tracks (?).

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GCE LAW

PAPER LA2 (AS)

UNDERSTANDING LEGAL REASONING, PERSONNEL AND METHODS

Answer two questions.

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

Section 2(1) of the European Communities Act 1972 states that:

All such rights, powers, liabilities, obligations and restrictions from time to time created or arising under the Treaties, and all such remedies and procedures from time to time provided for, by, or under the Treaties, as in accordance with the Treaties, are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law and be enforced, allowed and followed accordingly; and the expression, 'enforceable Community right' and similar expressions shall be read as referring to one to which this subsection applied.

Section 2(2) provides a general power for further implementation of Community obligation by means of secondary legislation.

Section 2(4) of the European Communities Act 1972 states that:

The provision that may be made under subsection (2) above includes, subject to schedule 2 of this Act, any such provision (of any such extent) as might be made by Act of Parliament and any enactment passed or to be passed, other than one contained in this part of this Act, shall be construed and have effect subject to the foregoing provisions of this section.

Section 3(1) of the European Communities Act 1972 states that:

For the purposes of all legal proceedings, any question as to the meaning or effect of any of the Treaties, or as to the validity, meaning or effect of any Community instrument, shall be treated as a question of law (and, if not referred to in the European Court, be for determination as such in accordance with the principles laid down by and any relevant decision of the European Court or any court attached thereto).

(a) Explain European law as a source of law. [14]

Credit reference to:

- Primary and secondary sources of Community law.
- Administrative Acts Defined in Article 288 TFEU.
- Letters of interpretation used in Community law.

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(b) Discuss the development of European Community Law.

[11]

Credit reference to:

- The role of general principles within the legal system.
- Authority for the development of general principles within the EC legal system.
- Specific examples of European Community general principles including proportionality, non-discrimination, protection of legislative expectations, fundamental rights and procedural rights.
- Credit will be given for relevant citation.

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Q.2 Study the texts and answer the questions based on it.

'To Index on Censorship ... it has become increasingly clear that English libel law and the use of 'super-injunctions' are having a profoundly negative impact on freedom of expression, both in the UK and abroad. Writers such as Simon Singh, and respected current affairs programme Newsnight, have found themselves facing defamation suits, whilst human rights campaigners are often forced to edit and retract articles in the face of potential libel action.

We need to persuade politicians from all the political parties to commit to reform of our unjust libel laws.'

[Source: The Libel Reform Campaign]

(a) Explain the role of law reform movements and agencies in England and Wales. [14]

Credit reference to:

- Consideration of means of law reform not limited to the Law Commission.
- Parliamentary Acts reforming legislation but note the role of Private Member's Bills.
- Judges alter the law.
- Royal Commissions.
- The creation, structure and procedure of the Law Commission.
- The role of popular law reform movements.

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(b) Assess the effectiveness of law reform movements.

[14]

Credit reference to:

- The effectiveness of the Law Commission and the need for annual reports against which progress is assessed.
- the role of popular movements such as libels leading to Lord Lester's Bill.
- Other relevant examples of popular movements.
- Credit will be given for relevant citation.

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	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 following and answer the questions based on it.

'In addition to the main rules of interpretation there are a number of secondary aids to the construction of statutes available to a Judge and these are often neglected.'

(a) What is meant by intrinsic and extrinsic aids to statutory interpretation? [14]

Credit reference to:

- Intrinsic aids such as the title and section headings as well as the preamble.
- Extrinsic aids, e.g. the Interpretation Act 1978.
- The presumptions, e.g. against the alteration of the common law; against retrospective effect of new law; presumption against deprivation of liberty, etc.
- Credit will be given for appropriate citation.

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

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

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

Protection of Endangered Species (Fictitious) Act 2012.

Section 1 of the Act makes it an offence for 'any person to knowingly be in possession in the United Kingdom of any wildlife product that has been imported into the United Kingdom unless he has possession of a licence.'

Section 2 makes it an offence for any person to 'import or seek to import into the United Kingdom any wildlife product unless he has an import licence.'

Steven owns a shop in which he sells natural medicines. His premises are raided by police officers and quantities of traditional Indian remedies are seized. A detailed chemical analysis undertaken by the Police of the remedies are found to contain powders from elephant tusks. Elephants are protected species under the 2012 Act. Steven is charged under Section 1. Steven has no licence but claims that he does not know that the products contained these powders but the customs officials note that accompanying papers written in Punjabi refer to the ingredients. Steven does not read or speak Punjabi.

Advise Steven.

Credit reference to:

- Application of different rules for the scenario.
- Application of other aids of interpretation.
- Discussion of the purpose of the Act and the need to interpret criminal legislation strictly.

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.

The Judiciary

Days sat by judge type showing type of work dealt with, 2010

Type of Judge	<u>Court of Appeal</u>			<u>High Court</u>			<u>Crown Court</u>	<u>County Court</u>			Total
	Criminal	Civil	Chancery Division	Queen's Bench Division	Family Division	T&C Court		General List	Public	Private	
Lords Justices	678	2,397	45	242	57	0	0	0	0	0	3,419
High Court Judges	1,149	136	2,278	3,750	2,525	351	3,511	36	130	34	13,899
Deputy High Court Judges	0	9	1,775	859	373	621	181	156	30	12	4,014
Circuit Judges	235	0	704	855	367	148	85,296	12,031	16,862	6,447	122,944
Deputy Circuit Judges	0	0	4	6	11	0	871	190	372	87	1,540
Recorders	0	0	148	135	53	28	21,110	2,433	1,514	859	26,278
District Judges	0	0	786	22	4	0	0	55,976	5,262	24,420	86,468
Deputy District Judges	0	0	0	0	0	0	0	62	62	1,615	23,862
Total	2,062	2,542	5,739	3,390	1,148	110,969	93,006	24,230	33,472	282,424	282,424

Source: HM Courts & Tribunal Service and CREST system

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

- (a) **By reference to the data, explain the work of Judges in the administration and the development of precedent in the law in England and Wales.** [14]

Credit reference to:

- Doctrine of precedent and the authoritative hierarchy of the Court structure
- Consider the relationship between the various Courts within the hierarchy and the amount of work on a daily basis conducted by the Courts.
- Consider the differences between criminal law and civil law.
- Credit will be given for appropriate citation.

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

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

(b) Discuss the extent to which the judiciary is representative of society.

[11]

Credit reference to:

- The role of Judges in interpreting the law and the impact of representation of society as being part of the legitimacy of the legal system.
- The impact of failing to ensure that Judges are not a statistical cross-section of society – the nature of the restrictions placed upon the appointment process in terms of the essential competencies for High Court judicial appointments.
- The views of Professor Griffith.
- The importance of the composition of the jury, particularly with regard to judicial review and the Human Rights Act 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.

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.
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0-3	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply to the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

LAW - PAPER LA3 (A2)

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

OPTION 1: CONTRACT AND CONSUMER LAW

Answer two questions.

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

On Wednesday Lillian visited Sophie's beauty parlour because she wanted her nails manicured for a wedding that she was attending the following Friday. When Sophie had finished, Lillian was so pleased with what she had done that she said she would give Sophie an extra £50 as a tip. She then found that she did not have enough money with her but said she would call with it after the wedding on Monday to give it to her. On Monday, to give it to her. On Monday, Lillian phoned Sophie to tell her that she did not intend to give her the tip. Unfortunately Sophie, in reliance of Lillian's promise, bought a dress on the Saturday and is pressing to be paid the tip.

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

[14]

Credit reference to:

- The issue of consideration and identifying the nature of consideration of Contract Law.
- The issue of past consideration, e.g. the case of *Re McArdle* (1951); *Pae On -v- Lau Yiu Long* (1980).
- The nature of the relationship as being commercial.
- The question of intention to create legal relations.
- 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.

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. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given 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.
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 importance of the doctrine of precedent in the development of Contract Law.** [11]

Credit reference to:

- The significance of case law and the doctrine of precedent.
- Hierarchy of Courts.
- The role of the Privy Council, particularly in the light of the case of *Pao On* (1980).
- Credit will be given for relevant citation.

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

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <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.

Andrew wrote to Ivor, offering to sell his two-year-old Ascari motor car and because it was such a rare car, offered to sell it for £50,000. Ivor was thrilled and immediately telephoned to accept. Nevertheless, Andrew was nervous and requested that Ivor should confirm his acceptance in writing. He said that if Ivor got his letter of acceptance by 10.30am the following day, he would accept it. At once, Ivor posted his letter of acceptance which was received at 8.30am the following day. Unfortunately in the meantime, Xavier offered Andrew £75,000 for the car and he accepted. He then posted a letter to Ivor, withdrawing the offer.

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

[14]

Credit reference to:

- The postal rule.
- Acceptance by telephone.
- Avoidance of the postal rule.
- Revocation of offers in unilateral contracts.
- 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.

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. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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0-2	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 source of assistance to Ivor in funding litigation in this situation. [11]

Credit reference to:

- Analysis of the financial position and the availability of Legal Aid.
- Private means.
- Conditional fees.
- The significance of legal insurance.
- Pre-action protocols and the civil procedure rules.

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

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

Bertie has a great talent in modern singing and dancing. When he was barely eighteen years old he entered into a contract with Pears Audio Ltd. The contract was for ten years and, under it, Bertie agreed to record all his routines giving Pears Audio Ltd an exclusive right to develop and exploit his recordings. The contract provided that Bertie would pay Pears Audio Ltd a royalty fee of 35%. Over the last three years, Bertie has provided thirty-four songs to Pears Audio Ltd who has, on each occasion, turned down his request. He now wants to take his recordings to Oak Productions Ltd but Pears Audio Ltd is threatening to stop him from doing so.

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

Credit reference to:

- The issue of restraint of trade.
- Is there a legitimate interest here?
- Credit will be given for relevant citation, e.g. *Shroeder Music Publishing Co Ltd –v- Macaulay* (1974).
- Enforceability of contract.

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. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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0-2	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 civil remedies available to Pears Audio Ltd.

[11]

Credit reference to:

- Civil remedies.?
- The significance of injunctive release.
- The principles of equity and the nature of equitable remedies being discretionary.
- Credit will be given for relevant citation.
- the civil procedure rules.

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

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

Harper Ltd provides electrical services to the general public. Joanna bought an old house and she wanted part of the house to be rewired with new electric cable wiring. She enquired from Harper Ltd, who agreed to carry out the work for £2,500. They sent Joanna a copy of their terms and Conditions of Business. Clause 3 of these stated:

'Harper Ltd is not responsible under any circumstances for any loss or damage or injury suffered by the client except to the sum of £50,000 in respect of negligence caused by the employee of Harper Ltd.'

Having completed the rewiring unfortunately, due to the negligence of Fred, one of Harper Ltd's employees, the house caught fire and whilst no-one was hurt, the house burned down.

(a) Explain the influence of European Law as a source of law in the above situation.

[11]

Credit reference to:

- The failure to carry out a service is breach of the primary obligations under the contract.
- The question of negligence.
- The incorporation of the clause.
- Construction of the clause as covering the breach.
- UCTA 1977 and UTCCR 1999

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. 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, analysis and analogy.
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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 influence of European Law as a source of law in the above situation.** [11]

Credit reference to:

- The role of European Law in progressing consumer protection.
- The differentiation between directives and regulations.
- The reference to unfair terms in consumer contract regulations.
- The duty to trade fairly and the unfair commercial practices regulations.
- Credit will be given for relevant citation.

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

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

LAW – PAPER LA3 (A2)

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

OPTION 2: CRIMINAL LAW AND JUSTICE

Answer *two* questions.

Q.1 Janice works in Mandy's beauty salon. One of the treatments available at the salon is a tank full of so-called "doctor fish". Customers sit with their feet in the tank, and the harmless little fish nibble away any hard skin from their feet. Mandy gave Janice the unpleasant job of cleaning out the dirty tank every day. To pay Mandy back for being so mean to her, Janice bought a number of small loach from a pet shop, and surreptitiously put them in the tank. The loach looked very similar to the "doctor fish" but were capable of inflicting a nasty bit. Janice knew that Mandy often used the tank herself, and hoped that one of the loach would bite her. However, one of the customers, Anna, used the tank first, and was bitten on the toe. Anna's toe became red and swollen, but she felt silly telling her doctor that she had been bitten by a fish, so she delayed seeking treatment until the pain was unbearable. Within a few days the infection had spread throughout Anna's bloodstream, and she died.

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

Credit reference to:

- Elements of murder and manslaughter; actus reus and mens rea.
- Mens rea of murder: intention to kill or cause grievous bodily harm.
- Indirect intention: Woollin, Matthews and Alleyne – jury entitled to find intention where death or grievous bodily harm is a virtual certainty – a question of fact.
- Janice clearly has no intention to kill anyone, and death is not likely to be viewed as a virtual certainty as a result of a fish bite, but there may be argument as to whether what Janice intended or foresaw amounts to grievous bodily harm. Grievous bodily harm means "really serious" (DPP v Smith) or "very serious" (Janjua and Choudhury).
- Principles of causation: factual causation, legal causation, novus actus interveniens; cases such as White, Dalloway, Pagett.
- Transferred malice: Latimer; A-G's Ref. no.3 of 1994.
- Chain of causation: whether broken by medical negligence: Smith, Jordan, Cheshire.
- Voluntary manslaughter: possible defence of loss of control: Coroners and Justice Act 2009, ss.54-55.
- Involuntary manslaughter: unlawful act manslaughter (Church, Lamb, Franklin); gross negligence manslaughter (Adamoko).

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. 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, analysis and analogy.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given 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 Janice if she is tried in the Crown Court.** [11]

Credit reference to:

- Duty solicitor scheme: free legal advice at the police station.
- Duty solicitor scheme: free representation for an accused's first appearance before the magistrate's court.
- Access to Justice Act 1999; Legal Services Commission.
- Criminal Defence Service.
- Levels of state funding: advice and assistance, advocacy assistance and representation.
- Means test and merits test.
- Public Defender Service (in four areas only).

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

Marks	AO1
Knowledge and Understanding	
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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Q.2 Following a heavy fall of snow, Ed and Dean went out to have some fun playing tricks on their neighbours. Ed found a stick and used it to write “We’re coming to get you” in the snow on old Mrs. Evans’ front lawn. Mrs. Evans saw this message, and felt very frightened. Meanwhile, Dean piled up a large heap of snow against Mrs. Jones’ front door. When Mrs. Jones opened the door, the heap of snow fell on top of her. After that, Ed and Dean then went to the local park, where they started a snowball fight. Ed put a sharp stone in the middle of a snowball and threw it at Dean. The snowball missed Dean but hit Mrs. Thomas, who was out walking her dog, and inflicted a deep cut to her face. Ed and Dean ran off, but were spotted by PC Lucy Frost, who chased after them. PC Frost caught up with Dean and grabbed him by the arm. Dean pushed her away, causing her to slip and fall over in the snow. PC Frost fell awkwardly, and suffered a serious injury to her spine.

(a) In the light of reported case law and other sources of law, consider whether Ed and Dean may have committed any criminal offences. [14]

Credit reference to:

- Assault and battery at common law: both summary offences; sentence set by Criminal Justice Act 1988, s.39.
- Aggravated assaults under the Offences Against the Person Act 1861, sections 47, 20 and 18.
- Candidates should indicate knowledge of the actus reus and mens rea of the above offences in the course of their answers.
- Ed’s liability: the message in the snow may be an assault – actus reus of assault: an act which causes V to apprehend immediate infliction of unlawful violence. Words can be assault: Ireland and Burstow; Constanza. “Immediate” is interpreted liberally: Smith v Chief Superintendent of Woking Police Station (D looking through window at V who was behind locked door: held sufficiently immediate).
- The snowball that hits Mrs. Thomas: transferred malice, Latimer. May be charged as s.20 as either infliction of grievous bodily harm or a wound: a wound requires breaking the continuity of the skin: C v Eisenhower. Mens rea: D must intend or be reckless with regard to the infliction of some physical harm. It is sufficient to prove that D intended or foresaw that some harm might occur, not necessarily would occur: DPP v A.
- Alternatively, Ed could be charged under s.47: causing actual bodily harm. Actus reus: causing hurt or injury calculated to interfere with the health or comfort of the victim: Miller. The injury must be more than transient or trifling: Chan Fook. Mens rea: same as common law battery: no extra mens rea is required: Savage.
- Dean’s liability: the snow on Mrs. Jones’ doorstep may amount to a battery. Actus reus: the application of unlawful physical force to the victim: enough if it is applied to the clothing: Thomas. May be applied indirectly: Martin, DPP v K (acid in hand dryer). Mens rea: intention or subjective recklessness: Venna.
- The injury to PC Frost may be charged under s.18: maliciously wounding or causing grievous bodily harm, or to prevent the lawful apprehension or detention of any person.

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Marks	AO2
	Skills
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(b) Explain how a jury would be selected if Ed or Dean were to be tried at 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 can ask to be 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 community order.
- People who suffer from mental illness or handicap and are being treated regularly may not serve. The judge can discharge anyone who is not fit to serve through physical disability (blind or deaf) or does not have sufficient understanding of English.
- Summoning officer has a discretion to excuse anyone or allow them to defer their service to another time for good reason.
- Jury vetting: routine police check to exclude those disqualified because of a criminal record; in exceptional cases the Attorney-General may authorise vetting of background and political views.
- A jury must be random; a judge may not attempt to create a racial balance on a jury: R v Ford.

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

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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Q.3 Nelly was feeling depressed, so her friend Lorna invited Nelly round to her flat for the evening. The girls shared a bottle of wine, and Lorna gave Nelly some of her own Valium tablets which had been prescribed by her doctor. The girls then settled down to watch a vampire movie on TV. Both girls fell asleep on the sofa before the movie was over. The mixture of the tablets with the alcohol caused Nelly to experience a terrifying dream in which Lorna had turned into a vampire and was trying to kill her. Believing that she was fighting for her life, Nelly grasped the necklace that Lorna was wearing, and twisted it until Lorna let her go. When Nelly woke up, she discovered that she had strangled Lorna.

(a) In the light of reported case law and other sources of law, consider whether Nelly might have any defences to a charge of murder. [14]

Credit reference to:

- Diminished responsibility: Coroners and Justice Act, 2009, s.52 – D suffering from an abnormality of mental functioning, arising from a recognised medical condition, which was a significant contributory factor to the killing. In Dietschmann (2003) D was suffering from depression but was also drunk: court accepted diminished responsibility. There is doubt as to whether depression would count as a recognised medical condition under the new law: if it does, then the key issue is whether it was a significant contributory factor regardless of whether D was also intoxicated. Effect of defence: reduces murder to voluntary manslaughter.
- Possible defences: automatism, intoxication, self defence; possibly also insanity or diminished responsibility. Candidates should be credited for defences which would be unlikely to succeed so long as they are at least plausible and explained and applied in a coherent way.
- Automatism: where an action is done without any control by the mind, e.g., concussion, sleepwalking: Bratty v A-G for Northern Ireland, Hill v Baxter.
- Automatism may be insane or non-insane depending on whether the cause is internal (insane) or external (non-insane). Where the cause is external, such as a drug, the outcome depends on whether automatism was involuntary or self-induced. Case: Bailey – self-induced automatism not a defence where (a) D was reckless in becoming an automaton, or (b) if automatism was caused by illegal drink or drugs. However, it was said that (c) automatism is available if D did not know that his actions were likely to result in automatism, as he would not have been reckless in becoming an automaton. Case: Hardie – D reckless in becoming an automaton.
- Automatism is a complete defence to specific intent crimes and also to basic intent crimes when not self-induced as above – hence Nelly may have a complete defence to murder and manslaughter.
- Intoxication – not a true defence in itself, but D may adduce evidence of intoxication to show lack of mens rea as in automatism. Distinction between voluntary and involuntary intoxication and crimes of specific and basic intent. Involuntary intoxication can result from unforeseen effects of a normally harmless drug: Hardie, and can be used both in crimes of specific or basic intent. Voluntary intoxication is regarded as reckless, hence cannot be used in crimes of basic intent, e.g., manslaughter: Lipman. If the crime is one of specific intent it can result in acquittal or conviction for a lesser offence of basic intent: Majewski.

- Self defence: where D uses force to defend himself or another, the force must be necessary and reasonable. Mistaken belief in need for self-defence: D is judged by the facts as he believed them to be so long as the mistake is genuine and reasonable under the circumstances as he believed them to be: Gladstone Williams. The Criminal Justice and Immigration Act 2008, s.76(4) confirms that the belief in the threat should be reasonable. Reasonable force is judged in relation to the circumstances: the Criminal Justice and Immigration Act 2008, s..76(6) suggests that it must be proportionate to the threat – courts traditionally allow some leeway, e.g., Cross v Kirby; A-G for Northern Ireland’s Reference No.1 of 1975.
- D cannot rely on a mistaken belief in need for self-defence induced by voluntary intoxication: the O’Grady exception to Gladstone Williams; applied in O’Connor and Hatton.
- Insanity – unlikely here, but Crown might seek to prove that Nelly was suffering from insanity under the M’Naghten Rules on the basis that Nelly suffers from a sleep disorder (internal cause) as in Burgess.

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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. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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(b) Explain the route of appeal from the Crown Court if Nelly is convicted. [11]

Credit reference to:

- Appeal from the Crown Court to the Court of Appeal (Criminal Division) against conviction or sentence. Leave to appeal must be obtained from the trial judge or the Court of Appeal.
- The CA can allow the appeal, dismiss it or order a fresh trial. Appeal against conviction should be allowed if the CA considers the conviction is “unsafe”. Appeal against sentence is only allowed if the sentence is wrong in principle or manifestly severe. The CA cannot increase the sentence passed by the Crown Court.
- The CA does not rehear the case, but it may admit fresh evidence if they think it is necessary or expedient in the interests of justice (Criminal Appeal Act 1968, s.23(1)): they must consider whether the evidence is capable of belief; could afford a ground for allowing the appeal; would have been admissible at the trial, and there is a reasonable explanation why it was not adduced at the trial.
- The CA can direct the Criminal Cases Review Commission to investigate and report on any matter relating to a case being considered by the CA (Criminal Appeal Act 1995).
- The accused can apply to the Criminal Cases Review Commission, which can investigate a case and refer it to the CA if there is a real possibility that the conviction or sentence may not be upheld. Once a case is referred to the CA it is treated as a fresh appeal.
- The CA can hear a second appeal in exceptional circumstances where a significant injustice has probably been done and there is no other effective remedy: Taylor v Lawrence.
- Appeals by way of case stated can be made from the Crown Court to the High Court: Access to Justice Act 1999 – the Law Commission considers that all appeals should go to the CA.
- Further appeal to the Supreme Court: either the accused or the prosecution may appeal to the Supreme Court on a point of law. Permission is required from either the CA or the Supreme Court, and the CA must certify that the case involves a point of law of public importance.
- There is no further appeal, but an accused may make an application to the European Court of Human Rights in Strasbourg if one of his rights under the ECHR has been breached – often the right to a fair trial under Art.6, e.g., Condron v UK.

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Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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Q.4 Mungo walked down the street whistling happily because he had just secured his first job to train as a professional photographer. The noise annoyed PC Zap, who tapped Mungo on the shoulder and told him to be quiet. Mungo said, “I’m not breaking any law, am I?” PC Zap replied: “Let’s find out, shall we?”, and proceeded to carry out a thorough search of Mungo’s clothing and bag. In the bag, PC Zap found a well used but obviously expensive camera. PC Zap thought that this was highly suspicious, so he arrested Mungo in order to carry out further enquiries. At the police station, Mungo was put in a cell while waiting to be interviewed. During that time he made several requests to be allowed to phone his family and speak to a solicitor, but each time he was told that the police were too busy. After 12 hours in the cell, Mungo was interviewed by detectives who were investigating a number of burglaries. Mungo explained repeatedly that the camera had been lent to him by his new employer, but as it was now the middle of the night, he was told that he would have to remain in custody until the police could confirm his story. The police had difficulty contacting Mungo’s employer, so after Mungo had spent a total of 38 hours in police custody, it was decided to release him on bail subject to the condition that he should report to the police station the following day.

(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 and Codes of Practice.
- Power to stop and search: ss.1-3; Code A.
- Whether the power to search was properly exercised on these facts, e.g., no grounds for suspicion that officer would find stolen or prohibited items; formalities of a valid search (ss.2-3) not complied with – cases such as *Castorina*, *Osman*.
- Arrest powers: s.24 as amended by SOCPA 2005; Code G. Grounds for arrest; necessity test. Formalities of valid arrest; s.28.
- Procedure to be followed on arrival at police station; role of custody officer: information to be given to suspect.
- Rights of suspects in police custody: right to have someone informed of the arrest (s.56); right to legal advice (s.58).
- Treatment of suspects during detention: Code C.
- Detention review: s.40.
- Time limits on detention: ss.41-42.

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Marks	AO2
Skills	
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(b) Explain the powers of the police to grant bail.

[11]

Credit reference to:

- Police and Criminal Evidence Act 1984.
- 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.
- Criminal Justice Act 2003 allows the police to grant street bail.
- 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.

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LAW - PAPER LA3

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

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

Answer two questions

Q.1 The local council decided to demolish the community centre and sell off the land to developers. Harriet, who runs the centre, organised a protest against the closure. Around two hundred people turned up and set off to march to the council offices, with Harriet in the lead. Some of the marchers carried home-made placards saying: "Demolish the Council!" As the marchers drew near to the council offices, Sergeant Smiley arrived in a police car, accompanied by PC Kitten. Sergeant Smiley told Harriet that they were marching without police permission, and would have to disband. Harriet refused, so Sergeant Smiley arrested her. While this was going on, PC Kitten ordered the marchers who were carrying placards to put them down. Some of the marchers waved their placards in defiance, so PC Kitten arrested them. The march came to a standstill as the rest of the marchers tried to find out what was happening. Fearing trouble, Sergeant Smiley radioed for reinforcements. Several police vans arrived filled with officers, who imposed a tight cordon around the marchers and kept them there for seven hours. Harriet was charged with a public order offence and convicted by the magistrates' court.

(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.
- Under s.11 of the POA 1986, the organiser of a procession is required to give notice six clear days in advance stating the date of the procession, the start time, the proposed route and the name and address of at least one person organising it. The notice must be delivered by hand or by post to a police station in the area where the procession is to start. Failure to give notice is a summary offence punishable by a fine.
- It is not the case that organisers require permission from the police, nor do they have to wait for police permission before going ahead. Failure to give notice is an offence as above, but the procession is not illegal. Under s.13 the Chief Constable can apply to the district council to ban all processions of a particular type in the area for up to three months, subject to approval by the Home Secretary: organising or participating in a banned procession is a summary offence under s.13.
- Section 11 is one of the few sections of the POA 1986 which did not give the police a power to arrest, but since the SOCPA amendments to PACE 1984, s.24, the police have power to arrest for any offence.
- The police have power under s.12 of the POA 1986 to impose conditions on processions: these may be imposed in advance by the Chief Constable in writing (s.12(3)), or by the senior police officer present at the scene (s.12(2)(a)).

- The grounds for imposing conditions (s.12(1)) are that the senior officer reasonably believes that the procession may result in serious public disorder, or serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is to intimidate others into doing something which they have a right not to do, or refraining from doing something which they have a right to do. These grounds are commonly called the “four triggers”.
- Conditions which may be imposed: s.12(1) states that the officer may impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation. S.12(1) specifies that these may include conditions as to the route to be followed and that the procession is not to enter some particular public place, but presumably extends beyond these.
- Since the HRA 1998, conditions imposed must be “proportionate” in order not to breach Art.11 of the ECHR.
- Refusal to comply with a condition is an offence (s.12(4) for organisers, s.12(5) for participants).
- The placards: s.5 of the POA 1986 creates the offence of causing harassment, alarm or distress. This may be committed in two ways: by using threatening, abusive or insulting words or behaviour, or by engaging in disorderly behaviour. The behaviour must take place within the sight of hearing of a person likely to be caused harassment, alarm or distress thereby (s.5(1)). This can include a police officer: DPP -v- Orum. Cases: DPP -v- Clarke; DPP -v- Fidler. The arrest power under s.5 required the officer first to give a warning, and only arrest if this was ignored, but this has been superseded by the amended s.24 of PACE 1984.
- PC Kitten may not have the power to impose conditions if Sergeant Smiley is near enough to be considered present at the scene. In that case, the marchers would commit no offence by failing to comply. However, she could arrest them for the offence under s.5.
- Once a procession comes to a standstill, it becomes an assembly and the police may impose conditions under s.14. The triggers are identical to s.12 and the police can impose virtually any conditions they consider necessary.
- In Austin -v- Metropolitan Police Commissioner, the House of Lords held that the practice of confining demonstrators (“kettling”) was lawful as an exercise of the power to impose conditions under s.14, even if the police did not have these in mind. There was no breach of Art.5: freedom of movement, where the confinement was only for the time necessary to prevent serious public disorder; if a cordon was maintained beyond this merely to punish the demonstrators, it would be a breach of Art.5.

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. 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
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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 <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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Q.2 It was a wet and windy day. As Samira walked down the street the wind blew a crisp packet, which stuck to the front of Samira's coat for a few seconds before being blown away again. This was observed by PC Crane, who grasped Samira by the arm and searched her. When Samira asked what was going on, PC Crane told her that he was arresting her for dropping litter. Samira was taken to the police station, where she immediately asked to be allowed to phone her husband and speak to a solicitor. Both these requested were refused, and Samira was placed in a cell. Samira remained in the cell for twenty-six hours, at the end of which time she was released on bail.

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

Credit reference to:

- Police and Criminal Evidence Act 1984 and Codes of Practice.
- Power to stop and search: ss.1-3; Code A.
- Whether the power to search was properly exercised on these facts, e.g., no grounds for suspicion that the police officer would find stolen or prohibited articles; formalities of a valid search under s.2 and s.3 not complied with - cases such as *Castorina*, *Osman*.
- Arrest powers: s.24 as amended by SOCPA 2005; Code G. Grounds for arrest; necessity test. All offences are now arrestable, but the necessity test (s.24(5)) is probably not satisfied.
- Formalities of valid arrest; s.28. Code C says the suspect should be cautioned.
- Procedure to be followed on arrival at police station; role of custody officer.
- Rights of suspects in police custody: right to have someone informed of the arrest (s.56); right to legal advice (s.58).
- Treatment of suspects during detention: Code C.
- Detention review: s.40.
- Time limits on detention: s.41.

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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.

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. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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(b) Explain the powers of the police to grant bail.

[11]

Credit reference to:

- Police and Criminal Evidence Act 1984.
- 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.
- Criminal Justice Act 2003 allows the police to grant street bail.
- 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
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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 <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.
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Q.3 Greta, a civil servant who works for the Department of Work and Pensions, heard a rumour around the office that a factory which manufactures tinned food was about to be closed down. Greta passed on the rumour to her cousin Sandra, who works at the factory. Neither Greta nor Sandra was aware that the factory was a major supplier of tinned foods to the British Army, and that the reason why the factory was about to close was that the Minister of Defence had decided to reduce the number of British soldiers serving abroad. Sandra wrote a letter to the editor of her local weekly newspaper, Ivor, expressing her distress at the prospect of losing her job. There was no room for Sandra's letter in the letters column that week, so Ivor placed the letter on file with a view to publishing it when the closure was officially announced.

(a) In the light of reported case law and other sources of law, consider whether Greta, Sandra or Ivor may have committed a criminal offence.

[14]

Credit reference to:

- Official Secrets Act 1989.
- Categories of protected information: s.2, defence.
- Greta: unauthorised disclosure by a Crown servant.
- Possible defences: that the disclosure is not damaging within the terms of s.2; that Greta had no knowledge or reasonable cause to believe that the information was within a restricted category or that the disclosure would be damaging.
- Sandra: 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.
- Ivor: no offence of merely receiving protected information, but would commit the offence under s.5 if he publishes the information.
- Possible defences: as for Sandra.
- No defence of public interest.

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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.

Marks	AO2
	Skills
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(b) Explain what sources of legal advice and funding are available to persons charged with a criminal offence. [11]

Credit reference to:

- Duty solicitor scheme: free legal advice at the police station.
- Duty solicitor scheme: free representation for an accused's first appearance before the magistrates' court.
- Access to Justice Act 1999; Legal Services Commission.
- Criminal Defence Service.
- Levels of state funding: advice and assistance, advocacy assistance and representation.
- Means test and merits test.
- Public Defender Service (in four areas only).

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Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content making an <i>entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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Q.4 A leading scientist claimed that recent genetic evidence has proved that there was interbreeding between humans and Neanderthals, and that some people in Britain still carry traces of Neanderthal origins in their DNA. Martha Mutton, editor of the popular tabloid newspaper, the Daily Slur, ran a front-page article under the headline: "The Secret Neanderthals: Where Are They Hiding?" The article was accompanied by photos of various public figures chosen by Martha as possible descendants of the Neanderthals. One of the photos was of Horatio Tubb, a well-known Member of Parliament who is currently standing for election as the leader of his party. Horatio feels that the article has completely destroyed his credibility as a politician, and wants to sue the Daily Slur. Martha, on the other hand, argues that the article was simply a light-hearted attempt to inform the public about an important scientific discovery, and that as a public figure Horatio is a legitimate target for jokes by the media.

(a) In the light of reported case law and other sources of law, consider whether Horatio might have an action for defamation against the Daily Slur. [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 suggestion that someone might be a descendant of Neanderthals plays into popular images of Neanderthals as brutish and unintelligent - the reference to "secret" Neanderthals suggests there is something to be ashamed of.
- 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).

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	Skills
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(b) Explain the role of the jury in today's civil justice system.

[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 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.

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Marks	AO1
	Knowledge and Understanding
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GCE LAW - PAPER LA4

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

**OPTION 1: CONTRACT & CONSUMER LAW
1254/01**

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

SECTION A

Q.1 Critically evaluate the circumstances when a regulated consumer credit agreement is cancellable under Consumer Credit Law. [25]

Credit reference to:

- Whether or not a consumer is a high net worth individual or buying for business purposes – Sections 1-4 of the Consumer Credit Act 2006.
- The right of withdrawal and cancel ability of a hire purchase agreement within Section 67 of the Consumer Credit Act.
- Withdrawal from the prospective agreement provided for Section 57(3) of the Consumer Credit Act.
- The unilateral right of withdrawal as seen by Section 66A of the Consumer Credit Act 1974.
- Misrepresentation.
- Credit will be given for relevant citation.

Marks	AO1
	Knowledge and Understanding
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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.
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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 Discuss the law relating to termination of hire purchase agreements under Consumer Law. [25]

Credit reference to:

- Arrears information and arrears notice under Section 9 of the Consumer Credit Act 2006.
- What is a terminating event and the concept of the default notice under Sections 87-89 of the Consumer Credit Act 1974.
- The right of determination by a consumer under Sections 99 and 100 of the Consumer Credit Act 1974.

Marks	AO1
Knowledge and Understanding	
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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.

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 impact of the European Consumer Credit Directive 2008 on English and Welsh Consumer Law.

[25]

Credit reference to:

- The CCD is only a partial harmonisation of Consumer Credit Law e.g. it does not deal with provisions relating to unfair credit transactions or regulated hire agreements.
- Where it does apply, it follows the maximum harmonization approach.
- The UK Government has retained much of the existing domestic law.
- The new unilateral right of withdrawal from credit agreements.
- Note the new provisions in relation to credit intermediaries.
- Credit will be given for relevant citation.

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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Marks	AO2
	Skills
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Q.4 Evaluate the role of licensing in promoting responsible consumer credit lending.

[25]

Credit reference to:

- Licensing of consumer credit businesses on behalf of the Consumer Credit Act 1974 which listed six categories of licence.
- The role of the OFT.
- Reform of the Consumer Credit Act 2006. These reforms are intended to clarify the definitions of credit business and hire business.
- Fitness test in applying for a licence.
- The powers of the Office of Fair Trading enhanced under the Consumer Credit Act 2006.

Marks	AO1
	Knowledge and Understanding
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SECTION B

Answer **one** question.

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

Rapid Alert System for non-food consumer products (RAPEX).

RAPEX is the EU rapid alert system for dangerous consumer products – with the exception of food, pharmaceutical and medical devices which are covered by other mechanisms.

It facilitates the rapid exchange of information between Member States and the Commission on measures to prevent or restrict the marketing or use of products posing a serious risk to the health and safety of consumers. Both measures ordered by national authorities and measures taken voluntarily by producers and distributors are reported by RAPEX.

When a product (e.g. a toy, childcare article or household appliance) is found to be dangerous, the competent national authority takes appropriate action to eliminate the risk. It can withdraw the product from the market, recall it, or issue warnings. The National Contact Point then informs the European Commission (Directorate-General for Health and Consumer Protection) about the product, the risks it poses to consumers and the measures taken by the authority to prevent risks and accidents.

The European Commission disseminates the information that it receives to the National Contact Points of all other EU countries. It publishes weekly overviews of dangerous products and the measures taken to eliminate the risks on the internet.

The National Contact Points in each EU country ensure that the authorities responsible check whether the newly notified dangerous product is present on the market. If so, the authorities take measures to eliminate the risk, either by requiring that the product be withdrawn from the market, or recalling it from consumers, or by issuing warnings.

A weekly overview of the dangerous products reported by the national authorities (the RAPEX) notifications is published on the Commission Website.

Source: BIS Web Site on Product Safety

(a) Explain the impact of general product regulations on the development of consumer protection law and enforcement in the law of England and Wales. [11]

Credit reference to:

- General product safety is regulated by the General Product Safety Regulations 2005.
- All products, new and second hand, used by consumers are governed by the product safety regulations.
- The regulations maintain the general duty placed upon producers and distributors to place on the market, only products that are safe in the normal or reasonable foreseeable use. The principal responsibility for day to day enforcement of the regulations, lie with local authorities.
- The regulations recognise certain technical standards as carrying a presumption of conformity with a general safety requirement meaning that products that comply with them are deemed to be safe.
- Credit will be rewarded for accurate citation of consumer protection regulations including references to the development of the concept of unfairness in commercial practises.

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
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) Assess the role of European Law in the development of consumer protection law in England and Wales.

[14]

Credit reference to:

- Note the role of European Law and the distinction drawn between directives and regulations. The concept of direct effect and direct applicability.
- The role of European Law in the development of both consumer protection and contract law.
- An understanding of the EU context and the treaty frameworks.
- The general framework of EU activities in favour of consumers.
- Relevant citation in Consumer Law of directives.
- The development of the concept of safe trading as part of the European ideal and the integration of the European market.

Marks	AO3
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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.

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 facts and answer the questions based on them.

The doctrine of freedom of contract was established in the nineteenth century. Is this a myth? When the Sale of Goods Act was enacted in the nineteenth century, the statutory implied terms exposed this myth.

(a) Explain the implied terms of the Sale of Goods Act. [11]

Credit reference to:

- Implied terms under the Sale of Goods Act.
- Satisfactory quality and fitness for purpose.
- Section 13 Sale of Goods Act 1979 and relevant citation e.g. *Arcos v Ronaasen* (1933).
- Normally a breach of condition entitles the buyer to reject the goods – Sections 13-15 of the Sale of Goods Act. Note Section 15A of the Sale of Goods Act.
- Joanne is not dealing as a consumer.
- Credit will be given for relevant citation.

Marks	AO3
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(b) Assess the extent to which Statute Law has undermined the Common Law. [14]

Credit reference to:

- The nature of the Common Law as precedent.
- The role of precedent and its application in the context of statutes particularly the rules of statutory interpretation.
- The principles of the Common Law including protection of property and also sanctity of contracts and the impact of statutes.
- Understanding law in context and the balance between freedom, the state and the individual.
- Credit will be given for relevant citation.

Marks	AO3
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LAW – PAPER LA4 (A2)

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

OPTION 2: CRIMINAL LAW & JUSTICE

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

SECTION A

Q.1 Critically evaluate the aims of adult sentencing. [25]

Credit reference to:

- Aims of sentencing set out in the Criminal Justice Act 2003, s.142.
- Retribution – punishment: the sentence must be proportionate to the offence.
- Deterrence – may be individual or general. Individual deterrence is intended to deter the individual offender from re-offending; general deterrence is aimed at deterring others by making an example of the offender (e.g. Liam Stacey).
- Protection of society – sentence aims at protecting the public from the offender, e.g. custody; driving ban; curfew, etc.
- Rehabilitation – the aim is to help the offender amend his behaviour and prevent him re-offending. The Criminal Justice Act 2003 enables community sentences to be tailored to the individual needs of the offender.
- Reparation – the offender is required to make amends, such as by paying compensation to his victim, doing unpaid work for the community.
- Candidates may offer examples of sentences intended to achieve these aims, e.g. –
 - Custodial sentences: the Criminal Justice Act 2003, s.152 (2) states that these are only available for offences so serious that neither a fine alone nor a community sentence can be justified for the offence.
 - Determinate sentences: for sentences of more than 12 months, usually only half is served in prison and the other half in the community on licence with conditions and under supervision.
 - Mandatory life sentence: compulsory for those convicted of murder: if released by the Parole Board they remain on licence for life.
 - Indeterminate sentences: the court sets a minimum period which must be served before the offender becomes eligible for early release by the Parole Board. Examples –
 - Life imprisonment: Criminal Justice Act 2003, s.225: where an offender is convicted of a serious offence (defined as carrying a maximum sentence of at least 10 years; where in the court's opinion the offender poses a significant risk to the public of serious harm by committing further specified offences; where the maximum penalty for the offence is life imprisonment; where the court considers that the seriousness of the offence, or the offence and one or more associated offences, justifies the imposition of imprisonment for life.
 - Imprisonment for public protection: where the offender is convicted of a serious sexual or violent offence punishable by imprisonment for life or a determinate sentence of 10 years or more; where in the court's opinion the offender poses a significant risk to the public of serious harm by the commission of further specified offences; the offence is punishable with life imprisonment and the court is satisfied that the seriousness of the offence justifies such a sentence; the offender has a previous conviction for an offence listed in schedule 15A of the Criminal Justice Act 2003 or the current offence warrants a notional minimum term of at least two years.

- Community orders can include any number of the requirements set out in the CJA 2003: unpaid work requirement; activity requirement; programme requirement; prohibited activity requirement; curfew requirement; exclusion requirement; mental health treatment requirement; drug rehabilitation requirement; alcohol treatment requirement; supervision requirement.
- Fines, conditional or absolute discharges.
- The Sentencing Council set up under the Coroners and Justice Act 2009 requires the court to take into consideration the five purposes of sentencing.

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Q.2 To what extent can consent be a defence to a crime?

[25]

Credit reference to:

- Consent is mainly relevant to offences against the person: in other offences the absence of consent may be an actual element of the offence which must be proven by the prosecution.
- Consent can be a defence to common law assault and battery where the degree of injury is minor. Physical contact which is generally acceptable in everyday life is generally treated as being consented to: Collins -v- Wilcock (police officer tapping a person on shoulder to get his attention).
- Consent may provide a defence to more serious injuries which would come within s.47 or s.20 of the Offences Against the Person Act 1861 where the activity is one which is accepted as a matter of public policy or social usefulness.
- A-G's Ref. (No.6 of 1980): the CA set out situations where the conduct is regarded as socially useful or permitted as a matter of public policy.
- Properly conducted sports and games provided that the players stick within the rules of the game and only use the force which the rules allow. Case: Barnes – consent allowed as a defence where a football player committed a foul resulting in injury – for the defence to be excluded, the conduct must go outside what is expected in the normal course of a game. Contrast Moss, where a rugby player punched an opponent in the face causing a fractured eye socket.
- Lawful surgery – obviously socially useful, but also covers ritual circumcision, etc.
- Tattooing and body piercing provided this is within the law, e.g., by statute a person must be 18 to consent to professional tattooing. Case: Burrell -v- Harmer.
- Consensual branding accepted as tattooing in Wilson (Alan).
- Consensual sexual relations, so long as there was no intention to cause injury: Slingsby.
- The courts distinguish between cases where injuries caused by sexual activity are intentional and merely reckless: Brown, Slingsby.
- Rough horseplay where there is no intention to cause injury: Jones, Aitken.
- Dangerous exhibitions – not specified, but presumably covers things like being an assistant to a magician or knife thrower, wing riding, etc.
- Consent must be valid: victim must be competent to consent (Gillick) and be aware of the facts; consent must not be the result of fraud or duress. Examples: e.g., Olugboja, Richardson, Tabassum, Dica, Bolduc and Bird, etc.

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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.3 “The law relating to bail contains ample safeguards to ensure that the public is not put at risk from suspected offenders.” Discuss. [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.
- Powers of arrest for breach of bail conditions.
- Evaluation of when it is appropriate to refuse bail; bail bandits, cases of Hogans and Weddell.

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 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.

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. 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	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 Critically evaluate the operation of the youth justice system.

[25]

Credit reference to:

- Age of criminal responsibility: at 10, this is lower than other European nations, and has been criticised by the United Nations Committee on the Rights of the Child.
- Removal of presumption of doli incapax by Crime and Disorder Act 1998.
- Young people suspected of crime: particular provisions, e.g., Code C – young people should not be interviewed or arrested at school, or held in a police cell; PACE 1984, s.55 – people 17 or under should have an appropriate adult; children under 17 who are refused bail should normally be held in local authority accommodation.
- Use of reprimands and warnings: Crime and Disorder Act 1998, s.65.
- Youth conditional cautions: Criminal Justice and Immigration Act 2008 – intended to reduce number of young people brought to trial for low level offences. The young person must admit guilt and accept the caution. Conditions must be approved by the CPS – usually a fine or some form of community punishment – effectively punishment without trial at the discretion of the police, as with adults.
- Mode of trial: youth courts staffed by specially trained magistrates; separate from adult magistrates court, only those involved in proceedings, the parents and the press may be present, no wigs and gowns, procedure less formal than adult courts, etc.
- Crown court trial: if offence charged is murder or causing death by dangerous driving, or if there is an adult co-defendant. Since *Thompson and Venables* -v- UK and Lord Bingham's Practice Direction 2000, the trial judge must take account of the age, maturity and intellectual and emotional development of the young person on trial, and take steps to make the experience less stressful, including altering the layout of the courtroom and discarding wigs and gowns.
- Sentencing: under the Criminal Justice and Immigration Act 2008 the court must have regard to the fact that the principal aim of the youth justice system is to prevent reoffending, the welfare of the offender, the purposes of sentencing (punishment, deterrence, reform and rehabilitation, protection of the public, and reparation). Candidates may give examples of sentences for young persons, e.g., custody, referral orders, reparation orders, supervision orders, attendance centre orders, action plan orders, curfew orders, etc.
- Detention and Training Orders: Powers of Criminal Courts (Sentencing) Act 2000, ss.100-106 – between four months and two years – first half served in custody and second half in the community under supervision of the Youth Offending Team. A Training and Supervision Plan must be adhered to, which will specify unpaid work to be undertaken and reparation to be made.
- The Criminal Justice and Immigration Act 2008, ss.1-4, provides for the creation of Youth Rehabilitation Orders which allow the court to select from a list of requirements that the young offender must comply with – the idea is to make sentencing more flexible and tailored to individual needs. Youth rehabilitation orders replace most community sentences, although referral orders are retained. The reforms should be brought into force from 2010.

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.

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. 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.
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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** “The majority of cases continue to be prosecuted by the CPS successfully. However, generally, the quality of case handling is very variable. All casework decisions must comply with the Code for Crown Prosecutors (the Code) which requires that there is a realistic prospect of conviction and that a prosecution is in the public interest. In cases examined this year, the number of charging decisions which failed to comply with the Code evidential test was high at 9.3% and data from the most recent inspections showed an increase to 11.4%. This may not be a permanent trend but the decline is of concern.”

Adapted from HM Crown Prosecution Inspectorate Annual Report 2010-11.

- (a) Explain the Full Code Test in the Code for Crown Prosecutors. [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 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 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.

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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(b) Evaluate the importance of the Crown Prosecution Service within the Criminal Justice System. [14]

Credit reference to:

- The background to and reasons for the establishment of the CPS (e.g., Justice Report, Phillips Commission – concern over serious miscarriages of justice; not in the interests of justice that same body should be both investigators and prosecutors; lack of uniformity inefficient preparation and presentation of cases, etc.).
- Prosecution of Offences Act 1985 – established CPS as part of major reform that also included PACE 1984 to clarify police powers.
- 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; closer collaboration with the police.
- Present structure of the CPS: 43 areas corresponding to police areas, each headed by a Chief Crown Prosecutor.
- Roles of the Attorney-General and Director of Public Prosecutions.
- Recent reforms which have raised the importance of the CPS, e.g.: granting of full advocacy rights; Criminal Justice Act 2003 moves the decision to charge from the police to the CPS in all but minor cases.
- Introduction of CPS Direct.
- Establishment of CPS Inspectorate.
- Evaluation: the importance of an independent prosecution service; gradual expansion of the role of the CPS; whether the CPS has too much responsibility.

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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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.
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Q.6 “Most offences are now defined by statute. It is a question of construction whether the offence requires a mental element and, if so, what that mental element is. Often the definition uses a word or phrase – “knowingly”, “with intent to”, “recklessly”, “wilfully”, “dishonestly”, and so on – which gives guidance to the court. Often the definition uses a verb or noun which imports a mental element of some kind – “permits” and “possesses”, are examples – so that there cannot be an actus reus without that mental element. [But] it does not follow that, where no word or phrase importing a mental element is used, the court will find that mens rea is not required.”

Adapted from Smith & Hogan, Criminal Law: Cases and Materials, 8th edn., 2002.

(a) Explain what is meant by a strict liability offence. [11]

Credit reference to:

- Meaning of strict liability offence: an offence which does not require mens rea for at least some part of the actus reus, e.g., Prince as contrasted with Hibbert.
- Examples of strict liability; may be common law examples like contempt, public nuisance and outraging public decency, or statutory offences.
- Distinction between strict and absolute liability, e.g., Larsonneur, Winzar.
- General presumption that mens rea is required; e.g., Sweet v Parsley; Gammon Ltd -v- A-G for Hong Kong.
- The principles set out by Lord Scarman in Gammon as to when the presumption of mens rea can be displaced.
- Illustration of the Gammon principles with examples of case law, e.g., Callow -v- Tillstone, Sweet -v- Parsley, DPP -v- B (A minor). Smedleys -v- Breed, LBC of Handsworth -v- Shah, Storkwain, Alphacell -v- Woodward.

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 approaches used by the courts when interpreting statutes.

[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, 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	A03
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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.

Marks	AO2
Skills	
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LAW – PAPER LA4 (A2)

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

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

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

SECTION A

Q.1 Critically evaluate the powers of the police to carry out secret surveillance. [25]

Credit reference to:

- Art.8 of the ECHR gives a right to private and family life – a qualified right which can be restricted, inter alia, for the prevention of disorder or crime.
- Candidates may mention the background to current legislation regulating surveillance; cases such as Malone -v- UK, Khan -v- UK, Govell -v- UK, Halford -v- UK.
- Candidates should refer to the Police Act 1997 and the Regulation of Investigatory Powers Act 2000.
- Police Act 1997, Part III, gives police power to enter premises and plant surveillance devices without a warrant (the “bug and burgle” power).
- Section 93 gives power to enter premises without a warrant and interfere with wireless telegraphy.
- Section 92 gives absolute immunity against criminal prosecution or civil suit for any action authorised under the Act.
- Authorisation can be given by the Chief Constable or Assistant Chief Constable (s.94).
- Basis for authorisation: that the authorising officer believes the action to be necessary because it will be of substantial value in the prevention or detention of serious crime, and that the action is proportionate (s.93(2)).
- “Serious crime” is widely defined as crime which involves the use of violence or results in substantial gain, or is conducted by a large number of persons in pursuit of a common purpose. The offence must be one for which a person over 21 with no previous convictions could expect a sentence of 3 years or more.
- Authorisation should normally be in writing, but may be given orally in urgent cases by the Chief Constable. A written authorisation lasts 3 months; one issued orally lasts 72 hours, and can be renewed in writing for a further 3 months without limit on the number of renewals.
- Procedures under the Police Act 1997 are supervised by the Surveillance commissioners, headed by the Chief Surveillance Commissioner (a senior judge). The Chief Surveillance Commissioner reviews actions taken and makes an annual report to Parliament. This can be edited by the Prime Minister before it is presented.
- Every authorisation must be notified to a Commissioner.
- Prior approval must be obtained from a Commissioner if the property is a dwelling house, a hotel bedroom or office premises, or if the action is likely to reveal matters which are subject to legal privilege, confidential personal information or confidential journalistic information. Prior approval can be dispensed with in urgent cases.

- Regulation of Investigatory Powers Act 2000, Part II, provides the legal basis for actions not covered by the PA 1997, and also deals with covert surveillance.
- Covert surveillance is defined (s.26) to include monitoring, observing and listening to people's movements, conversations or other activities, recording anything monitored, etc., and the use of electronic surveillance devices.
- Section 26 draws a distinction between directed surveillance and intrusive surveillance.
- Directed surveillance is surveillance conducted for the purposes of a particular operation which is likely to result in obtaining private information about a person. Directed surveillance can be authorised by a Superintendent, or in urgent cases, by an Inspector.
- Intrusive surveillance involves placing surveillance devices in residential premises or a private vehicle. It requires authorisation from a Chief Constable under a system similar to the authorisation procedure under the Police Act 1997. Authorisation lasts for 3 months and can be renewed indefinitely.
- Powers to conduct directed surveillance are given to a wide range of bodies including the Department of Social Security, Department of Trade and Industry, and also to local authorities.
- There is a tribunal, the RIPA Tribunal, which hears complaints. It is the only body which has jurisdiction in proceedings brought under the HRA 1998, and ousts the jurisdiction of the ordinary courts. The Tribunal can only consider whether authorisation was validly given, and not whether the action itself was justified. It can give no reason for its decision, and there is no appeal.
- In theory, the Tribunal has power to order the cessation of surveillance and destruction of such material already obtained as is not needed by the police. However, most targets are not aware they are under surveillance, and it is impossible to show that surveillance was undertaken without authorisation. It is believed that no complaint from a member of the public has ever succeeded.

Marks	AO1
	Knowledge and Understanding
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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.
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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.2 “English and Welsh law adequately protects against discrimination.”**[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.

Marks	AO1
	Knowledge and Understanding
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Marks	AO2
	Skills
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Marks	AO3
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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 “The UK needs a Bill of Rights.” 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.
- Arguments against a Bill of Rights, e.g., ???
- It would increase the power of the unelected judiciary.
- A Bill of Rights would lack the flexibility to adapt to changing circumstances.

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 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.

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. 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	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.
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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 on contempt of court ensures the right to a fair trial. [25]

Credit reference to:

- Nature of contempt of court: behaviour which interferes with the due administration of justice by the courts – includes abusing a judge or refusal to obey a court order, but the most common form is doing something that prejudices the fairness of legal proceedings.
- Contempt is dealt with summarily, and proceedings are usually brought by the Attorney-General.
- Contempt is a strict liability offence at common law.
- The law of contempt was reformed by the Contempt of Court Act 1981 in response to *Sunday Times -v- UK*.
- Contempt of Court Act 1981, s.2(1), limits the scope of the strict liability rule to publications addressed to the public at large – includes speech, writing, broadcast or any other form of communication (e.g., Twitter).
- Removes the uncertainty about when a case has become sub judice – s.2(3) says that proceedings must be “active”, as defined in Schedule I.
- Criminal proceedings become active once any formal step has been taken, e.g., arrest, issue of a warrant, issue of a summons, and cease to be active after an acquittal, or conviction and sentence, or if the proceedings are discontinued in any other way.
- Civil proceedings become active once any formal step has been taken, e.g., arrest, issue of a warrant, issue of a summons, and cease to be active after an acquittal, or conviction and sentence, or if the proceedings are discontinued in any other way.
- Civil proceedings become active when arrangements are made for the hearing, or when the hearing begins – in High Court, usually when a case is set down for trial – and remain active until the case is concluded or withdrawn.
- Appeals become active when an intention to appeal is formally notified.
- To amount to contempt, a publication must create a substantial risk of serious prejudice: s.2(2).
- “Substantial” risk means a risk which is not remote: in *A-G -v- News Group Newspapers (the Ian Botham libel case)* the CA said it relates to the proximity of the risk, i.e. whether the publication is close in time to the proceedings, and whether it is widespread or restricted.
- Examples of cases, e.g., *A-G -v- ITN* (ephemeral news broadcast, small circulation of early editions of newspapers, length of time to trial, meant the risk of prejudice not substantial).
- Contrast *A-G -v- BBC* (comments about sons of Robert Maxwell on “Have I Got News For You?” held to be “strikingly prejudicial” to their trial on fraud charges although the trial was six months away).
- Serious prejudice includes prejudging the outcome of a case, turning a jury against a party, criticising a party to a case, trying to force a party to drop a case.
- Examples, e.g.: *R -v- Bolam* (Daily Mirror described man on trial for murder as a vampire); *A-G -v- MGN* (Geoffrey Knights trial for assault: newspapers raked up earlier libel case, previous prosecutions for violence, etc. – case states that standard of proof is beyond reasonable doubt).

- Not necessary to imply that a defendant is guilty, e.g., A-G -v- Times (the Michael Fagan case – intruder in Buckingham Palace); A-G -v- Express Newspapers and A-G -v- English (the Dr Leonard Arthur case – doctor tried for murder of a Down’s syndrome baby: emotive articles about the right to life of children born with disabilities).
- No obligation on law officers to bring proceedings for contempt, e.g., R -v- Solicitor-General ex p Taylor (conviction of two sisters for murder quashed because of inaccurate and sensation press coverage).

Marks	AO1
	Knowledge and Understanding
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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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Marks	AO2
	Skills
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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.

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.
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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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SECTION B

Answer **one** question.

Q.5 “While religious freedom is primarily a matter of individual conscience, it also implies freedom to manifest one’s religion, alone or in private, or in community with others ... Article 9 lists the various forms which manifestation of one’s religion or belief may take, namely worship, teaching, practice and observance.

Article 9 does not protect every act motivated or inspired by a religion or belief. In democratic societies, in which several religions coexist in one and the same population, it may be necessary to place restrictions on freedom to manifest one’s religion or belief in order to reconcile the interests of various groups and ensure that everyone’s beliefs are respected.”

Adapted from Sahin -v- Turkey, Judgment of the European Court of Human Rights (2005).

(a) Explain how the European Convention on Human Rights protects the human rights of individuals. [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 freedom 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 the production of kosher or Halal meat.
- Blasphemy abolished by the Criminal Justice and Immigration Act 2006, s.79.
- Religiously aggravated offences allow for higher sentences where religious hatred is one of the motives behind the offence.
- 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 – preserves freedom of expression on religious matters.

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
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 extent to which the law of England and Wales protects the individual's right to freedom of religion. [14]

Credit reference to:

- Nature of the ECHR: an international convention drawn up by the Council of Europe in the wake of World War II and signed in Rome on 4th November 1950 (came into force 3rd September 1953).
- European Court of Human Rights: sits in Strasbourg; consists of a number of judges equal to the number of members of the Council of Europe (originally 10, now 47 including the member states of the EU).
- Scope of the Convention: examples of Articles; distinction between absolute and qualified rights.
- Candidates may concentrate on the content of the ECHR or the way the ECHR works in practice, and credit should be given for either.
- Enforcement: under Art.33 any state which is a party to the ECHR can bring an application against another state which is a party, e.g., Ireland -v- UK. Under Art.34 applications can be brought by individuals, groups of individuals or non-governmental organisations: in this case, the applicant must be a "victim" of a violation by one of the state parties. Protocol 11 obliges states to allow individuals to bring applications (UK has recognised right of individual application since 1966).
- Proceedings must be against a state, but the failure of a state to secure the rights of an individual against violation by other individuals or non-government organisations can be a ground for application.
- Procedure: an application from an individual is first referred to a Committee of the Court to consider its admissibility; applications from states are referred to a Chamber of the Court. If an application is admissible the Court will ascertain the facts through representations: the object at this state is to secure a "friendly settlement". If this cannot be reached, the Chamber of the Court will give judgment. A case can be referred to the Grand Chamber if it raises serious questions about the interpretation of the Convention. Either side can appeal to the Grand Chamber on these grounds within 3 months of the judgment.
- A judgment that a state's laws are in breach of the Convention imposes an obligation to amend the breach, e.g., Sunday Times -v- UK. The Court can order a state to make "just satisfaction" to the victim, such as compensation or contribution to the victim's costs.

Marks	AO3
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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.

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 “Until the Human Rights Act 1998 ... there could be no basis for questioning an Act of Parliament by court proceedings. Under the 1988 Act, the courts still cannot say that an Act of Parliament is invalid. But they can declare that it is incompatible with the human rights of persons in this country. Parliament may then choose whether to maintain the law or not. The declaration of the court enables Parliament to choose with full knowledge that the law does not accord with our constitutional traditions.”

Lord Hoffman in *A & Others* (2002).

(a) Explain what is meant by a ‘declaration of incompatibility.’ [11]

Credit reference to:

- Human Rights Act 1998.
- Obligation on the courts to read and give effect to primary and subordinate legislation in a way which is compatible with Convention rights so far as it is possible to do so: HRA 1998, s.3.
- Where it is impossible to do this, the higher courts (Supreme Court, Privy Council, Court of Appeal and High Court) have a power to issue a declaration of incompatibility under s.4.
- A declaration of incompatibility simply puts the government on notice that a particular provision is incompatible with Convention rights; it does not have any effect on the legislation, and the court must apply the law as it stands.
- If a court is considering issuing a declaration of incompatibility, under s.5 it must give notice to the Crown so that the relevant Minister can be joined as a party to the proceedings and can argue against the declaration before it is made. The government can also appeal to a higher court against the issue of a declaration.
- The real practical effect is to enable the fast-track amendment procedure to be used: s.10 and Sch.2 of the HRA 1998. This allows, but does not require, a Minister to amend primary or secondary legislation to remove the incompatibility by means of an order laid before Parliament.

Marks	AO3
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	Knowledge and Understanding
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(b) Evaluate the use of the purposive approach to statutory interpretation in the law of England and Wales.’ [14]

Credit reference to:

- Approaches to statutory interpretation: literal rule; golden rule, mischief rule, purposive approach.
- Explanation of approaches other than the purposive approach –
- Literal rule, e.g., 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.
- Explanation of the purposive approach – the court looks at the purpose of the statute and interprets it in the light of that purpose. A more liberal approach than the mischief rule, because it looks for Parliament’s purpose in a broader context than simply rectifying a defect in the law. 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, e.g., Ghaidan v Godin-Mendoza.
- Evaluation: advantages and disadvantages of purposive approach – courts not absolutely bound by the literal meaning of the words that the draughtsman happened to use; can consider the fundamental features of the legislation; on the other hand, can go too far in attempting to resolve issues that ought to be left to Parliamentary debate.

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