



GCE MARKING SCHEME

SUMMER 2016

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
1254/03**

INTRODUCTION

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

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

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

GENERAL MARKING GUIDANCE

General Instructions to LA4-03 Marking Scheme

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

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

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

***Principles of Marking
(for LA4-03)***

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

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

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

MARKING INSTRUCTIONS

ASSESSMENT

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

METHOD OF MARKING

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

SAMPLE SCRIPTS

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

EXAMINER'S REPORT

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

LAW – PAPER 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

1. **'The Equality Act 2010 protects against all forms of unjustifiable discrimination.'**
Discuss. [25]

Credit reference to:

- Equality Act 2010 – codifies and clarifies previous legislation.
- Protected categories – sex, race/ethnicity, religion, age, disability, sexual orientation, gender reassignment, marital status, pregnancy, maternity.
- Meaning of direct discrimination with examples from case law.
- Meaning of indirect discrimination with examples from case law.
- Discrimination on the basis of presumed characteristics.
- Discrimination on grounds of association (e.g. carers).
- Victimisation.
- Harassment.
- Post-employment discrimination.
- Remedies: Employment Tribunal can now make recommendations going beyond the instant case.

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

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

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

2. Consider whether the protection of human rights and civil liberties within the United Kingdom would be strengthened by the introduction of a Bill of Rights.

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 might make the government more accountable for its actions if these could be challenged.
- Arguments against a bill of rights: gives judges too much power.
- Makes it very difficult to bring about arguably desirable changes, e.g. gun control in the USA.
- A bill of rights can become ossified and out of date.
- A bill of rights is no guarantee of protecting human rights – tends towards a due process model, as in USA, where the authorities can do as they like so long as the procedures are formally compliant with the constitution.

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

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

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

3. To what extent are the powers of the police to conduct secret surveillance balanced by adequate safeguards to protect individual privacy? [25]

Credit reference to:

- Art.8 of the ECHR gives a right to a 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*.
- Candidates should refer to the Police Act 1997 and the Regulation of Investigatory Powers Act 2000.
- Police Act 1997 III, give police power to enter premises and plant surveillance devices without a warrant (the "bug and burgle" power).
- Section 93 give power to enter premises without a warrant and interfere with wireless telegraphy.
- Section 92 give 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 a substantial value in the prevention or detection of serious crime, and that the action is proportionate (s393(2)).
- "Serious crime" is widely defined as crime which involves the use of violence or results in substantial gain, or is conduct by a larger 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 certain cases by the Chief Constable. A written authorisation lasts 3 months; one issued orally lasts 72 hours, and either can be renewed in writing for a further
- 3 months without limit on the number of renewals.
- Procedures under the Police Act 1997 are supervised by the Surveillance Commissioners, headed by the Chief Surveillance Commissioner (a senior judge). The Chief Surveillance Commissioner reviews actions taken and makes an annual report to parliament. This can be edited by the Prime Minister before it is presented.
- Every authorisation must be notified to a Commissioner.
- Prior approval must be obtained from a Commissioner if the property is a dwelling house, a hotel bedroom or offices 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 surveillance and intrusive surveillance.
- Directed surveillance is surveillance conducted for the purposes of a particular operation which is likely to result in obtaining private information about a person. Directed surveillance can be authorised by a superintendent or in urgent cases, by an inspector.
- Intrusive surveillance involves placing surveillance devices in residential premises or a private vehicle. It requires authorisation from a chief constable under a system similar to the authorisation procedure under the Police Act 1997. Authorisation lasts for 3 months and can be renewed indefinitely.

- Powers to conduct directed surveillance are given to a wide range of bodies including the Department of Social Security, Department of Trade and Industry, and also to local authorities.
- There is a Tribunal, the RIPA Tribunal, which hears complaints. It is the only body which has jurisdiction in proceedings brought under the HRA 1998, and ousts the jurisdiction of the ordinary courts. The Tribunal can only consider whether authorisation was validly given, and not whether the action itself was justified. It can give no reasons for its decision, and there is no appeal.
- In theory, the Tribunal has power to order the cessation of surveillance and destruction of such material already obtained as it is not needed by the police. However, most targets are not aware they are under surveillance, and it is impossible to show that surveillance was undertaken without authorisation. It is believed that no complaint from a member of the public has ever succeeded.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism, including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
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	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
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Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

4. To what extent does the law relating to contempt of court amount to an unjustifiable restriction upon the right to freedom of expression? [25]

Credit reference to:

- Protection of FOE under art 10; conflict with art 6.
- Meaning of contempt of court – conduct tending to interfere with the course of justice.
- 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).

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

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

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

SECTION B

Answer **one** question.

5. **Article 9 covers the sphere of private, personal beliefs and religious creeds. The European Court of Human Rights emphasises the democratic importance of an open forum of beliefs and opinions, atheists and agnostics may, therefore, claim the protection of this right.**

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

Credit reference to:

- The HRA 1998 gives effect to Art.9 of the ECHR, which provides for freedom of thought, conscience and religious belief.
- Art.9(2) - qualifies the right to manifest one's religion or beliefs by permitting restrictions in the interests of public safety, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others.
- Candidates may discuss a variety of ways by which freedom of religion is protected, such as the exemptions allowing the production of Halal and kosher meat, the exemption of Sikh men from wearing motorcycle helmets, the provision for faith schools, the requirement for employers to make reasonable provision to allow employees to observe religious festivals (Equality Act 2010) etc. They may discuss issues of religious dress and ornamentation, etc. Credit should be given for all relevant information and references to statute and case law.
- Protection from discrimination on grounds of religion – the Equality Act 2006, Part II introduced protection in provision of goods and services, education and the activities of public bodies including the criminal justice system.
- Equality Act 2010 includes religion or belief within the nine categories which are protected from discrimination in employment.
- Blasphemy – abolished by the Criminal Justice and Immigration Act 2008, s.79.
- Religiously aggravated offences – the Crime and Disorder Act 1998, s.28 and s.29, increases the maximum penalty for offences against the person where D demonstrates racial or religious hostility or is motivated by racial or religious hostility. Section 32 adds two racially or religiously aggravated offences to the Protection from Harassment Act 1997 - racially or religiously aggravated harassment and putting people in fear of violence. Section 30 adds the offence of racially or religiously aggravated criminal damage. Section 31 adds racial or religious aggravation to sections 4, 4A and 5 of the Public Order Act 1986. (Candidates are not expected to provide details of religiously aggravated offences – the information is given for the benefit of examiners just in case they do.)
- Offences of religious hatred - the Racial and Religious Hatred Act 2006 adds Part IIIA (sections 29A-29N) to the Public Order Act 1986. The effect is to create six offences relating to stirring up religious hatred (similar but not identical to the existing offences of stirring up racial hatred).
- Public Order Act 1986, s.29J provides that nothing in Part IIIA prohibits or restricts discussion, criticism, expressions of antipathy or dislike, ridicule, insult or abuse of particular religions.

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

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

(b) Evaluate the ways in which judges can avoid awkward precedents. [14]

Credit reference to:

- Explanation of precedent: stare decisis – decisions of higher courts are binding on lower courts in like cases
- Types of precedent: original, binding and persuasive precedent
- Hierarchy of the criminal courts: Supreme Court follows its own previous decisions; Court of Appeal bound by Supreme Court and own previous decisions apart from exceptions in *Young v Bristol Aeroplane*; Divisional Court bound by same rules as Court of Appeal (Criminal Division) when hearing appeals by way of case stated; Crown Court and Magistrates' Court bound by superior courts and do not make precedent themselves.
- Practice statement of 1966: Supreme Court can depart from a previous decision where it appears right to do so. e.g. *Anderton v Ryan* overruled by *Shivpuri*. Court of Appeal (Criminal Division) will also depart from its own previous decisions to avoid an injustice.
- Following, distinguishing, disapproving, avoiding, overruling, reversing.
- Importance of precedent generally: promotes consistency in the law; promotes rationality because it requires judges to give reasons for their decisions; promotes fairness because like cases are treated alike; enables people to know what the law is and assess the legal consequences of their actions; assists lawyers to advise clients, etc.
- Importance of precedent in criminal law: enables the superior courts to adjust (sometimes change) the criminal law when necessary to achieve justice.
- Examples of precedent and departure from precedent in criminal cases, e.g. *Moloney*, *Nedrick*, *Hancock and Shankland*, *Woollin*, *Majewski*, *Gladstone Williams*, etc. credit should be given for all relevant material including effect of decisions of the European Court of Human Rights, other jurisdictions, etc.

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

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

6. Following the passing of the Human Rights Act 1998, judges are required to interpret statutes compatibly with human rights. Lord Steyn stated that "the interpretative obligation under section 3 of the 1998 Act is a strong one. It applies, even if there is no ambiguity in the language in the sense of the language being capable of two different meanings." He further added that it may be necessary, under section 3, to "adopt an interpretation which linguistically may appear strained."

(a) Explain the scope of the Human Rights Act 1998. [11]

Credit reference to:

- HRA 1998 incorporates the rights given in the ECHR into UK law, with a few exceptions.
- The HRA 1998 provides positive rights and not just residual liberties.
- Rights under the ECHR are directly enforceable in the UK without need to apply to the ECtHR in Strasbourg (s.7).
- Section 6 imposes a duty on all public authorities, including the courts, to act in a way which is compatible with Convention rights.
- Section 2 imposes an obligation upon the courts to take account of Strasbourg jurisprudence.
- Section 3 requires that all UK legislation must be interpreted in a way which is compatible with Convention rights so far as is possible to do so.
- The courts have no power to overrule or refuse to apply primary legislation if it proves impossible to interpret it in a way which is compatible with Convention rights.
- The higher courts have power to issue a declaration of incompatibility under s.4.
- Section 10 provides a fast-track procedure whereby legislation which is not compatible can be amended.
- The government must include a statement that all proposed legislation is compatible with Convention rights, or state that it is not compatible but that the government intends to proceed with the Bill anyway: s.19.
- Credit relevant case law.

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

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

(b) Evaluate the ways in which the Human Rights Act 1998 has impacted upon statutory interpretation. [14]

Credit reference to:

- Definition of statutory interpretation.
- 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. *R v A, Re W and B, Ghaidan v Godin-Mendoza, Re S*.
- 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
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

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