



GCE MARKING SCHEME

LAW
AS/Advanced

JANUARY 2012

INTRODUCTION

The marking schemes which follow were those used by WJEC for the January 2012 examination in GCE LAW. They were finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conferences were held shortly after the papers were taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conferences was to ensure that the marking schemes were interpreted and applied in the same way by all examiners.

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

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

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UNDERSTANDING LEGAL VALUES, STRUCTURES AND PROCESSES

PAPER LA1 (AS)

Answer two questions

Q.1 (a) What role did Lord Woolf see for Alternative Dispute Resolution in his 1999 reforms of the Civil Justice System? [14]

Credit reference to:

- Identification of the various forms of ADR including arbitration, mediation and conciliation.
- The post-Woolf Civil Justice System which gives the power to the judge, as part of the management strategy, to stay a case for up to 28 days to give the parties a chance to use ADR.
- ADR as a theory of justice.
- Detailed descriptions of the context in which various forms of ADR apply.

Quality of Written Communication

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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.
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(b) Discuss the extent to which this has been achieved.

[11]

Credit reference to:

- Some initially argued that the Civil Procedure rules combined with the changes in the rules on the funding of litigation would result in substantial increase in litigation as a potential use of the courts. As this would lead to the need to divert cases from the courts, ADR would become an important means of achieving such a diversion. In fact levels of civil litigation fell quite sharply after the new rules were introduced.
- The litigation culture and ADR and the impact of community legal services.
- The Ministry of Justice is now more active in promoting the use of ADR. It now sponsors a national mediation helpline.
- The Judicial Studies Board is providing a great deal of judicial training on ADR designed to give judges a greater understanding of the power of ADR in resolving disputes.

Marks	AO3
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Marks	AO2
	Skills
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Q.2 (a) What are the advantages and disadvantages of jury trial? [14]

Credit reference to:

- The advantages are public confidence and the role of jury trial as a democratic tradition; jury equity, for example, in *Pontings* case; an open system of justice; secrecy of the jury room protects jurors from pressure; impartiality.
- The disadvantages include high acquittal rates; doing jury service is unpopular; perverse verdicts, for example, *Randle and Pottle*; media influence; reporting may influence the decision; secrecy means that the reasons for decisions are not known; bias.

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(b) Discuss the methods employed in selecting a jury.

[11]

Credit reference to:

- Qualifications, for example, 18 to 70 and registered to vote.
- Who are disqualified?
- Excusals, for example, members of the armed forces.
- Selection where a central office selects names from the lists of electors.
- Vetting.
- Challenges, for example, you and a whole panel may be challenged for biased selection but note there is no right to a multi racial jury – *R v Ford* (1989).

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Q.3 (a) Explain the restrictions on the granting of legal aid.

[14]

Credit reference to:

- Different levels of help and representation are available.
- Merits test for representation.
- Means test for representation.
- Problems including capping of funding; number of solicitors is decreasing.
- Financial level of eligibility excludes people of modest means.
- Not available for employment tribunal cases.
- Credit reference shall be made for an understanding of the policy context and emerging legislation.

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(b) Discuss the effectiveness of conditional fee arrangements. [11]

Credit reference to:

- Citizens Advice Bureau – the Benson Commission in 1979 emphasised the importance of CAB as a first tier legal advice service. The Legal Services Commission has awarded a number of contracts to CAB to provide Government funded advice.
- Law centres. These offer a free, non means tested legal service to people in their area. Funding has become a major problem for law centres.
- Schemes run by lawyers, for example, cheap-free interviews; ALAS – this is the Law Society’s free accident legal advice service which also includes an accident line; free representation unit which was set up by the Bar in 1992 and is aimed at helping those who are ineligible for legal aid to present their cases in court.

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Q.4 (a) Explain the role of the Criminal Cases Review Commission. [14]

Credit reference to:

- The models of criminal justice, for example, the dual process model and the crime control model.
- Understanding the significance of the approaches arising out of the models.
- High profile miscarriage of justice cases.
- Wrongful convictions could be avoided through the introduction of the corroboration rule for confession evidence; stricter control of the activities of the police and the police station and more money for the defence to challenge forensic evidence.
- It is impossible to create a system where no miscarriage of justice could ever occur but the aim should be to minimise them.

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(b) Discuss the impact of the Criminal Cases Review Commission. [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 history of Common Law and Equity.

[14]

Credit reference to:

- The development of the common law is the product of a particular struggle for personal power after 1066.
- The common law represents the imposition of a unitary system under the control of the centralised power in the form of a King.
- The development of the King's Peace.
- Increasing formalisation of the common law through the forms of action leading to the development of equity.
- The role of the Lord Chancellor.
- Credit reference to appropriate citation, for example, the *Earl of Oxford's* case.
- Judicature Acts 1873-1875

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(b) Discuss the development of Common Law and Equity of today. [11]

Credit reference to:

- Judicature Acts 1873-1875.
- Maxims.
- Remedies.
- Whether fusion took place is a controversial question.
- One of the oddities of the statutory limitation regime is that it does not expressly or directly apply to equitable claims.
- The Judicature Acts brought about the reorganisation of the superior courts and was in fact the procedural fusion of law and equity.
- Matters of both law and equity can now be determined in the course of one set of proceedings but if there is any conflict between rules of law and rules of equity the latter are to prevail.

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Q.6 (a) Explain the roles of the Institutions of the European Union. [14]

Credit reference to:

- Identification of the institutions – European Parliament; European Council; European Commission; European Court of Justice; European Court of Auditors.
- Description of functions.
- Candidates will be rewarded for accurate citation and discussion.

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(b) Discuss the effectiveness of the European Court of Justice. [11]

Credit reference to:

- The role of the Court in deciding whether member states have failed to fulfil obligations under the treaties, for example, *Re Tachographs* (1979).
- The role of the European Court of Justice in hearing references from national courts for preliminary rulings on points of law – Article 267 of TFEU.
- Discretionary referrals, for example, *Bulmer v Bollinger* (1974).
- The significance of the European Court of Justice in ensuring uniformity of European Law.
- Candidates will be rewarded for accurate citation and discussion.

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UNDERSTANDING LEGAL REASONING, PERSONNEL AND METHODS

PAPER LA2 (AS)

Answer *two* questions.

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

"Given that judicial activism seems to have reached unprecedented levels in thwarting the wishes of Parliament, it is time, I believe, to go back to first principles. The British constitution, largely unwritten, is based on the separation of powers. Ever since the Glorious Revolution established its supremacy, Parliament has made the law and the judiciary has interpreted it [...] A decade ago, the former Lord Chancellor, Derry Irvine, urged the judiciary to show restraint in deference to the sovereignty of Parliament when exercising its powers of judicial review. The need for such restraint is even greater today."

Source: Michael Howard MP, *Daily Telegraph*, 10th August 2005

(a) Explain the role of judges as law makers. [14]

Credit reference to:

- The constitutional role of judges and in particular the concern expressed about judicial review.
- Should judges make law and the issue of democratic deficit.
- The politicisation of the judiciary, for example, the views of Professor Griffiths.
- Credit should be given for accurate citation, for example, *R v R* (1981).
- Examples of judicial law making, such as the tort of negligence.

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(b) Discuss how judges avoid awkward precedents.

[11]

Credit reference to:

- Distinguishing, for example, *Balfour v Balfour* (1919) and *Merritt v Merritt* (1971).
- Overruling, for example, the European Court of Justice can overrule a past decision it has made or when House of Lords uses its power under the Practice Statement.
- Reversing, that is, where a court higher up in the hierarchy overturns the decision of a lower court on appeal in the same case.

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

2010 Annual diversity statistics as at 31 st March 2010											
		Not stated	White	Asian or Asian British	Chinese	Black or Black British	Mixed	Other Ethnic Group	Total minority Ethnic	Total in post	% Minority Ethnic
Justice of the Supreme Court	Men	0	10	0	0	0	0	0	0	10	0.00%
	Women	0	1	0	0	0	0	0	0	1	0.00%
	Total	0	11	0	0	0	0	0	0	11	0.00%
Heads of Division	Men	0	5	0	0	0	0	0	0	5	0.00%
	Women	0	0	0	0	0	0	0	0	0	0.00%
	Total	0	5	0	0	0	0	0	0	5	0.00%
Lords Justices of Appeal	Men	13	21	0	0	0	0	0	0	34	0.00%
	Women	0	3	0	0	0	0	0	0	3	0.00%
	Total	13	24	0	0	0	0	0	0	37	0.00%
High Court Judges	Men	18	72	0	0	0	0	2	2	92	2.74%
	Women	5	10	0	0	0	1	0	1	16	9.09%
	Total	23	82	0	0	0	1	2	3	108	3.53%
Circuit Judges	Men	55	513	2	0	0	2	7	11	579	2.10%
	Women	16	80	1	0	2	0	2	5	101	5.88%
	Total	71	593	2	0	2	2	9	16	680	2.63%

Source: Judicial Statistics 2010 (HMSO)

(a) Explain the role of the Judicial Appointments Commission. [14]

Credit reference to:

- Historic role of the Lord Chancellor where the procedure traditionally was surrounded in secrecy.
- The review of the appointment of judges by Sir Leonard Peach.
- The establishment of the Judicial Appointments Commission in 2006, intended to improve on traditional arrangements for the appointment of the judiciary.
- Criteria clearly established with scoring mechanisms and a formal approach to the appointment of judges.
- Judicial qualities set out by the Commission based around intellectual capacity; personal qualities including integrity; ability to understand and deal fairly; authority and communication skills; efficiency.

Quality of Written Communication

The quality of written communication is embedded in Assessment Objective 3 of this unit.

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) By reference to the data, evaluate the extent to which the Senior Judiciary is representative of society.

[11]

Credit reference to:

- Judges perceived as being unrepresentative of sectors of society.
- The statistics demonstrate the predominance of men over women and particularly the lack of representation of ethnic minorities.
- The impact of failure to ensure that judges are not a statistical cross section of society, for example, it is not possible for people to understand and empathise with those who are not from the same background.
- The role of the senior judiciary and their influence on the legal system in England and Wales and the importance of wide representation.

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

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

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

The Government was concerned by the number of protesters in Parliament Square many of whom were living in tents. The Government sought to use enabling powers under the Crime and Order (Fictitious Act) 2008 to ban existing future and continuing demonstrations outside of Parliament Square. John Lewis is a passionate protester against war and is seeking to challenge by way of judicial review the enabling order so that he can continue protesting.

(a) Explain what is meant by delegated legislation. [14]

Credit reference to:

- While Acts of Parliament can provide the broad framework for areas of law more detailed technical rules are often required to address specific issues. The complexity of the modern legislative scene requires delegated legislation.
- Delegated legislation is used to implement a great deal of technical EC law, for example, under Section 2 (2) of the European Communities Act 1972.
- The Human Rights Act 1998 includes a controversial use for delegated legislation in order to make swift amendments to primary legislation that is seen as incompatible with The European Convention on Human Rights. Such powers arise from so called Henry VIII Clause.
- Law is made by specialists in the field and often follows consultation with a wider body of expert opinion.
- Delegated legislation is easier and quicker to make than Acts of Parliament, which is very important given pressures on Parliamentary time.
- Orders in council.
- Statutory instruments.
- By-law.

Quality of written communication

The quality of written communication is embedded in Assessment Objective 3 of this unit.

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) Evaluate the ways in which delegated legislation is controlled. [11]

Credit reference to:

- Judicial control is provided by judicial review procedure in the High Court, that is, at the Administrative Court.
- Ultra vires - focuses on alleged abuses of delegated law making powers by administrative bodies. It is therefore concerned with the content of delegated legislation. If delegated legislation is found to be unreasonable or disproportionate it may be declared void in whole or in part.
- Procedural grounds for declaring ultra vires, for example, a person may challenge the validity of delegated legislation where a minister has failed to follow the correct procedures, for example, *Aylesbury Mushroom* case (1972).
- Substantive grounds, where a person may challenge the validity of delegated legislation on the basis of alleged abuses, for example, *Attorney General v Fulham Corporation* (1921).
- Candidates will be rewarded where they use examples to illustrate their answer, for example, *R (Haw) v Secretary of State for the Home Department* (2006).
- Parliamentary control.

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

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

Q.4 (a) Explain the impact of the Human Rights Act 1998 on the methods employed by judges in interpreting statutes. [14]

Credit reference to:

- Section 2 of the Human Rights Act 1998 states that the court must take into account any judgement, decision, declaration or the opinions of the European Court of Human Rights.
- Credit will be given for appropriate citation, for example, *re Medicaments* (2001).
- The Act states that so far as it is possible courts in England and Wales have to interpret legislation in a way that is compatible with the Convention. This means that the courts read the provisions of an Act in a very broad way, for example, *Mendoza v Ghaidan* (2002).
- Note the views of Lord Woolf in *R v A* (2001).
- Declarations of incompatibility.

Quality of Written Communication

The quality of written communication is embedded in Assessment Objective 3 of this unit.

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]

Reduction of Student Noise (Local Authority) Fictitious Act 2009

Section 1.

“It shall be an offence to organise a party at a student residence after 11.30 p.m. on a weekday night”.

Simon, a student, had completed his first year examinations and during the vacation he organised a discussion group with his friends. A number of friends came round where there was a passionate discussion centering on political opinions. After the discussion had finished Simon prepared coffee and biscuits. At 11.30 p.m. the meeting came to an end when Timothy who was helping with the washing up dropped a tray of cups which smashed. The noise woke up Sarah who lived next door. She complained to the police who investigated the matter and subsequently charged Simon under Section 1 of the Act.

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.
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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.

UNDERSTANDING SUBSTANTIVE LAW

PAPER LA3-01 (A2)

CONTRACT AND CONSUMER LAW

Answer *two* questions

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

Albert owns a shop specialising in selling sporting trophies. On Monday he placed an advertisement in the local paper which stated: "Special offer hand crafted sporting trophy for sale by local sculptor Paula Davies one only £3,000". Later that day Ben a keen golfer telephoned Albert and said "I will take the sculpture for £2,500". Albert replied, "I cannot take less than £2,800 but I will not sell it to anyone else before Saturday. Let me have a reply by midday on Friday if you want it". On Wednesday Colin went to Albert's shop to view the sculpture. As it was so exceptional he paid Albert £3,000 for the sculpture and took it away with him. On Thursday Ben met Colin's brother who told him that Colin had bought an amazing new sporting trophy which he thought had been made by the famous Paula Davies. Ben rushed home and put a letter in the post to Albert agreeing to pay £2,800 for the trophy. The letter was correctly stamped and addressed but due to a mix up at the sorting office it did not arrive with Albert until Saturday.

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

Credit reference to:

- The need for communication and discussion of the general rule with reference to the appropriate case law.
- The postal rule and its appropriateness in terms of legal response.
- Relevant citation.
- The significance of the rule in the light of the particular circumstances set out.

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, 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 doctrine of precedent to the development of the law in the above scenario.** [11]

Credit reference to:

- The significance of case law and the doctrine of precedent.
- Hierarchy of courts.
- Relevance of case law linked to the state of technological development.
- Candidates should be rewarded for relevant citation.

Marks	A03
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	A01
	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 applications of the law.

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

Cynthia runs a small business from her home. She needed a quiet fast printer that was cheap to run. She contacted Edward who works for a specialist printer supply called Print-it Co. She explained her needs and Edward recommended the printer model "Super XLX". Cynthia emphasised that she knew nothing about printers and that it must be quiet as her small baby was in the house and she did not want to disturb the baby when sleeping. She also said that unless it was cheap to run she would not even ask the price. Edward told her that the price was £500. The printer was not quiet, fast or cheap to run and as a result Cynthia was not able to use it and lost a valuable contract to print posters for a new theatrical production.

(a) In the light of reported case law and other sources of law, advise Cynthia as to whether there was a misrepresentation. [14]

Credit reference to:

- Nature of misrepresentation and differentiating between the different types of misrepresentation.
- Is this an expressed term of a contract?
- The distinction between fact and opinion.
- Relevant citation.
- Damages v rescission.

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

AO2	
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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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. 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 statutory interpretation in the development of the law relating to misrepresentation. [11]

Credit reference to:

- The approaches to statutory interpretation.
- The coexistence of the common law and statute.
- Misrepresentation Act 1967.
- Relevant citation.
- The fiction of fraud under the Misrepresentation Act and the significance of statutory interpretation.
- General discussion of statutory interpretation within the context of the development of contract law as obligations voluntarily assumed.

Marks	A03
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	A01
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.

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

Andrea is a firm believer in complementary therapies and she set up a business marketing these therapies. She placed an advertisement in the Daily Post stating that: "If used in the manner stated, Andrea's complementary therapies will ward off the common cold. In token of my belief in their effect I have deposited £5,000 with the Black Sheep Bank and a sum of £100 will be paid to any dissatisfied customer". Fred and Elinor each purchased one of Andrea's complementary therapies on the strength of the advert. Fred used the therapy and followed the instructions to the letter but unfortunately caught a cold. Elinor gave Andrea's complementary therapy to a friend, Simon, who had not seen the advert but nevertheless used it and contracted a heavy cold.

(a) Advise Fred and Elinor as to whether or not they can claim some of the deposited funds. [14]

Credit reference to:

- Reward advertisement cases.
- Unilateral offers.
- Relevant citation such as *Carlill v Carbolic Smokeball Company* (1893).
- Bi-lateral contracts.
- The significance of whether Simon can take the benefit of the offer in ignorance of its terms. Compare the reward cases, for example, *Gibbons v Proctor* (1891).

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, 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 mechanisms available outside of litigation in resolving this dispute.** [11]

Credit reference to:

- The significance of civil procedure rules and pre-action protocols.
- Discussion of alternative dispute resolution mechanisms.
- Advantages and disadvantages of alternative dispute resolution mechanisms.
- Small claims and the treatment of such claims under the civil procedure rules.

Marks	A03
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	A01
	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.

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

Geoffrey owns a printing business which prints out free advertisements to domestic houses. Whilst delivering his free adverts to houses in his local town of Newtown he fell and broke his leg. His best friend Richard (a postman) told him that he would help him out and offered to take the free adverts with him whilst delivering his letters. After 4 months Geoffrey recovered and then told Richard that in consideration of his efforts he would pay for a holiday in mid Wales. On the strength of this promise Richard booked a holiday for £1,000. Shortly afterwards Geoffrey and Richard

- (a) In the light of the reported case law and other sources of law, advise Richard as to the legal position. [14]**

Credit reference to:

- The doctrine of past consideration and also promissory estoppel.
- Relevant citation.
- Promissory estoppel operates defensively it cannot operate offensively.
- The question of the enforceability of the promise. Even if the contract is unenforceable on the basis of past consideration, credit should be given to those students who refer to the possibility of an action for unjust enrichment.

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

AO2	
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, 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) **Taking into account his prospects of success, explain the available sources of assistance for Richard in funding his litigation.** [11]

Credit reference to:

- Analysis of the financial position and discussion of the Legal Services Commission.
- Private means.
- Conditional fees.
- The significance of legal insurance.

Marks	A03
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	A01
	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.

UNDERSTANDING SUBSTANTIVE LAW

PAPER LA3-02 (A2)

CRIMINAL LAW AND JUSTICE

*Answer **two** questions.*

Q.1 Archie and Sam went to a night club together. After a few drinks, they began to argue, and Archie punched Sam on the jaw. Sam fell and banged his head on a table. The doorman, Ronald, physically threw them both out into the street, causing Sam to fall over and bang his head for a second time. By now Sam was barely conscious, so Archie hailed a passing taxi and took Sam to the accident and emergency department of the nearest hospital. Sam was examined by Charlie, a young and inexperienced doctor. Charlie sent Sam for an X-Ray, but did not think it necessary to order a brain scan. The X-Ray looked normal, so Charlie told Sam he could go home. In fact Sam had suffered a serious brain injury which did not show up on the X-Ray, but which could have been diagnosed and treated if Charlie had ordered a brain scan. Sam died a few days later.

(a) In the light of reported case law and other sources of law, consider whether Archie may be criminally liable for Sam’s death. [14]

Credit reference to:

- Elements of murder and manslaughter.
- Causation – factual and legal causation, e.g. White, Dalloway.
- Chain of causation: whether broken by medical negligence: Smith, Jordan, Cheshire.
- Involuntary manslaughter: unlawful act manslaughter: Franklin, Lamb; 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.

	A02
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, 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, assistance and funding may be available to Archie if he is prosecuted in the Crown Court.** [11]

Credit reference to:

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

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

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

Q.2 Police Constable Crusty was on foot patrol when he saw twelve-year-old Jack take a hot dog from a street stall and eat it without having paid for it. Deciding to give the boy a fright, PC Crusty grabbed Jack by the shoulder and forcibly searched him, then marched him to the nearby police station. The custody officer happened to be elsewhere in the building, so PC Crusty put Jack into a cell. By the time the custody officer returned, PC Crusty had been sent out on another assignment, and Jack had hidden himself under the bed, out of view of the CCTV camera in his cell. Jack fell asleep, and was not discovered until the next morning, by which time he had spent sixteen hours in the cell. Jack explained that he had been arrested for stealing a hot dog, so the custody officer granted him bail and sent him home in a police car.

(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.
- Police powers of stop and search: PACE ss.1-3, Code A.
- Powers of arrest: PACE s.24 (as amended), Code G.
- Role of custody officer: suspect's entitlements on arrival at the police station.
- Treatment of juveniles in detention: PACE s.55 (appropriate adult); under-16's not to be placed in a cell: Code C.
- Right to have someone informed of arrest: PACE s.56.
- Right to legal advice: PACE s.58.
- Time limits on detention and detention reviews.

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.

	A02
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, 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 powers of the police to grant bail.

[11]

Credit reference to:

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

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

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

Q.3 Becky and Roz were contestants on the popular live television game show, Absolute Freak-Out, in which the contestants tried to complete a series of challenges while the other contestants attempted to stop them. Becky's boyfriend, Joel, and Roz's mother, Jill, were both in the studio audience, cheering them on. The first challenge was a spacehopper race, which Becky won easily. The next challenge was to walk across a tightrope stretched above a vat of yogurt. As Roz was inching her way across the rope, Becky threw a handful of yogurt at her. Roz lost her concentration and tumbled into the vat. When Becky's turn came, Roz picked up a spacehopper and hurled it at Becky's face, knocking her off the tightrope. The laughter of the audience died away as it was realized that Becky had suffered serious injuries to her face. Joel jumped up and shouted at Roz, "I'll get you for this!" Thinking that Joel meant to attack Roz, Jill knocked him unconscious with her handbag.

(a) In the light of reported case law and other sources of law, consider whether Becky, Roz, Joel and Jill may be liable for any offence, taking account of any defences which may be available to them. [14]

Credit reference to:

- Common law assault and battery: Criminal Justice Act 1988, s.39.
- Aggravated assaults under s.18, s.20 and s.47 of the Offences Against the Person Act 1861.
- Becky – throwing the yogurt at Roz may be a common law assault if Roz saw it coming, and is certainly a common law battery – can be committed indirectly (Martin; DPP v K) – but probably has defence of consent as it's part of the game.
- Roz – could be charged with s.47 or s.20 if Becky's injuries amount to wounding or grievous bodily harm, but not s.18 as this requires intention to wound or cause grievous bodily harm. Defence of consent not normally available in cases of aggravated assaults, but might fall within A-G's Ref. (No.6 of 1981) if considered as rough horseplay: Jones.
- Joel – common law assault – can be committed by words: Ireland: Burstow.
- Jill – could be charged with common law assault and battery, or even s.47 as the CPS Charging Standards include loss of consciousness as sufficient for this section. Possible defence: reasonable force in defence of another.

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, 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 process of appeal from the magistrates' court. [11]

Credit reference to:

- Appeal as of right to the Crown Court against conviction or sentence.
- Composition of Crown Court when hearing appeals: judge and two magistrates.
- Powers of the Crown Court: affirm, quash or vary conviction, affirm, quash or vary sentence.
- Appeal on point of law by way of case stated to the Divisional Court of the Queen's Bench Division.
- Further appeal from the Divisional Court directly to the Supreme Court on a point of law of public importance.
- Further appeal from the Crown Court to the Court of Appeal (Criminal Division), and thereafter to the Supreme Court on a point of law of public importance.

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

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

Q.4 Henry was very anxious about his forthcoming A level law examination, so his doctor prescribed some tablets to help him cope. During the examination Henry grew increasingly agitated, and became convinced that the candidate sitting behind him, Sonia, was sending him messages that were interfering with his brain. Henry suddenly turned round and slapped Sonia hard across the face. When one of the invigilators, Oliver, tried to restrain him, Henry stabbed Oliver in the eye with his ball-point pen, as a result of which Oliver lost his sight. Afterwards, Henry was unable to remember anything about the incident. It later turned out that Henry was suffering from a previously undiagnosed thyroid condition, and that it was the combination of this condition together with the tablets which had caused him to become violent.

(a) In the light of reported case law and other sources of law, consider whether Henry would have any defence if he were prosecuted for his attacks upon Sonia and Oliver. [14]

Credit reference to:

- Offences for which Henry might be prosecuted – common assault against Sonia; grievous bodily harm contrary to s.18 of the Offences Against the Person Act 1861.
- Intoxication: distinction between voluntary and involuntary intoxication: Hardie.
- Majewski: can rely on involuntary intoxication both for crimes of basic and specific intention.
- Automatism: distinction between insane and non-insane automatism.
- Distinction between internal and external causes: Sullivan, Quick, Hennessey.

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.

	A02
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, 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 tests which would be used by the Crown Prosecution Service when deciding whether Henry should be prosecuted.** [11]

Credit reference to:

- Code for Crown Prosecutors 2010.
- Full Code Test.
- Evidential test, with examples.
- Public interest test, with examples.

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

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

UNDERSTANDING SUBSTANTIVE LAW

PAPER LA3-03 (A2)

FREEDOM OF THE INDIVIDUAL & PROTECTION OF HUMAN RIGHTS

Answer *two* questions

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

Harvey, a young businessman of African-Caribbean appearance, walked down the street talking into his mobile phone. He was observed by PC Grievous, who was inclined to be suspicious of young black men. PC Grievous walked up to Harvey and took him by the arm, intending to search him. Harvey said, "Excuse me, I'm on the phone", and carried on talking. PC Grievous considered this highly disrespectful, so he snatched the phone from Harvey, pushed him against a wall, and proceeded to search him in full view of passers-by. In the pocket of Harvey's suit PC Grievous found a second mobile phone. Knowing that it was common for criminals and drug dealers to have more than one mobile phone, PC Grievous took Harvey to the police station for questioning. At the police station, Harvey was interviewed by detectives for 48 hours with only short breaks between sessions. During that time he was not allowed to contact his family or speak to a solicitor. His fingerprints and a sample of his DNA were taken. Eventually the police accepted that Harvey had no useful information to give them, and he was released with a warning that his fingerprints and DNA would be kept on file indefinitely in case he ever became involved in criminal activity.

(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.
- Powers of police to stop and search: ss.1-3 and Code A; procedural requirements of a valid search.
- Powers of arrest: s.24 as amended; necessity test; procedural requirements of a valid arrest.
- Role of the custody officer; entitlements of the suspect upon arrival at the police station.
- Rights of suspects in police detention –
- Right to have someone informed of arrest: s.56.
- Right to free legal advice: s.58.
- Time limits upon detention and detention reviews.
- Treatment of suspects: Code C.
- Power to take fingerprints and DNA samples without consent: s.61 and s.65; power to retain (but may be modified in light of the Marper case).

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

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

- (b) **Explain what legal advice and funding may be available to Harvey if he decides to sue the police in the civil courts.** [11]

Credit reference to:

- Access to Justice Act 1999.
- Community Legal Service.
- Merits and means test.
- Limits on kinds of actions which can be funded under the scheme.
- No win no fee arrangements.
- Other sources of advice and assistance: Citizens' Advice Bureaux.

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

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

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

Workers at a local hospital staged a march to protest against plans to close the hospital's Special Care Baby Unit. Sergeant Blue, who was escorting the march assisted by PC Pink, instructed the marchers not to shout slogans or stop along the route. As the procession wound through the city centre, some of the marchers held up placards showing tiny babies being kept alive in incubators. PC Pink, who was pregnant, found the placards distressing and told the marchers to put them down. The marchers refused, and began to chant "Save the babies!" Before PC Pink could take any further action, a group of bored youths tossed a lighted firework among the marchers. One of the youths, Micky, shouted "Burn, baby, burn!" before running away. The procession came to a halt in confusion, with the marchers forming a single large group and ignoring Sergeant Blue's instructions to keep moving.

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

Credit reference to:

- Public Order Act 1986.
- Powers of police to impose conditions upon processions: s.12.
- Offence of refusing to comply with conditions: s.12(7).
- POA 1986, Part I offences –
- Section.5; causing harassment alarm or distress – placards (Clarke) – police officer can be a person who is harassed, etc.
- Throwing the firework – at least s.5, could be s.3 affray, s.4 or s.4A.
- Violent disorder – Micky may be charged on basis of Hebron.

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

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

- (b) **Explain the tests used by Crown Prosecutors when deciding whether someone should be prosecuted.** [11]

Credit reference to:

- Code for Crown Prosecutors 2010.
- Full Code Test.
- Evidential test.
- Public interest test.

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

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

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

The Government set up a scheme under which the state benefits received by single parents were paid instead to a private company, which set them to work in the community and allowed them a proportion of their benefits depending on how many hours they worked each week. Stories soon began to circulate about the large profits being made by the company and the terrible poverty which the scheme was causing to many single-parent families. The editor of the Daily Dirt, Martha Mutton, was informed by a usually reliable source that Ashley, one of the government ministers behind the scheme, had been receiving payments from the company. Martha printed the story, together with a photo of Ashley coming out of an expensive restaurant, under the headline: "Fat Ashley Carves While Children Starve". In fact, the story was not quite accurate, as it was actually Ashley's ex-wife who had received payments from the company.

- (a) In the light of reported case law and other sources of law, consider whether Martha and the Daily Dirt might have any defence if Ashley decides to sue for defamation. [14]**

Credit reference to:

- Outline of tort of defamation, with examples from case law.
- Defences: justification; fair comment; absolute privilege; qualified privilege.
- Justification: need not be true in every detail so long as the sting of the defamation is true.
- Fair comment on a matter of public interest – again, the essential facts on which the comment is based must be true.
- Absolute privilege not applicable.
- Qualified privilege – Lord Nichols' principles in *Reynolds v Times* – duty to publish an allegation in the public interest - newspapers may have qualified privilege provided they meet the standard of responsible journalism.
- Offer of amends under the Defamation Act 1996.

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

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

(b) Explain the role of the jury in the civil courts. [11]

Credit reference to:

- Limited use of juries to try civil cases in the Queen's Bench Division of the High Court.
- Cases where juries still used: defamation, malicious prosecution, false imprisonment, fraud.
- The decision whether to allow a jury trial rests ultimately with the judge – even if the case is one where jury trial is permitted, the judge can refuse if the case is likely to be extremely long or complex, or involve a lot of scientific or documentary evidence.
- Composition of civil jury.
- Role of jury: to hear the evidence and reach a decision in favour of the claimant or the defendant; to recommend the level of damages.
- Juries in coroners' courts.

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

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

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

Maria, a junior civil servant, was given the job of tidying up a committee room following a meeting of the Defence Review Committee. As she was clearing the table, Maria noticed that one of the members of the committee had left behind his own handwritten notes on the latest proposals for improving the equipment issued to British forces engaged in the war in Afghanistan. Maria, who is strongly opposed to the war, put the notes in her briefcase and later showed them to her boyfriend Simon, a trainee journalist with the Sunday Investigator. Sensing a scoop, Simon used the camera in his mobile phone to photograph the notes and showed them to his editor, Rufus, who is considering whether to publish them.

(a) In the light of reported case law and other sources of law, consider whether Maria, Simon or Rufus may have committed any offence. [14]

Credit reference to:

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

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

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

(b) Explain the process of appeal from the Crown Court. [11]

Credit reference to:

- Appeal to Court of Appeal (Criminal Division)
- Notice of appeal must be entered within 28 days
- Leave to appeal must be granted by the Crown Court or the Court of Appeal.
- Powers of Court of Appeal: vary conviction, uphold conviction, quash conviction; vary sentence, confirm sentence, quash sentence.
- Further appeal to the Supreme Court on a point of law of public importance.

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

AO1	
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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UNDERSTANDING LAW IN CONTEXT: FREEDOM, THE STATE & THE INDIVIDUAL

PAPER LA4-01 (A2)

CONTRACT & CONSUMER LAW

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

SECTION A

Q.1 Evaluate the legal regime for advertising credit and hire.

[25]

Credit reference to:

- The controls under CCA 1974 were severely criticised.
- The 2004 regulations in respect of credit advertisements and hire advertisements and the need to ensure that an advertisement shows plain and intelligible language, be easily legible and specify the name of the advertiser.
- The content of advertisements in respect of credit agreements are set out in schedule 2 of the 2004 regulations.
- The content of advertisements in respect of hire agreements.
- The issue of APR.

	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.
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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	A02
Marks	Skills
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Marks	A03
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Q.2 Evaluate the approach adopted in English and Welsh law in measuring loss in damages for consumers. [25]

Credit reference to:

- Defining what is lost and the rules of remoteness.
- the rule of mitigation.
- General principles of compensation.
- Action for non-delivery.
- Damage for breach of warranty.
- Damages claimed, for example, mental distress.
- Candidates will be rewarded for appropriate citation.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content.
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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	A02
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Q.3 Evaluate the extent to which implied terms are significant in imposing obligations upon the supplier in consumer contracts. [25]

Credit reference to:

- The common law position which is that of *caveat emptor*.
- The historical position, for example, under the 1893 Sale of Goods Act and the 1973 Supply of Goods Act (Implied Terms) Act.
- Sale and Supply of Goods Act 1994 and amendments made.
- Sale and Supply of Goods to consumer regulations 2002.
- Discussions of Sections 13, 14 & 15 Sale of Goods Act 1979.
- The role of implied terms and the significance of legislative intervention in consumer contracts.
- Candidates will be rewarded for appropriate citation.

AO1	
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content.
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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	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Marks	A03
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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 Examine the mechanisms available for enforcing consumer rights without going to court. [25]

Credit reference to:

- The role of informal mechanisms such as codes of practice.
- The role of conciliation and arbitration.
- Control mechanisms such as deposits, guarantees.
- The role of Ombudsman.
- Arbitration and ADR.

	A01
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.
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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	A02
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Marks	A03
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
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0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

SECTION B
Answer **one** question.

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

"A UNIFIED REGIME FOR CONSUMERS (PART 3)

Background

2.2 For consumer contracts, the key objective of our project was to design a single, unified legislative regime that preserved the consumer protections currently afforded by both UCTA and the UTCCR.

2.3 In developing our recommendations we were aware of the constraints imposed on us by the UK's obligation to implement the Directive in full. Equally, as we stated in the Consultation Paper, we were keen that consumers should not be deprived of any of the protections afforded by UCTA."

[Source: Law Commission Report, *Unfair Terms in Contracts* No.292 (2005)]

(a) What is meant by the unified legislative regime for consumers referred to by the Law Commission? [11]

Credit reference to:

- The statutory controls over unfair terms are split between two pieces of legislation.
- The inconsistencies between the UTCCR and UCTA.
- The scope of application of each piece of legislation is different.
- The UCTA and the UTCCR use different language and terminology.
- Effect of reform and the requirement of a fair and reasonable test.
- Burden of proof of showing that a term is fair and reasonable.
- Preserving the effect of UCTA in business contracts.

Marks	A03
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	A01
	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 mechanisms for the reform of Consumer Law in England and Wales. [14]

Credit reference to:

- The role of the Law Commission with appropriate examples.
- Royal Commissions.
- Reviews by Judges.
- The role of pressure groups on the informing approach.
- The impact of reform on the development of an integrated EU consumer market.

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	A02
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation, making a convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given fact situation in a partly accurate and occasionally unsubstantiated way, making a limited synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way, making some basic synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

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

"Part 6. The Protection of the Consumer in Credit Transactions.

Many families, through no fault of their own, find their income quite insufficient for their needs, even with such supplementary benefits as are available ... to persons in this position the need to borrow may become acute. The most that protective legislation can hope to achieve for consumers in this situation is the alleviation of hardship by judicial control over the enforcement of judgement debts and over the repossession and realisation of goods or other property held by the debtor under a security agreement ..."

[Source: The Report of the Committee on Consumer Credit (Crowther Committee) Cmd 4596/1971]

(a) Explain the measures available in Consumer Law in regulating enforcement following default by a consumer. [11]

Credit reference to:

- Is there a contract at all?
- Is a contract voidable for misrepresentation?
- Is the agreement cancellable?
- Is the agreement improperly executed?
- Power to modify Agreement and Enforcement orders.
- The impact of Human Rights.
- Time orders.
- Default Notice.
- Entry on premises and restrictions.
- Relief against forfeiture.

Marks	A03
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	A01
	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 applications of the law.

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

Credit reference to:

- The application of the Human Rights Act.
- The relationship between Human Rights and Consumer Credit Law, for example, declarations of incompatibility.
- The concept of unfair relationships and Human Rights.
- Credit will be given for appropriate citation, for example, *Wilson v First Country Trust* 2003 and the concept of agreements being improperly executed and the reform of consumer credit law.

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	A02
	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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UNDERSTANDING LAW IN CONTEXT: FREEDOM, THE STATE & THE INDIVIDUAL

PAPER LA4-02 (A2)

CRIMINAL LAW & JUSTICE

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

SECTION A

Q.1 “The primary purpose of bail is not to protect the public, but to respect the rights of the unconvicted defendant”. 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 the purposes of bail, e.g. ECHR Art.5 and Art.6, rights of the unconvicted defendant v protection of the public.

	AO1
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	AO2
Marks	Skills
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Marks	A03
3	Presents a wholly illogical 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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Q.2 To what extent can loss of self control provide a defence to a charge of murder?

[25]

Credit reference to:

- Defence of provocation: Homicide Act 1957, s.3.
- Abolition of defence of provocation by s.56 of Coroners and Justice Act 2009 and its replacement by defence of loss of control set out in ss.54 and 55 of the Act.
- Section 54: Requirements of the defence of loss of control: D's acts must have resulted from D's loss of self-control; the loss of self-control must have had a qualifying trigger; a person of D's age and sex with a normal degree of tolerance and self restraint, and in the circumstances of D, might have reacted in a same or similar way.
- The loss of control does not have to be sudden – takes account of the “slow burn” effect.
- The defence is not available if D acted “in a considered desire for revenge”.
- The circumstances of D includes all of D's circumstances except for those whose only relevance is that they have a bearing on D's general capacity for tolerance or self restraint – would exclude, e.g., mental conditions which affect D's capacity for self control – these would normally give rise to the defence of diminished responsibility – restores the distinction which was blurred in Martin and reaffirmed in Holley.
- The need for a qualifying trigger, set out in s.55 – D's loss of self control must be attributable to: D's fear of serious violence from V towards D or another person; or to a thing or things done or said (or both) which constituted circumstances of an extremely grave character and caused D to have a justifiable sense of being seriously wronged; or a combination of both.
- Fear of serious violence is disregarded to the extent that it was caused by something done or said which D incited for the purpose of having an excuse to use violence on V.
- Sexual infidelity on its own is not to be regarded as a qualifying trigger.
- The rule that the judge must leave the defence of provocation to the jury if there is any evidence has been tightened – under s.54, there must be sufficient evidence in the opinion of the trial judge on which a properly directed jury could reasonably conclude that the defence might apply.
- If sufficient evidence is adduced, the jury must assume that the defence is satisfied unless the prosecution proves beyond all reasonable doubt that it is not.

Marks	Knowledge and Understanding
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Q.3 “The Crown Prosecution Service has greatly increased the fairness and efficiency of the criminal justice system.” Discuss. [25]

Credit reference to:

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

AO1	
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Q.4 To what extent have the courts in recent years developed a clear set of principles for determining whether an offence is one of strict liability? [25]

Credit reference to:

- Nature of strict liability.
- General presumption that mens rea is required; e.g., Sweet v Parsley; Gammon Ltd v A-G for Hong Kong.
- The principles set out by Lord Scarman in Gammon as to when the presumption of mens rea can be displaced.
- Examples of case law, e.g., Callow v Tillstone, Sweet v Parsley, DPP v B(A minor), Smedleys v Breed, LBC of Handsworth v Shah, Storkwain, Alphacell v Woodward.

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SECTION B

Answer one question from this section.

Q.5 “Over recent years we have seen an increase in these so-called ‘out of court disposals’: between 2004 and 2009 the number of cases dealt with in that way has almost doubled. Quite apart from simple cautions . . . there are also ‘Penalty Notices for Disorder’ . . . Conditional Cautions . . . and cannabis warnings . . . On the basis of efficiency and speed, a strong case can be made for the use of these types of disposal in appropriate cases but . . . when we consider issues such as transparency and open justice, the picture becomes a little blurred. In issuing an out of court disposal the police are essentially acting as prosecutor and judge, outside the environment of an open court.”

Lord Justice Leveson, The Roscoe Lecture: Criminal Justice in the 21st Century, 2010.

- (a) Explain the kinds of out of court disposals which can be issued by the police. [11]**
- (b) Evaluate the use of juries in criminal trials. [14]**

Credit reference to:

Part (a)

- Types of out of court disposals:
- Simple cautions – formally administered at the police station; the recipient must admit the offence; the caution is recorded and forms part of the criminal record of the recipient which can be revealed in a CRB disclosure.
- Conditional cautions – requires the consent of the CPS to attach conditions to a caution – conditions can involve making reparations to the victim, carrying out work in the community - can be very similar to community punishment, and again is recorded and forms part of the criminal record.
- Penalty notice for disorder – used mainly to deal with shoplifters and petty criminal damage, but can also be issued for very minor offences such as dropping litter. The penalty is a fixed financial penalty, currently £80 for an adult and £40-£60 for under-17s. The recipient can either pay the penalty or elect to be prosecuted for the offence in the magistrates court, in which case the full powers of sentencing may be applied. Also recorded.
- Cannabis warnings – a warning which can be given to someone found in possession of a very small amount of cannabis; also recorded.
- Discretionary nature of out of court disposals – except for conditions which can be attached, the process is at the discretion of the police.

Marks	A03
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Marks	A01
	Knowledge and Understanding
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Part (b)

- Positive aspects of trial by jury, e.g., a decision reached by 12 people is less likely to be affected by individual prejudices; juries are not “case hardened” and can approach the evidence with an open mind; juries have the chance to discuss the case between themselves and can take every aspect into consideration; juries are believed to be good at judging the credibility of witnesses and defendants; juries are representative of society at large; juries allow for lay participation in the administration of justice and counteract the remoteness of the law, etc.
- Negative aspects of jury trials, e.g., jury trials are expensive, tend to take longer, juries are more likely to acquit or tender a perverse verdict, juries can be swayed by advocacy or by moral rather than legal considerations, juries can be influenced by the media, there are no formal tests to exclude people who may be unintelligent, illiterate or prejudiced, juries are more vulnerable to intimidation, many people are reluctant to serve on juries, juries may not reach decisions rationally (e.g., the Oujia board case: R v Young).
- Problems of carrying out research into effectiveness of juries: Contempt of Court Act 1981, s.8 prevents jurors revealing how they reached their verdict.
- Juries are falling into disuse, as the right to jury trial has been removed for many offences.

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Marks	A02
Skills	
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Q.6 “The youth justice system in England and Wales has a comprehensive set of measures aimed at helping young offenders stay out of trouble. However, we might ask whether, in our anxiety to prevent re-offending, we perhaps assume too readily that children have broken the law. Nobody would suggest that children should be subjected to the trauma of a trial conducted along the lines of trials in adult courts. But we should recognise that the system places great pressure on children to admit to having committed an offence rather than risk being seen as lacking in remorse.”

(a) Explain the role of the youth courts. [11]

(b) Evaluate the impact of the Human Rights Act 1998 on the protection of human rights within the UK. [14]

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Marks	A01
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Part (b)

- Young people aged 10-17 are normally tried in youth courts – a specialised branch of the magistrate’s court which sits at a different time or venue from the adult court, is staffed by specially trained magistrates, one of whom must be a woman, and follows a more informal procedure than an adult court. The courtroom is normally arranged so that the young person is not placed in a dock but can sit with his/her family, legal advisors, social worker, etc. The press are allowed to be present but may not publish reports which could identify the young defendant unless the reporting restrictions are lifted.
- If the charge is murder, or an offence under the Firearms Act 1968, or a “grave crime” – murder, and some forms of sexual crime within the family, a young person may be tried in the Crown Court. A young person charged with an offence which would carry a maximum term of 14 years if committed by a person over 21 may be tried in the Crown Court. If a custodial sentence of more than 2 years is likely to be passed, or if a finding is likely that the young person is a dangerous offender and an extended custodial term is likely to be imposed, trial in the Crown Court may be ordered, but pre-sentence reports should be obtained before the decision is made.
- Young persons charged jointly with an adult may be tried in the Crown Court if it is in the interests of justice and trial in the Crown Court is not considered likely to be damaging to the young person. But it should be considered whether the interests of justice could equally be served by the young person being tried separately in the youth court.
- In 2000, the case of *Thompson and Venables v UK* resulted in a finding by the ECtHR that two 11 year old boys charged with the murder of Jamie Bulger had not received a fair trial under Art. 6 of the ECHR. Two main reasons: the massive publicity given to the trial, and the fact that it would have been hard for the boys to understand and follow the proceedings. The ECHR was particularly concerned that the boys were placed in the dock under guard throughout the proceedings.
- In February 2000 the LCJ, Lord Bingham, issued a Practice Direction concerning the method of conducting a trial of a person under 18 in the Crown Court. Whenever possible, the court should be arranged so that all persons are on the same level, and a young person is not to be placed in the dock but may sit with his/her family and legal advisors. Wigs and gowns should not normally be worn. Police or prison officers guarding the young defendant should not be in uniform. The media should be kept as far as possible away from the young defendant in court, and reporting restrictions should be observed unless there are good reasons for allowing publicity. Every effort must be made to ensure that the young defendant understands what is going on. The limited ability of a child to concentrate for long periods must be taken into account, and regular breaks should be given.
Evaluation, e.g:
- Probably inevitable that very serious offences should be tried before a jury, and probably right that a young person should have the chance of acquittal by a jury if this can be done without undue trauma.
- The Practice Direction seeks to overcome the most frightening aspects of Crown Court trial, but probably still an ordeal for very young children. Raises the question of whether children should ever be subjected to a criminal trial.

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Marks	A02
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation, making a convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given fact situation in a partly accurate and occasionally unsubstantiated way, making a limited synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way, making some basic synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

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

PAPER LA4-03 (A2)

FREEDOM OF THE INDIVIDUAL & PROTECTION OF HUMAN RIGHTS

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

SECTION A

Q.1 “The law of the United Kingdom provides complete protection against all forms of 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.
- Problems of obtaining remedy – action in county court is expensive; ET is daunting; no legal aid; limited compensation.

	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.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Marks	A03
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Q.2 Consider whether the protection of human rights within the United Kingdom would be strengthened by the introduction of a Bill of Rights. [25]

Credit reference to:

- Lack of a written constitution setting out the rights of people in the UK.
- Almost all developed countries have a Bill of Rights.
- The Human Rights Act 1998 is a piece of ordinary legislation which could be repealed by any government.
- The HRA 1998 is based on the ECHR, which is 50 years old and does not provide for social, economic or political rights – arguably out of date, and inadequate to reflect the needs of the UK.
- Many ECHR rights are qualified in ways that allow them to be effectively circumvented by the UK government.
- The HRA 1998 does not prevent the government from passing laws which are incompatible with Convention rights.
- The HRA 1998 depends upon the willingness of the judges to uphold human rights.
- A Bill of Rights could be tailored to the needs of the UK.
- A Bill of Rights would be entrenched.
- A Bill of Rights would place permanent limits upon the actions of the executive.
- A Bill of Rights would make the government more accountable for its actions.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content.
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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	A02
Marks	Skills
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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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**Q.3 “Of all the rights which are enjoyed by persons in the United Kingdom, the freedom to practice one’s religion is among the best protected by law.”
Discuss**

[25]

Credit reference to:

- Art.9 of the ECHR: the right to freedom of thought, conscience and religion.
- Art.9(2): qualifies the right to manifest one’s religion or beliefs by permitting restrictions in the interests of public safety, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others.
- Protection from discrimination on grounds of religion: Equality Act 2010.
- Particular exemptions on religious grounds, e.g. exemption from wearing motorcycle helmets or safety hats for Sikhs; exemption from slaughter regulations for production of kosher or Halal meat.
- Blasphemy abolished by the Criminal Justice and Immigration Act 2006, s.79.
- Religiously aggravated offences.
- Offences relating to religious hatred: the Racial and Religious Hatred Act 2006 added Part III A to the Public Order Act 1986.
- Public Order Act 1986 s.29J provides that nothing in Part III A prohibits or restricts discussion, criticism, expressions of antipathy or dislike, ridicule, insult or abuse of a religion.

AO1	
Marks	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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	AO2
Marks	Skills
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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 Consider whether the tort of breach of confidence provides an adequate solution to the problem of media intrusion in the lives of ordinary citizens. [25]

Credit reference to:

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

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content.
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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	A02
Marks	Skills
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Marks	A03
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SECTION B

Answer **one** question.

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

“Secret surveillance by the police does not only affect the privacy of people who are suspected of wrong-doing. Their families, friends, and even casual acquaintances may become the subject of police investigation without ever being aware that their privacy is being invaded. Such powers require the most stringent controls if they are to be acceptable in a free society.”

- (a) Explain what controls are in place to govern the exercise of secret surveillance by the police. [11]
- (b) Evaluate the impact of the Human Rights Act 1998 upon the protection of human rights within the United Kingdom. [14]

Credit reference to:

Part (a)

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

Marks	A03
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	A01
	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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Part (b)

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

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	A02
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Q.6 Study the text below and answer the questions based upon it.

“Contempt of court evolved originally to uphold the authority and dignity of the courts. Nowadays the courts display a fairly relaxed attitude in face of criticism, and the form of contempt known as “scandalising the court” has more or less fallen into disuse. However, contempt of court still plays an important role in the administration of justice. In today’s society, its main function is to ensure that everyone who comes before the courts receives a fair trial. Contempt of court can therefore be justified on the ground that it contributes to upholding the Rule of Law.”

(a) Explain what is meant by contempt of court. [11]

(b) Evaluate the significance of the Rule of Law. [14]

Credit reference to:

Part (a)

- Contempt of Court Act 1981.
- Strict liability rule: s.1.
- When a case is “active”: s.2(3).
- Substantial risk of serious prejudice: s. 2(3).
- Defences : innocent publication: s.3.
- Defence under s.5: the material which is alleged to form the contempt is part of a discussion on a matter of public interest and is merely incidental.

Marks	A03
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	A01
	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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Part (b)

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

Marks	A03
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
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Marks	A02
Skills	
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WJEC
245 Western Avenue
Cardiff CF5 2YX
Tel No 029 2026 5000
Fax 029 2057 5994
E-mail: exams@wjec.co.uk
website: www.wjec.co.uk