



GCE MARKING SCHEME

LAW
AS/Advanced

SUMMER 2013

INTRODUCTION

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

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

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

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GCE LAW

PAPER LA1 (AS)

UNDERSTANDING LEGAL VALUES, STRUCTURES AND PROCESSES

Answer two questions

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

Credit reference to:

- The significance of the Conquest.
- Forms of action.
- Position of the King.
- Inflexibility.
- Credit should be given for the appropriate citation.

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

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

Q.1 (b) Discuss the characteristics of equity today.

[11]

Credit reference to:

- The distinctions between the common law and equity and its relationship today.
- Developments of equity.
- Remedies.
- Judge made the law.
- The so called principles of the common law and equity, e.g. protection of property; liberty; retrospective law.
- Presumptions of equity.

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

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

Q.2 (a) Explain the role of tribunals in the English and Welsh legal system.

[14]

Credit reference to:

- Alternative to courts.
- Different types of tribunals eg administrative tribunals.
- Composition of tribunals.
- Features of tribunals.

Marks	AO3
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	Knowledge and Understanding
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Q.2 (b) Discuss the advantages and disadvantages of Alternative Dispute Resolution (ADR).

[11]

Credit reference to:

- Cost and informality.
- Specialist evidence and adjudicator.
- Increasing formalism.
- Speed.
- No precedent.
- Differing types of ADR

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Skills	
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Q.3 (a) Explain the role of the Institutions of the European Union.**[14]**

Credit reference to:

- The present status of the EU after the Lisbon Treaty.
- Detailed account of the various types of EU legislation.
- A description of the essential Institutions of the EU and their relationship and particular roles and function.

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Q.3 (b) Discuss the impact of the European Institutions on the legal system of England and Wales. [11]

Credit reference to:

- European Union law as a source of English and Welsh law.
- Focus on the relationship between the ECJ and the domestic Courts of the UK.
- Specific examples such as the role of the European Commission in competition law under Articles 105 & 106 of TFEU.
- Credit should be given for appropriate citation.

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Marks	AO2
Skills	
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Q.4 (a) Explain the relationship between law and morality.**[14]**

Credit reference to:

- Examples of some recent cases such as the Debbie Purdy case.
- Any background difficulty or confusion in the law or legal policy that leads to a case needing to go to the Court for clarification.
- The limits of law.
- The relationship between law and morality.

Marks	AO3
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Q4. (b) Discuss the impact of morality on the development of the law. [11]

Credit reference to:

- Har t v Devlin debate and background.
- Morality as a rules based system.
- International conventions.
- Citation of relevant cases.

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Q.5 (a) Explain the different types of Jury trial available in England and Wales.

[14]

Credit reference to:

- Criminal and civil juries.
- Coroner's Courts.
- Credit will be awarded for relevant citation.

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Q.5 (b) Discuss the impact of the Criminal Justice Act 2003 on who can be required to attend for Jury service [11]

Credit reference to:

- The limits of the previous system.
- Detailed account of the provisions introduced by the CJA 2003.
- In relation to eligibility, reference to cases such as *R - v- Abdroakov* (2005).
- The Human Rights Act 1998.

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Q.6 (a) Explain the sources of funding available to access justice in England and Wales. [14]

Credit reference to:

- Community Legal Service.
- Criminal Defence Service and Public Defender's Service.
- The various advice schemes.
- Alternative methods of funding.
- Conditional fee arrangements.
- The role of the Legal Services Commission.

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Q.6 (b) Discuss the extent to which legal needs are met in England and Wales.

[11]

Credit reference to:

- The problems of advice deserts.
- The establishment of the Community Legal Service.
- The role of paralegals.
- The significance of the third sector.
- New developments and efficiency gains sought by the Government in the provision of legal services.

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Marks	AO2
	Skills
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GCE LAW

PAPER LA2 (AS)

UNDERSTANDING LEGAL REASONING, PERSONNEL AND METHODS

Answer two questions.

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

IMPACT OF ECHR BY STATE TO 1997

State	References to European Court of Human Rights 1960 - 97	Adverse Judgements of European Court of Human Rights
Belgium	40	24
France	99	42
Germany	33	14
Italy	251	98
Spain	19	8
UK	95	47

(a) Explain the background to the European Convention of Human Rights and the UK's relationship to the Convention prior to 1998. [14]

Credit reference to:

- UK was one of the original signatories of the ECHR in 1950.
- In 1966 the UK recognised the power of the ECHR to hear complaints from individual UK citizens.
- Difficulties with non-incorporation and the fact that the Convention could not be directly enforced in the English Courts.
- Credit will be given for appropriate citation e.g. *R -v - Secretary of State for the Home Department ex p Brind (1991)*.

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	Knowledge and Understanding
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(b) Discuss the significance of the Human Rights Act 1998

[11]

Credit reference to:

- HRA 1998 had profound implications for the operation of the English legal system.
- The various Sections of the HRA notably Section 2, Section 3, Section 6.
- The Act reflects the move towards the entrenchment of rights recognised under the convention but the Act expressly states that the Courts cannot invalidate any primary legislation. Note declarations of incompatibility and Section 4 of the HRA.

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

“I am pleased to present this report which relates to the implementation of Law Commission proposals. This is the first annual report to be presented following the passing of the Law Commission Act 2009 which came into force on 12 January 2010. This amends the Law Commissions Act 1965 to place a duty on the Lord Chancellor to report to Parliament each year on the extent to which Law Commission proposals have been implemented by the Government. This report covers the period 12 January 2010 to 11 January 2011.

The Law Commission Act 2009 also provide the statutory basis for the protocol between the Government and the Law Commission. The protocol was agreed in March 2010 and sets out how the Government and the Law Commission should work together on law reform projects.

The Government is committed to ensuring that the law is modern, simple and accessible and holds the work of the Law Commission in very high regard. This report demonstrates that progress is being made to implement the excellent work of the Law Commission. There is clearly further to go and I am pleased in that regard that the new House of Lords procedure for Law Commission bills has been made permanent. The procedure, which reduces the amount of time which selected Law Commission bills spend on the floor of the House of Lords, has already enabled the implementation of two Law Commission reports (The Rules Against Perpetuities and Excessive Accumulations and Third Parties - Rights Against Insurers) and will I hope lead to the implementation more over the next few years.

(Source: The Lord Chancellor *Report on the implementation of Law Commission proposals 2011*)

(a) Explain the role of the Law Commission [14]

Credit reference to:

- The establishment of the Law Commission under the Law Commissions Act 1965.
- Under the 1965 Act, the Law Commission was constituted as an independent body given the duties to revise and codify the law but the prime duty is law reform.
- The scope of the Commission’s work is set out in a programme and the Law Commission consults as to areas to cover in its programmes.
- Credit will be given for relevant citation.

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(b) Discuss the effectiveness of the Law Commission**[11]**

Credit reference to:

- The Lord Chancellor is now required to prepare an annual report as seen in the data where there is a quotation from the Lord Chancellor to the Annual Report of 2011.
- The annual report requires the Lord Chancellor to set out plans for dealing with any Law Commission proposals which have not been implemented and the reasoning behind decisions not to implement proposals.
- A number of reports historically remain to be implemented.
- Credit will be given for relevant citation.

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Marks	AO2
	Skills
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Question 3. Study the following and answer the questions based on it.

“The judgements of the European Court of Justice are an essential source of English and Welsh law and its approach to interpreting Community Law is a vital consideration and will inform statutory interpretation in England and Wales.”

(a) What are the methods of interpretation used by the European Court of Justice. [14]

Credit reference to:

- Purpose of methods of interpretation.
- Influences on the ECJ.
- Methods used by the ECJ - teleological, contextual, literal, historical.
- Credit will be given for relevant citation, e.g. as Lord Denning observed in *Bulmer v Bollinger* (1974) “The EC Treaty is quite unlike any of the enactments to which we have been accustomed. It lays down general principles. It expresses its pains and purposes but it lacks precision.”
- Faced with a body of law couched in such terms, the ECJ uses the teleological approach.

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

Marks	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.**

The Prevention of Noise Pollution (Fictitious) Act 2012

Section 1 of the Act states: “This Act applied to a gathering on land in the open air in which a crowd of persons or more play amplified music during the night which by reason of its loudness and the time at which it is played likely to cause serious distress to local inhabitants.”

Maureen is a Solicitor and she holds a party in her garden. Eighteen people are invited but thirty-five turn up. Maureen prepares a barbecue in the garden. She has hired music equipment which she installs in her kitchen and with her door open, plays classical music for four hours from 8 p.m. At midnight twenty-five of the guests leave the party and the rest of the guests, all of Maureen’s neighbours, remain. At 3 a.m. a group of holiday makers who have parked their caravan in a lay-by close to Maureen’s house, complain that they are suffering severe mental and physical distress as a result of the music and noise. A Police Constable orders Maureen to shut down the party and she is arrested on the basis that she has committed an offence under section 1 of the Act.

Advise Maureen

Credit reference to:

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

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

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

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

“There has been much recent criticism of the mix of the judiciary and the launch yesterday of a House of Lords inquiry into the judicial appointment process led to a range of senior legal figures labelling the upper ranks as “too white, too male, too elitist”. The facts speak for themselves.

Only one woman sits in the Supreme Court; of 107 Judges at the High Court, only 3 are from ethnic minorities and 16 are female; all but one of the Supreme Court Judges went to Oxbridge”.

(Source: Ruth Deech, *The Guardian*, 7th July 2011)

(a) Explain the extent to which the composition of the senior judiciary is balanced and representative of society. [14]

Credit reference to:

- The significance of the statistics.
- Why the competition of the judiciary matters in particular because of judicial review and Human Rights Act 1988.
- The approach of Professor Griffith.
- The need for legitimacy and the appearance of legitimacy by reference to a social balance and the politics of the judiciary.
- Credit will be given for relevant citation.

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

Marks	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 way in which the Constitutional Reform Act 2005 has impacted upon the independence of the judiciary. [11]

Credit reference to:

- The concept of natural justice that a person should not be the Judge in an action in which they have a personal interest.
- The extradition of the former Chilean dictator Pinochet and Locabail (2000) action.
- The approach of the law in terms of bias in the judiciary e.g. R -v- Gough (1993).
- Separation of powers.
- Role of Judicial Appointment Commission.
- Lord Chancellor v Lord Chief Justice.

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

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

LAW - PAPER LA3 (A2)

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

OPTION 1: CONTRACT AND CONSUMER LAW

Answer *two* questions.

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

Colin is a wholesaler of potatoes is contracted to supply Pamela with 10,000 tons of potatoes every three months for two years at a fixed sum of £100,000 payable in advance. Pamela is a supplier of potatoes to the catering industry. After three months, the price of potatoes doubled because of a drought. Pamela, hearing that Colin was threatening to cancel contracts with other customers, suggests to Colin that she will be prepared to take 5,000 tons of potatoes every three months in satisfaction of their contract. Colin agrees and delivers for the next three months, 5,000 tons. Shortly thereafter the drought ended. Pamela is now claiming for the 5,000 tons shortfall in the potatoes delivered and 10,000 tons of potatoes for the rest of the contract period.

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

[14]

Credit reference to :

- The doctrine of promissory estoppel
- Credit will be given for relevant citation, e.g. *Pinell's Case* (1602)
- *Foakes-v Beer* (1884)
- The possibility of binding variation
- The limitations of promissory estoppel and whether or not it is extinctive in effect

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

(b) Explain the importance of the doctrine of precedent in the development of the law of promissory estoppel. [11]

Credit reference to:

- The significance of case law under doctrine of precedent
- Hierarchy of Courts
- The role of Judges particularly that of Lord Denning in High Trees

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

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

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

Bradford Services Ltd asked Poynters Ltd to quote for renewing their offices to include painting and decorating. In their letter it said that the required work was to be completed on 1 August and that it should be completed on their standard terms of business which stated that 'time was of the essence of the contract.' Shortly thereafter Poynters Ltd submitted a quote which stated that the quote was subject to their standard terms and conditions. Two days later Bradford Services Ltd accepted the quote on the basis of their standard terms and conditions which were materially different in terms of credit period than those anticipated by Poynters Ltd. There is now a dispute between the parties as to the terms and conditions of the contract.

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

Credit reference to:

- The issue of acceptance and the battle of forms
- Is there any communication which can be regarded as an acceptance of an offer?
- Credit given for relevant citation, e.g. *Butler Machine Tools* (1979)
- Are there any actions here indicating acceptance such as in *Brogden v Metropolitan Railway* (1877)

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.
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0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

- (b) **Explain the available sources of assistance for Poynters Ltd in pursuing the litigation.** [11]

Credit reference to:

- Analysis of the financial position and availability of legal aid for a business
- Private means
- Conditional fees
- Significance of legal insurance
- Pre action protocols and the civil procedure rules

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

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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0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content <i>making some basic synoptic connections</i> with basic elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a basic understanding of the practical application of the law.

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

Rachel owns a clothes shop in Manchester. She decides to re-fashion the shop in order to give it a new look for her new collection of clothes which she is going to launch in the summer. She is approached by Hans, a local builder. He is aware that Rachel is having a relationship with her business partner Carol. Hans threatens Rachel that if she doesn't give him the contract for the renewal of the shop, he will tell Rachel's husband, Oliver, of the affair. Rachel reluctantly agrees. Having started the work, Rachel discovers that she could have had the work done for less than one half of the price quoted by Hans.

- (a) In the light of reported case law and other sources of law, advise Rachel as to whether she can avoid the contract. [14]**

Credit reference to:

- The issue of distress and the ability to avoid the contract
- A threat to do something lawful may, in some circumstances, constitute duress e.g. *Attorney General v R* (2003)
- Credit will be given for relevant citation

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

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

Credit reference to:

- The civil procedure rules and pre action protocol
- Alternative dispute resolution mechanisms
- The importance of litigation in establishing precedent
- Credit will be given for relevant citation

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

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

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

Rachel owns a dishwasher which has needed constant repair over a period of three years. The machine has been repaired on a number of occasions by Brendan. In March 2012, Rachel phones Brendan and explains that the machine has broken down once again. Brendan agrees to come and repair the machine and he offers to do this at a special rate of £30 “all inclusive.” Having repaired the machine he asks Rachel to sign a form stating that all the work has been completed satisfactorily and that there is no liability for the damage or caused by his repair work. Rachel signs the form. Two months later the machine breaks down and floods Rachel’s kitchen causing £150 of damage.

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

Credit reference to:

- Was the exclusion clause incorporated?
- If so, does the clause cover the breach as a matter of construction?
- UCTA and its application
- Is the clause a void?
- The effect of the UTCCR

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

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

Credit reference to:

- The relationship between the UCTA 1977 and the UTCCR 1999 and the Law Commission's proposals
- The UTCCR being concerned with consumer contracts
- The reforms proposed by the Law Commission and the need to deal with the issues that arise from the dual system of controls that exist in relation to consumer contracts
- The definition of who is a consumer would be clarified as there would only be one test of what is "reasonable"
- The role of the Law Commission within the law reform movement in England and Wales.

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

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

LAW – PAPER LA3 (A2)

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

OPTION 2: CRIMINAL LAW AND JUSTICE

*Answer **two** questions.*

Q.1 Amy quarrelled with her fiancé, Ted, and moved out of the house they shared together. The next day Amy realised that she had left some of her clothes and perfume in the house, and went back to collect them, using her own key to gain access. In the bedroom, she found her best friend Louise, wearing Amy's bathrobe and smelling of Amy's perfume. Amy lost her temper and punched Louise, knocking her unconscious. Thinking she had killed her, Amy hauled Louise into the bath and turned on the taps, hoping to make it look as though Louise had slipped and drowned while taking a bath. After Amy had gone, the cold water revived Louise. She managed to climb out of the bath, but then tripped on the hem of the bathrobe and fell down the stairs. When Ted came home, he found Louise in the hall, unable to move because of a broken leg. Ted immediately drove Louise to the hospital, where she was examined by Philip, a junior doctor. Philip treated Louise's broken leg, but failed to realise that she was in danger of developing pneumonia due to lying on the floor for hours in the cold wet bathrobe. Louise's condition worsened, and she died.

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

Credit reference to:

- Elements of murder and manslaughter: actus reus and mens rea.
- Principles of causation: factual causation, legal causation, novus actus interveniens; cases such as White, Dalloway, Pagett.
- Chain of causation: whether broken by the actions of the victim (Blau, Wall, Roberts).
- Chain of causation: whether broken by medical negligence: Smith, Jordan, Cheshire.
- Voluntary manslaughter: possible defence of loss of control: Coroners and Justice Act 2009, ss.54-55.
- Involuntary manslaughter: unlawful act manslaughter (Church, Lamb, Franklin); gross negligence manslaughter (Adamoko).

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

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, 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 legal assistance and financial support may be available to Amy if she is tried in the Crown Court. [11]

Credit reference to:

- Access to Justice Act 1999.
- Community Legal Service means and merits test.
- Confidential fee agreement.

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

Merlin was sitting on a balcony of his third-floor flat, enjoying the view over a nearby lake, when a duck suddenly crashed onto the balcony of the flat occupied by his next door neighbours, Sally and Arthur. Concerned for the duck's welfare, Merlin climbed over the railing which separated the two balconies, and picked it up. Sally glanced out of her window and suffered a terrible fright at the sight of Merlin on her balcony holding a duck. Arthur ran onto the balcony and shook his fist at Merlin, saying: "If my wife wasn't here, I'd smash your face." In an attempt to explain, Merlin held out the duck for Arthur to see it. The duck, now fully recovered, lunged forward and bit off the tip of Arthur's finger before flying away. Enraged and in pain, Arthur rushed at Merlin, uttering threats. Merlin panicked and jumped off the balcony, suffering serious internal injuries when he landed on the ground below.

- (a) In the light of reported case law and other sources of law, consider whether any criminal offences may have been committed by Merlin and Arthur, taking account of any defences which may be available to them.**

[14]

Credit reference to:

- Assault and battery at common law: summary offences - Criminal Justice Act 1988, s.39.
- Offences Against the Person Act 1861: sections 47, 20 and 18.
- Elements of assault and battery: actus reus and mens rea.
- Elements of aggravated assaults under s.47, s.20 and s.18 of the OAP Act 1861.
- Section 47: actual bodily harm - actus reus is an assault which causes actual bodily harm, any injury calculated to interfere with the health or comfort of the victim (Miller) - under the CPS Charging Standards it includes temporary loss of consciousness, minor cuts and grazes and scalds, broken bones without complications. Mens rea is intention to commit assault/battery or recklessness. Foresight of the degree of harm is not necessary: Roberts; Savage, Parmenter.
- Section 20: actus reus is unlawful wounding or unlawful infliction of grievous bodily harm. GBH means serious harm: Smith. A wound must break the inner and outer skin: C -v- Eisenhower. Mens rea - intention or recklessness - D must foresee a degree of harm, but not necessarily the degree of harm which occurred: Mowatt, Savage, and Parmenter.
- Section 18: actus reus is wounding or causing grievous bodily harm. Mens rea requires intention to wound or cause gbh, or to resist or prevent a lawful arrest.
- Merlin - may be charged with common assault against Sally on the basis that the actus reus of assault is causing the victim to apprehend the immediate application of unlawful force, as in Smith -v- Chief Superintendent, Woking Police Station; Constanza. If Merlin has created a situation where Sally apprehends such force, even inadvertently, he may be under a duty to counteract this apprehension, and failure to do so may suffice for the actus reus of assault if the failure results in the necessary apprehension (Miller). However, the prosecution would have to show that he intended or was reckless as to causing the necessary apprehension.
- Merlin may be charged with causing actual bodily harm (s.47) or unlawful wounding (s.20) against Arthur. Recklessness suffices for either offence, but s.20 requires a degree of foresight of some harm, albeit not the harm which occurred.

- Arthur - probably not guilty of assault when he first runs out onto the balcony, as his words negative any intention to use immediate force, as in Tuberville -v- Savage. But he may commit an assault when he rushed at Merlin uttering threats, as his actions caused Merlin to apprehend the application of immediate unlawful force, and he has the necessary mens rea of intention or recklessness.
- Arthur may be charged under s.20 on the basis that his actions caused Merlin to jump from the balcony and suffer injury provided that Merlin's actions in trying to escape were "not so daft" as to be unforeseeable (Roberts) and that Arthur intended or foresaw some harm resulting from his own actions. With regard to s.18, it would have to be shown that Arthur intended to cause grievous bodily harm to Merlin.
- Possible defences - Merlin might argue duress of circumstances (saving the duck) in relation to Sally's fright. Arthur might argue private defence, claiming that he used only reasonable force in the circumstances.

Marks	AO3
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0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

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, 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:

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

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	AO1
Marks	Knowledge and Understanding
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Q.3 A disturbance occurred among a group of boys outside a supermarket. PC Keen examined the supermarket's own CCTV images of the disturbance, which were of very poor quality, and thought that one of the boys might be 14-year-old Percy, whose older brother had a conviction for violence. PC Keen went to Percy's house and found Percy in the front garden helping his mother to sweep the path. PC Keen searched Percy, and then told him that he was being arrested for questioning. Percy's mother asked if she could accompany Percy to the police station, but was told that parents were not allowed to be present during questioning. At the police station, Percy was taken directly to an interview room and questioned about the identity of the other boys. Percy claimed that he had not been involved in the disturbance and had no idea who the other boys might be. After eight hours of persistent questioning, Percy was placed in a cell and left there for another sixteen hours. At the end of that time, Percy was charged with a minor public order offence and granted bail.

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

Credit reference to:

- Police and Criminal Evidence Act 1984 and Codes of Practice.
- Power to stop and search: ss.1-3; Code A.
- Whether the power to search was properly exercised on these facts, e.g., grounds for suspicion, Percy not in a public place, formalities of a valid search not complied with - cases such as *Castorina*, *Osman*.
- Arrest powers: s.24 as amended by SOCPA 2005; Code G. Grounds for arrest; necessity test. Formalities of valid arrest; s.28.
- Procedure to be followed on arrival at police station; role of custody officer.
- Rights of suspects in police custody: right to have someone informed of the arrest (s.56); right to legal advice (s.58).
- Obligation of police to provide juvenile with an appropriate adult: s.57.
- Treatment of suspects during detention: Code C.
- Time limits on detention: s.41.

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0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

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Marks	Skills
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(b) Explain the powers of the police to grant bail after charge. [11]

Credit reference to:

- Police and Criminal Evidence Act 1984.
- Bail should be granted when a suspect has been charged with an offence (s.38) unless: there is doubt about the name or address of the suspect; or detention is necessary to protect the suspect from himself or others; to protect others from the suspect; there is a danger that the suspect may not answer to bail, or may interfere with witnesses or the administration of justice.
- Coroners and Justice Act 2009 says the police should not grant bail if the charge is murder.
- Bail can be granted after a suspect has been arrested but not charged (s.37) if the custody officer believes that there is sufficient evidence to charge the suspect or sufficient evidence to justify holding the suspect while the police continue their enquiries.
- Bail conditions: police may grant bail subject to conditions: Criminal Justice and Public Order Act 1994 - examples of conditions.
- Criminal Justice Act 2003 allows the police to grant street bail.
- The Police (Bail and Detention) Act 2011 provides retrospectively that the police can keep someone on bail without charge for as long as they consider necessary - reverses Greater Manchester Police -v- Hookway 2011.

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	AO1
Marks	Knowledge and Understanding
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Q.4 David looked after his father, who was old and frail. Dr. Goodman, the family GP, noticed that David seemed increasingly withdrawn and was complaining of frequent headaches. Dr. Goodman examined David and diagnosed that David was suffering from depression. He also suspected that David might be showing symptoms of an incurable brain disease, so he arranged for David to have certain tests carried out, to establish whether David's mental functioning was becoming impaired. However, before this could be done, David was arrested for the murder of his father. The explanation which David gave for his actions was that his father always said, when he wanted to go to bed, "It's time to sleep now." On the night of his father's death, David has put his father to bed as usual and watched him fall asleep. But later in the night he kept hearing his father's voice in his head, saying over and over again, "It's time to sleep now." Believing that his father was still awake and talking to him, David had gently placed a pillow over his father's face thinking that it would help him fall asleep.

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

Credit reference to:

- Possible defences: insanity, diminished responsibility.
- Insanity: M'Naghten Rules - defect of reason, due to disease of the mind, D does not know the nature and quality of his/her act or else does not know that it was (legally) wrong (Windle).
- Insanity requires an internal cause: examples of cases, e.g., Hennessey (diabetes); Burgess (sleep disorder); Sullivan (epilepsy); Thomas (sleep disorder) - contrast Clarke (absent-mindedness); Quick (insulin).
- Nature and quality of the act: David not aware that his action is one of killing - Codere.
- Insanity is for the jury to decide, but they may not acquit except on the evidence of two medical practitioners: Criminal Procedure (Insanity and Unfitness to Plead) Act 1991.
- Insanity is a complete defence: under the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 the court may make a hospital order, a supervision order or grant a complete discharge, but not where the charge is murder.
- Diminished responsibility; not a complete defence; reduces murder to voluntary manslaughter; allows judge discretion in sentencing.
- Diminished responsibility now governed by Coroners and Justice Act 2009, s.52.
- Elements of defence: D is suffering from an abnormality of mental functioning which arose from a recognised medical condition; the abnormality of mental functioning must be a significant contributory factor to the killing, and the abnormality of mind must have substantially impaired D's ability to (a) understand the nature of his/her conduct, or (b) form a rational judgment, or (c) exercise self-control.
- Need for a recognised medical condition: query whether depression as in Dietschmann would qualify under the new defence.

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AO2	
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(b) Explain what tests the Crown Prosecution Service would apply in deciding whether or not to prosecute David. [11]

Credit reference to:

- The decision whether to prosecute is made using the “Full Code Test” contained in the Code for Crown Prosecutors, issued by the Director of Public Prosecutions under s.10 of the Prosecution of Offences Act 1985. This is currently the 6th edition, issued February 2010.
- This consists of two tests, the evidential test and the public interest test, which must be applied in that order. If the evidential test is not passed, then the case should not be proceeded with at that time. If the evidential test is passed, the Crown Prosecutor should go on to consider the public interest test. Only if both tests are passed should proceedings be brought.
- Evidential test - is there a realistic prospect of conviction, i.e., would a court be more likely than not to convict? The CPS must consider two issues: can the evidence be used in court, and is it reliable?
- Whether evidence can be used in court - is it likely to be excluded because of the way it was obtained; is it hearsay; does it relate to the bad character of the accused?
- Whether evidence is reliable - is it consistent with an innocent explanation; are there doubts about the reliability of a confession; is the identity of the suspect likely to be questioned; are there doubts about the reliability of any witnesses; does a witness have any ulterior motive; does a witness have convictions which cast doubt on his/her reliability; is there a need to gather more evidence?
- If it would be helpful in assessing a witness’s reliability, an appropriately trained Crown Prosecutor may conduct a pre-trial interview with the witness.
- Public interest test - it will usually be in the public interest to prosecute unless the prosecutor is satisfied that the public interest is better served by not bringing a prosecution or by offering an out-of-court disposal.
- Examples of factors tending in favour of prosecution: e.g., offence likely to result in a significant sentence; committed with a weapon; committed by a group; committed against someone serving the public; committed against a vulnerable person; the accused’s previous record, etc.
- Factors tending against prosecution; sentence likely to be small; prosecution would have a bad effect on the victim; offence was the result of a genuine mistake; accused has made reparation; accused suffers from significant physical or mental ill-health, etc.
- The prosecutor may take account of the views of the victim and his/her family. However, the prosecutor does not act for the victim or his/her family, and must form an overall view of the case.

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LAW - PAPER LA3

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

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

Answer *two* questions

Q.1 Eighteen-year-old Rollo opened a current bank account, and was issued with a silver-coloured debit card. On his way to use the cash machine for the first time, he took the card from his pocket and fingered it as he walked along the street. Police Constable Nabb saw something that looked metallic in Rollo's hand, and thought that it might be a knife. He knocked Rollo to the ground and then kneeled on Rollo's back to subdue him while he searched Rollo's jacket for weapons. Finding only the debit card, he pulled Rollo to his feet, and told him that he was arresting him in order to establish his identity. Rollo was taken to the police station, where he was refused permission to phone his family or speak to a solicitor. The police took his fingerprints and a sample of his DNA. After thirty-eight hours in police custody, Rollo was told that the police had established his identity and that he was free to leave.

(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.
- Power to stop and search: ss.1-3 and Code A.
- Reasonable suspicion: Code A - should not be based on personal factors such as age or stereotyped images, but may be based on a person's behaviour - presumably, thinking a person has a knife would suffice.
- Use of reasonable force: s.117.
- Requirements of a valid search: information to be given under s.2; failure renders search invalid: Osman.
- Procedure following search: s.3.
- Arrest power: s.24 as amended by SOCPA 2005, s.110, and Code G - police may arrest anyone who is, or is reasonably suspected to be, about to commit an offence; or in the act of committing an offence; or is guilty of having committed an offence; or is reasonably suspected to be guilty of having committed an offence. In this scenario, there might be reasonable suspicion that 18-year-old Rollo is not the owner of the debit card, in which case it may be reasonable to suspect he has committed or is about to commit an offence. The level of required suspicion is low: Castorina; Holgate-Mohammed -v- Duke.
- Arrest power must only be exercised if the police have reasonable grounds to believe it is necessary (s.24(5)) - the grounds are: to enable the name and address of the person to be ascertained if it is not known, or the police believe it to be false; to prevent the person causing physical injury to himself or another, suffering physical injury, causing loss or damage to property, committing an offence against public decency, or causing unlawful obstruction of the highway; to protect a child or other vulnerable person; to allow the prompt and effective investigation of the offence or the conduct of the person; to prevent any prosecution for the offence being hindered by the disappearance of the person. Could be argued that Rollo's arrest was necessary in order to establish his name and address, or to allow prompt and effective investigation of his conduct, or prevent his disappearance.

- Procedural requirements of a valid arrest: Rollo should be informed of the fact he is under arrest and also the ground for arrest (s.28), and he should be cautioned.
- Treatment of suspects in police custody: Code C.
- Right to have someone informed of arrest: s.56.
- Right to legal advice: s.58.
- Fingerprints and DNA: fingerprints may be taken under s.61; DNA can be taken under s.64 - can be retained under s.82 of the Criminal Justice and Police Act 2011. Following S and Marper -v- UK (2008) only DNA from persons convicted of an imprisonable offence can be stored indefinitely.
- Time limits on detention: s.41 allows police to authorise detention up to 36 hours but further detention up to 96 hours requires authorisation by magistrates.
- Detention should be reviewed after 6 hours and then every 9 hours by a review officer not involved in the case: s.40.

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(b) Explain what sources of legal advice and funding might be available to Rollo if he wishes to sue the police. [11]

Credit reference to:

- Access to Justice Act 1999 established the Legal Services Commission.
- Community Legal Service Fund has a fixed amount of money each year to be spent according to the Funding Code drawn up by the Legal Services Commission and approved by the Lord Chancellor - sets out the criteria and the procedures for deciding whether a particular case should be funded.
- Only solicitors or advice agencies which have a contract with the Legal Services Commission can provide advice or representation which is directly funded by the Commission.
- Direct funding is provided for different categories of legal services.
- Legal help provide initial advice and assistance - means tested.
- Legal representation provides funding for representation in court - means and merits tested.
- Help at court allows a solicitor or adviser to speak for someone in court proceedings without formally acting in the whole proceedings - means tested.
- Some types of case are not eligible for funding: personal injury, defamation and malicious falsehood, business disputes, disputes involving trusts and land.
- The means test depends on disposable income and capital - a sliding scale from full funding down to no funding at all - excludes most people not living on state benefits - people in employment may have to pay part of their legal costs.
- Community Legal Advice - a telephone and website service providing free legal advice on civil matters.
- Other sources of advice: Citizens Advice Bureaux, Law Centres, various charities, pro bono services, etc.
- No win no fee arrangements - the solicitor agrees to take the case on the basis that they take no fee or a reduced fee if they lose, and increase their fee to a maximum of double the usual fee if they win (the "uplift"). A party to a conditional fee arrangement usually has to take out insurance to cover the legal costs if they lose.

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.
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0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content <i>making some basic synoptic connections</i> with 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 Dexter and his wife, Connie, organised a sponsored dog walk to raise money and gain publicity for a local charity, Shelter for Abandoned Dogs (SAD). Around a hundred people turned up with their dogs to walk the “Mutt Mile”, escorted by Sergeant Ham and PC Bone. Halfway along the route, they were confronted by a group of around twenty people belonging to an organisation which calls itself Ban All Dogs (BAD). The members of BAD behaved in a hostile manner towards the SAD supporters, shouting insults and threats of violence. Sam, Fred and Martin had come armed with eggs and rotten fruit, which they threw at the SAD supporters. One of the eggs, thrown by Martin, struck Connie in the face. Another member of BAD, Rufus, released a rabbit into the midst of the SAD supporters, which caused chaos as the SAD supporters struggled to control their dogs. Dexter lost his temper and rushed at Martin, knocking him to the ground. Alarm spread quickly among the SAD supporters, many of whom were crying and screaming in fright. While Sergeant Ham was preoccupied in rescuing the rabbit, PC Bone decided to take charge of the situation, and instructed the SAD supporters to terminate the walk and disperse. The SAD supporters ignored her and chanted “Walk the Mutt Mile!” Things eventually calmed down when Connie borrowed the largest and fiercest-looking dog she could find, and chased the members of BAD away down the road.

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

Credit reference to:

- Public Order Act 1986.
- Riot: POA 1986, s.1. This is the most serious of the public order offences contained in Part I of the POA. It is punishable with 10 years imprisonment, and the consent of the DPP is required before a prosecution can be brought. The CPS Charging Standard 2005 indicates that a prosecution for riot should only be brought in the most serious of cases where law and order has broken down.
- The offence of riot can only take place where 12 or more persons, who are present together, use or threaten unlawful violence for a common purpose, and the conduct of them, taken together, is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety. The question is not whether the conduct of an individual defendant would cause fear, but whether the conduct of the 12 or more persons who are present together for a common purpose would, when taken together, cause a third-party bystander of reasonable firmness to fear for his or her own safety.
- Only those persons who actually use violence commit the offence of riot. There is a mens rea requirement: by s.6(1), a person can only be guilty of riot if he intended to use violence or is aware that his conduct may be violent.
- “Violence” is defined in s.8 as meaning “any violent conduct.” It is not limited to conduct which causes or is intended to cause personal injury - s.8 specifically includes violence towards property and throwing a missile at a person which is capable of causing injury, even if it does not hit.
- “A person of reasonable firmness” refers to the average adult who is neither especially timid nor especially brave. The fear must be for the person’s own safety, and not for the participants or anyone else. It is a purely hypothetical standard, and no such person need actually be present (s.1(4)).

- Violent disorder: POA s.2. This offence requires only a group of three people, who may or may not be part of larger group, and do not have to be acting for any common purpose. The offence is committed where three or more people who are present together use or threaten unlawful violence, and the conduct of the three of them taken together is such as would cause a person of reasonable firmness present at the scene to fear for his or her own personal safety (s.2.(1)). “Violence” and “a person of reasonable firmness” have the same meaning as in s.1. Each of the persons who use or threaten unlawful violence will commit the offence. It is enough if an individual defendant has merely threatened violence: *Hebron*. The offence carries a maximum penalty on indictment of 5 years, and the consent of the DPP is not required.
- Affray: POA s.3. This offence can be committed by a single individual who uses or threatens unlawful violence so that a person of reasonable firmness present at the scene would fear for his or her own personal safety. “Violence” and “a person of reasonable firmness” have the same meaning as for riot and violent disorder. Unlike riot or violent disorder, the violence or threat of violence must be directed towards another person. A verbal threat is not enough: it must be accompanied by some threatening action (s.3(3)). In *I -v- DPP* the House of Lords held that persons seen carrying petrol bombs could be guilty of affray, but there must be a threat to someone actually present at the scene. Setting a dog on a person can amount to affray: *Dixon*. Affray is triable either way and carries a maximum on indictment of three years.
- With regard to the scenario, Sam, Fred and Martin might technically fall within the terms of the offence of riot, as they throw missiles, but eggs and fruit would probably not be held “capable of causing injury”. A more likely charge would be violent disorder.
- Dexter may commit affray when he knocks Martin down, although the prosecution might have trouble showing that the hypothetical person of reasonable firmness would have feared for his safety, as the violence is directed purely at Martin and nobody else (probably just common law assault and battery).
- Connie may commit affray when she chases the BAD group away - a large, fierce dog may well cause the hypothetical PRF to fear for his safety.
- Rufus probably commits the s.5 offence, in the form of “disorderly behaviour” - it takes place within the sight or hearing of persons likely to be caused harassment, alarm or distress. A police officer can be a person who is caused harassment, alarm or distress: *Orum -v- DPP*. The mens rea requirement of s.6 is probably also fulfilled.
- The SAD people may be guilty of refusing to comply with an instruction under s.12 or s.14, but whether the instruction is valid would depend on whether PC Bone is the senior officer present at the scene (given that Sergeant Ham is occupied with the rabbit).
- Candidates may also discuss the scenario from the standpoint of breach of the peace, in which case they should be credited for all relevant material.

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

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

- (b) **Explain what sources of legal advice and funding may be available to anyone who is arrested and charged with an offence, and the powers of the police to grant bail.** [11]

Credit reference to:

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

Marks	AO3
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1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

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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Q.3 A crime reporter with the Daily Dirt, Alice Papp, became friendly with Detective Chief Inspector Laura Snout, who was part of a team investigating a serious fraud. The investigation had reached a stage where the police were on the verge of seeking arrest warrants against a number of well-known figures in the banking world, and it was essential to maintain the secrecy of the investigation in order to prevent any of the suspects from escaping abroad. Laura told Alice, in strictest confidence, when the arrests were planned to take place. Alice then passed this information to her editor, Martha Mutton, without telling Martha how she had come by the information. Martha published the information in the Daily Dirt before all of the arrest warrants had been obtained, with the result that one of the main suspects escaped before he could be apprehended by the police. Alice, Laura and Martha have now been informed that they may be prosecuted under the Official Secrets Act 1989.

(a) In the light of reported case law and other sources of law, consider whether any offences may have been committed by Alice, Laura or Martha.

[14]

Credit reference to:

- Official Secrets Act 1989. s.4: Crime and special investigations.
- All police officers are Crown servants: s.12.
- Laura may have committed the offence of disclosure of information which has had the effect of impeding the apprehension or prosecution of offenders (s.4(1)).
- The disclosure must be “damaging”. There is no definition of “damaging” in relation to information etc. covered by s.4, since the effect of such a disclosure is regarded as “damaging” by definition.
- However, Laura may have the defence that she did not know or have reasonable cause to believe that the disclosure would be damaging, i.e., that it would have the effect of impeding the apprehension of offenders.
- Alice may have committed an offence under s.5: either disclosure of information acquired as a result of an unauthorised disclosure by a Crown servant (s.5(1)(a)(i)), or disclosure of information entrusted in confidence by a Crown servant (s.5(1)(a)(ii)).
- Where the information falls within s.4, the prosecution has no need to prove that the disclosure by Alice was damaging, or that Alice knew or had reasonable cause to believe that it would be damaging. However, it must show that she was aware, or had reasonable cause to believe, that the information was protected against disclosure under the OSA 1989.
- Martha may also have committed an offence under s.5: disclosure of material acquired as a result of an unauthorised disclosure by a person to whom it had been entrusted in confidence by a Crown servant (s.5(1)(a)(iii)).
- Martha may have a defence that she did not know, or have reasonable cause to believe, that the information was protected against disclosure.
- There is no public interest defence: Shayler.

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

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given 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 route of appeal from the Crown Court if any of the three are convicted. [11]

Credit reference to:

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

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.
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Q.4 Dogsbreath Productions created a successful weekly children’s television show, *Inside Emma*, which used hi-tech medical equipment to explain to youngsters how the human body works. The show won several awards for its educational value, and its young presenter, Emma, became a national celebrity. The editor of the Daily Slur, Vitupia Stabb, obtained photos of Emma taken outside an alcohol treatment clinic during filming of an episode designed to warn young viewers of the dangers of binge-drinking. Vitupia published the photos under the headline: “What Really Goes On Inside Emma”, together with an article claiming that Emma was a secret alcoholic. A Twitter mob quickly formed and bombarded Dogsbreath Productions with demands that Emma should be sacked from the show. Dogsbreath Productions took fright and promptly terminated Emma’s contract. The Minister for Youth, Ambrosia Fitt, made a speech in Parliament praising Dogsbreath Productions for “doing exactly the right thing”, and later repeated this comment during a live television interview.

(a) In the light of reported case law, consider whether Emma may be able to sue for defamation. [14]

Credit reference to:

- Nature of defamation: publication of untrue, defamatory statements; libel and slander.
- Elements of defamation: the statement must be defamatory; it must refer to the claimant, and it must be published.
- Is the statement defamatory? - a statement which would tend to lower the claimant in the eyes of right-thinking persons generally: *Sim -v- Stretch*, *Byrne -v- Dean*.
- Photographs and headlines - must be considered in terms of its effects on the ordinary reasonable reader who reads the whole article: *Charlesworth -v- NGN*.
- Innuendo - the statement that Dogsbreath Productions had done exactly the right thing in sacking Emma implied that Emma is guilty of misconduct: *Tolley -v- Fry*.
- Defences - justification, fair comment on a matter of public interest; absolute privilege; qualified privilege: *Reynolds -v- Times Newspapers* - standard of responsible journalism.

Marks	AO3
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	AO2
Marks	Skills
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(b) Explain the role of the jury in civil cases.

[11]

Credit reference to:

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

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Marks	Knowledge and Understanding
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GCE LAW - PAPER LA4

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

OPTION 1: CONTRACT & CONSUMER LAW 1254/01

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

SECTION A

Q.1 Evaluate the licensing provisions relating to credit brokers under consumer credit legislation. [25]

Credit reference to:

- Credit brokerage is an ancillary credit business and the carrying on of such a business requires a licence granted by the OFT
- Advertising offences and the role of credit brokers e.g. Regulation 8 of the Consumer Credit (Advertisement) Regulations 2004
- The need to ensure that pre contract procedures are properly carried out e.g. Section 160A of the Consumer Credit Act 1974
- One of the key elements of the Consumer Credit Act 1974 is to ensure that the debtor receives full information about his commitments - Section 60-65 of the Consumer Credit Act 1974
- Exercise of the right of withdrawal
- Credit will be given for relevant citation

	AO1
Marks	Knowledge and Understanding
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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.2 Examine the impact of the Consumer Credit Act 2006 in strengthening the protection for vulnerable debtors. [25]

Credit reference to:

- The enhanced licensing provisions granted to the Office of Fair Trading in relation to applicants for and current holders of Consumer Credit Licences by Sections 38-54 of the Consumer Credit Act 2006
- New provisions to regulate unfair credit transactions in Sections 19-22 of the Consumer Credit Act 2006
- The extension of the powers of the Office of the Financial Services Ombudsman set up under the Financial Services and Markets Act 2000 to cover consumer credit disputes
- The new focus on prevention of irresponsible lending

	AO1
Marks	Knowledge and Understanding
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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.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given fact situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

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

Q.3 Critically evaluate the concept of connected lender liability under Section 75 of the Consumer Credit Act 1974. [25]

Credit reference to:

- Critical discussion of the limits of Section 75 and the need for there to be a legal liability on the part of the supplier as a basic requirement
- The Crowther Committee described suppliers in finance houses as ‘being in a joint venture for mutual profit’
- The concept of Section 75 liability does not require there to be a direct link between the credit card company and the supplier - see for example, *OFT v Lloyds TSB*.(2007)
- The Consumer Credit Act 2006 which brought reform to the 1974 Act did not amend or change Section 75 which suggests that the Government is happy with this operation. Note the impact of the directive on consumer credit and Article 15 (3) of the EU Consumer Credit Directive 2008 permits the UK to retain the ‘ joint and several ‘ liability provision in Section 75
- Credit will be given for relevant citation

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

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Marks	AO3
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1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Q.4 Evaluate the concept of measuring loss in damages claims for consumers. [25]

Credit reference to:

- The rules of remoteness, see for example *Hadley v Baxendale* (1854)
- The rule of mitigation
- General principles of compensation
- Actions for non-delivery
- Damages for breach of warranty as distinct from breach of condition
- Credit will be given for relevant citation

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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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	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
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0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

SECTION B

Answer **one** question.

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

Consumer enforcement

We will address the most serious national consumer problems, maximising the deterrent effect of our actions and taking precedent setting cases in order to clarify the evolving area of consumer protection law including, in particular, the still relatively new Consumer Protection Regulations. We will continue our work with local authority Trading Standards Services, jointly develop an improved system for identifying priority national issues, developing strategies for dealing with them, and agreeing who is best placed to tackle them whether individually or in partnership. Working effectively in partnership with others in this way will become increasingly important as the Government’s proposals for reform of the consumer protection regime begin to take shape.

Consumer credit enforcement

We will continue to make targeted use of our credit enforcement tools, focussing enforcement on high risk activities and conduct that particularly affects vulnerable consumers, including taking any action arising from our recently launched review of compliance with the Irresponsible Lending Guidance in the payday loan sector. We will maintain a strong gateway into the market, so that those who are not fit to hold a license are kept out.

Source: Office of Fair Trading Annual Plan 2012

(a) Explain the role of the Office of Fair Trading in the licensing of consumer credit business. [11]

Credit reference to:

- Licensing of consumer credit business is at the heart of the Consumer Credit Act 1974 and this has now become even more important under the Consumer Credit Act 2006
- The consequences of trading without a licence and the better regulation approach
- Variation of licences
- Powers of the Office of Fair Trading including winding up of businesses and the provision of information
- The role of the Office of Fair Trading within the consumer protection regime

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

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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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) Assess the role of the civil process in enforcing consumer rights in the law of England and Wales. [14]

Credit reference to:

- The distinction between the civil process and criminal law enforcement and in particular the burden of proof
- The Court structure including Alternative Dispute Resolution
- The rule of enforcement agencies such as the Office of Fair Trading and also the Ombudsman
- The nature of civil remedies
- Credit will be given for accurate citation

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

Marks	AO2
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation, 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.
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Q.6 Study the facts and answer the questions based on the.

Geoffrey is a well-known art expert in modern Welsh art. He specialises in the work of Kevin Williams, a wild landscape artist. On 6th April he went into an antiques shop and noticed in a corner, a modern work of art. He asked Andrew the shop assistant what it was and was told that it was a painting of Snowdonia by the famous Welsh artist, Kevin Williams. After examining it he agreed to buy it for £5,000 and took the painting home with him. His intention was to sell the painting and gain a handsome profit.

On 23rd April, Geoffrey took the painting to Osmond to clean the painting. During the cleaning process Osmond thought that the brush strokes were such that the painting was not a genuine Kevin Williams painting but a cheap imitation and that it was worth no more than £50. Geoffrey contacted Andrew immediately and demanded his money back. He was told that in no circumstances would the shop make a refund.

(a) In the light of all sources of law, advise Geoffrey. [11]

Credit reference to:

- The policy about non refunding money, was this part of the contract?
- Description - Section 13 of the Sale of Goods Act 1979
- Satisfactory quality - Section 14(2) of the Sale of Goods Act 1979
- Fitness for purpose - Section 14(3) of the Sale of Goods Act 1979
- Misrepresentation, Common Law under the Misrepresentation Act 1967
- When a buyer loses the right to reject goods
- Remedies
- Credit will be given for relevant and accurate citation

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

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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(b) Assess the doctrine of “let the buyer beware” as a principle of the Common Law. [14]

Credit reference to:

- The doctrine of *caveat emptor*
- The development now of the law to one where it could be argued that it is *caveat venditor*
- The role of consumer protection legislation as undermining the doctrine of freedom of contract
- Identifying the principles of the Common Law including protection of property and the sanctity of contract
- Credit will be given for accurate and relevant citation

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

Marks	AO2
	Skills
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LAW – PAPER LA4 (A2)

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

OPTION 2: CRIMINAL LAW & JUSTICE

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

SECTION A

**Q.1. “The Crown Prosecution Service provides quality, efficiency and justice.”
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: 43 areas corresponding to police areas, each headed by a Chief Crown Prosecutor.
- Roles of the Attorney-General and Director of Public Prosecutions.
- Recent reforms, e.g., full advocacy rights; CPS Direct; CPS has taken over charging in all but minor cases.
- Establishment of CPS Inspectorate.
- Evaluation: the importance of an independent prosecution service, whether the CPS has made the system fairer and more efficient.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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	AO2
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Marks	AO3
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Q.2 “The so-called defence of intoxication is just the courts ‘way of showing mercy to defendants who never meant to do any real harm.’”
Discuss. [25]

Credit reference to:

- Intoxication not a defence in itself, but can be used to support a claim that D lacked the relevant mens rea
- Distinction between voluntary and involuntary intoxication -
- Intoxication is voluntary when it results from D knowingly taking alcohol and/ or drugs. D need not know the precise nature or strength of the substance: *Allen*.
- Intoxication is involuntary when D becomes intoxicated through no fault or knowledge of his own. Includes the situations where D takes the drug under medical advice, or takes a non-dangerous drug which would not normally cause unpredictability or aggressiveness, e.g., *Hardie*.
- Distinction between crimes of basic and specific intent: *DPP v Majewski*.
- Basic intent: crimes which can be committed with anything other than intention as the mens rea, e.g., involuntary manslaughter, offences against the person other than s.18 of the Offences Against the Person Act 1861.
- Specific intent: crimes which require intention as their mens rea, e.g., murder.
- Effect of voluntary intoxication: provides a complete defence to a crime of specific intent where it prevents D from forming that intention: *DPP v Beard*. But if it can be proved that D had the required specific intention despite his intoxication, he can still be convicted of that offence: *DPP v Beard*.
- The “dutch courage” concept: where D voluntarily intoxicates himself to get up the courage to commit a crime of specific intent, he can still be convicted of that crime: *A-G for Northern Ireland v Gallagher*.
- Voluntary intoxication cannot provide a defence to basic intent crimes, as the courts treat becoming involuntarily intoxicated as a reckless course of conduct which is sufficient to fulfil the mens rea requirement of any offence of basic intent. *Majewski*.
- Involuntary intoxication can provide a defence to a crime of specific intent, and also to a crime of basic intent, as involuntary intoxication is not regarded as reckless and therefore does not satisfy the mens rea requirement of crimes of basic intent.
- However, if it can be proved that D did in fact have the required mens rea of an offence despite his involuntary intoxication, he can be convicted of that offence. *Kingston*.
- Intoxication and mistake - D cannot rely on voluntary intoxication in relation to a crime of specific intent if he acted under a mistaken belief in the need for self-defence: *O Grady*.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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	AO2
Marks	Skills
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Marks	AO3
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2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Q.3 To what extent does the youth justice system in England and Wales make allowances for the fact that young people may be more vulnerable and less responsible than adults? [25]

Credit reference to:

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

	AO1
Marks	Knowledge and Understanding
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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.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given fact situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

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

Q.4 “ The law relating to bail is still balanced in favour of the accused, but only by a small margin.” Discuss. [25]

Credit reference to:

- Bail Act 1976, s.4 - presumption of entitlement to bail.
- Police and Criminal Evidence Act 1984m, 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 Schedule1 (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 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 specified serious offence or where the offence was committed while already on bail (*Criminal Justice and Public Order Act 1994 s.25 as amended by Crime and Disorder Act 1998*).
- Right of the prosecution to appeal against grant of bail: *Bail Amendment Act 1993*.
- Powers of police and courts to impose bail conditions.
- Powers of arrest for breach of bail conditions.
- Evaluation of when it is appropriate to refuse bail; bail bandits, cases of *Hogans* and *Weddell*.

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

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
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SECTION B

Answer one question from this section.

Q.5 “Necessity is a grey area in the criminal law. Its authority rests upon an old case of cannibalism at sea, a trades union dispute over whether fire engines are allowed to ignore a red light, and the recent tragedy of conjoined twins. The courts are reluctant to state that it exists as a specific defence. Legislation seems impossible. How could any government promote a bill to legalise breaking the law, however compelling the circumstances? If necessity exists, it must remain in the twilight of obscurity, able to be brought into play in the rare instance when it can truly be said that the accused averted a greater evil by acting as he did.”

(a) Explain what is meant by the defence of necessity. **[11]**

Credit reference to:

- Meaning of necessity: where D deliberately commits an offence but his conduct is held to be justified on the basis that it was done in order to avert a greater evil: *Re A* (conjoined twins).
- Courts’ reluctance to accept necessity as a general defence: cases such as *Dudley and Stephens*; *Buckoke v GLC* (emergency vehicle driving through red light), *Kitson* (passenger steered runaway car to safety), *Southwark LBC v Williams* (squatters).
- Statutory provision for necessity, e.g., Road Traffic Regulations Act 1984 permits emergency vehicles to break the speed limit; the Traffic Signs Regulations and General Directions 2002 permits emergency vehicles to drive through a red light - reverses outcome of *Buckoke v GLC*.
- Doubt as to whether there is a defence of “pure” necessity, i.e., necessity to break the law as the lesser of two evils: *Dudley and Stevens*.
- Situations where courts have been prepared to accept necessity, e.g., cases concerning medical treatment, such as *Bourne*, *Re F*, *Bournewood Community and Mental Health Trust*, *Re A* (conjoined twins).
- Defence of duress of circumstances as a type of necessity: *Willer Conway*, *Martin*.

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

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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(b) Evaluate the importance of precedent in the development of the criminal law. [14]

Credit reference to:

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

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

Marks	AO2
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given 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.
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Q.6

“The starting point for a court is the established common law presumption that a mental element, traditionally labelled mens rea, is an essential ingredient unless Parliament has indicated a contrary intention either expressly or by necessary implication. The common law presumes that, unless Parliament indicated otherwise, the appropriate mental element is an unexpressed ingredient of every statutory offence”.

Lord Nicholls of Birkenhead in B (A minor) v DPP (2000)

(a) Explain the nature of strict liability. [11]

Credit reference to:

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

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

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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(b) Evaluate the use of aids to statutory interpretation when determining the intention of Parliament. [14]

Credit reference to:

- Intrinsic and extrinsic aids to statutory interpretation.
- Examples of intrinsic aids: wording of the statute; interpretation sections; long title; short title; punctuation; marginal notes, etc.
- Examples of extrinsic aids: other statutes; the HRA 1998; case law; Oxford English Dictionary; textbooks; Law Commission Reports; Hansard; international conventions; travaux preparatoires; explanatory notes issued with every statute since 1999.
- Rules of language: ejusdem generis; expressio unius est exclusio alterius; noscitur a sociis.
- Examples of cases involving use of aids to statutory interpretation - credit should be given for all relevant material.

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

Marks	AO2
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given fact situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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GCE LAW - PAPER LA4

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

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

1254/03

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

SECTION A

Q.1 The law of England and Wales adequately protects the right to freedom of religion. Discuss. [25]

Credit reference to:

- The Human Rights Act 1998 gives effect to Art.9 of the ECHR, which provides for the freedom of thought, conscience and religious belief.
- Art.9(2) qualifies the right to manifest one's religious beliefs by permitting restrictions in the interests of public safety, disorder or crime, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others.
- Candidates may refer to special provisions and exemptions to protect religious freedom, e.g., exemption from slaughter regulations for production of Kosher and Halal meat; exemption of Sikh men from wearing motorcycle helmets and safety helmets; provision for faith schools; requirement for employers to make reasonable provision to allow employees to observe religious festivals under the Equality Act 2010, etc.
- Candidates may refer to cases involving religious dress and ornamentation, e.g., *Mandla v Dowell Lee*, R (on the application of Shabina Begum) v Head Teacher and Governors of Denbigh School, *Ali v Head Teacher and Governors of Lord Grey School*, etc.
- Protection from discrimination on grounds of religion - Equality Act 2010 includes religion or belief within the nine protected categories
- Religiously aggravated offences - the Crime and Disorder Act 1998, s.28 and s.29, increased the maximum penalty for offences against the person where D demonstrates racial or religious hostility, or is motivated by racial or religious hostility. Section 32 adds two racially or religiously aggravated offences to the protection of Harassment Act 1997: racially or religiously aggravated harassment, and putting someone in fear of violence. Section 30 adds the offence of racially or religiously aggravated criminal damage. Section 31 adds racial or religious aggravation to the Public Order Act 1986, s.4, s.4A and s.5. (Candidates are not expected to provide details of religiously aggravated offences: this list is just to assist examiners in case they do.)

- Offences of stirring up religious hatred - the Racial and Religious Hatred Act 2006 adds Part 111A (sections 29A-29N) to the Public Order Act 1986. This has the effect of creating six offences relating to stirring up religious hatred, which are similar but not identical to previously existing offences of stirring up racial hatred.
- The Public Order Act 1986, s.29J, provides that nothing in Part IIIA prohibits or restricts discussion, criticism, expressions of antipathy or dislike, ridicule, insult or abuse of particular religions.
- The common law offence of blasphemy has been abolished by the Criminal Justice and Immigration Act 2008, s.79.

	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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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 Critically evaluate the extent to which the law protects the privacy of the individual against secret surveillance by the police. [25]

Critical reference to:

- Art.8 of the ECHR gives a right to a private and family life - a qualified right which can be restricted, inter alia, for the prevention of disorder or crime.
- Candidates may mention the background to current legislation regulating surveillance; cases such as *Malone v UK*, *Khan v UK*, *Govell v UK*, *Halford v UK*.
- Candidates should refer to the Police Act 1997 and the Regulation of Investigatory Powers Act 2000.
- Police Act 1997, Part III, gives police power to enter premises and plant surveillance devices without a warrant (the "bug and burgle" power).
- Section 93 gives power to enter premises without a warrant and interfere with wireless telegraphy.
- Section 92 gives absolute immunity against criminal prosecution or civil suit for any action authorized under the Act.
- Authorisation can be given by the Chief Constable or Assistant Chief Constable (s.94).
- Basis for authorisation: that the authorising officer believes the action to be necessary because it will be of substantial value in the prevention or detection of serious crime, and that the action is proportionate (s393(2)).
- "Serious crime" is widely defined as crime which involves the use of violence or results in substantial gain, or is conduct by a large number of persons in pursuit of a common purpose. The offence must be for which a person over 21 with no previous convictions could expect a sentence of 3 years or more.
- Authorisation should normally be in writing, but may be given orally in certain cases by the Chief Constable. A written authorisation lasts 3 months; one issued orally lasts 72 hours, and either can be renewed in writing for a further 3 months without limit on the number of renewals.
- Procedures under the Police Act 1997 are supervised by the Surveillance Commissioners, headed by the Chief Surveillance Commissioner (a senior judge). The Chief Surveillance Commissioner reviews actions taken and makes an annual report to parliament. This can be edited by the Prime Minister before it is presented.
- Every authorisation must be notified to a Commissioner.
- Prior approval must be obtained from a Commissioner if the property is a dwelling house, a hotel bedroom or office premises, or if the action is likely to reveal matters which are subject to legal privilege, confidential personal information or confidential journalistic information. Prior approval can be dispensed with in urgent cases.
- Regulation of Investigatory Powers Act 2000, Part II, provides the legal basis for actions not covered by the PA 1997, and also deals with covert surveillance.
- Covert surveillance is defined (s.26) to include monitoring, observing and listening to people's movements, conversations or other activities, recording anything monitored, etc., and the use of electronic surveillance devices.
- Section 26 draws a distinction between directed surveillance and intrusive surveillance.
- Directed surveillance is surveillance conducted for the purposes of a particular operation which is likely to result in obtaining private information about a person. Directed surveillance can be authorised by a superintendent or in urgent cases, by an inspector.
- Intrusive surveillance involves placing surveillance devices in residential premises or a private vehicle. It requires authorisation from a chief constable under a system similar to the authorisation procedure under the Police Act 1997. Authorisation lasts for 3 months and can be renewed indefinitely.

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

	AO1
Marks	Knowledge and Understanding
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	AO2
Marks	Skills
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0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Q.3 To what extent does the law of England and Wales protect against unwanted intrusion by the media into a person's private life? [25]

Credit reference to:

- The outcome of the Leveson Inquiry into media standards, which will presumably be known by June 2013.
- At present there is no specific right to privacy in the law of England and Wales: *Kaye v Robertson*.
- Art.10 of the ECHR gives the right to freedom of expression, and the ECtHR has frequently affirmed the high importance which it attaches to freedom of the press, e.g., *Goodwin v UK*.
- Section 12(4) of the HRA 1998 states that UK courts must have particular regard to the Convention right to freedom of expression, and where the material in question is journalistic, literary or artistic material, to the extent to which is in the public interest for it to be published, and any relevant privacy code.
- Art.8 of the European Convention on Human Rights: "Everyone has the right to respect for his private and family life, his home and correspondence". The possibility of using Art.8 to protect against media intrusion was recognised by the ECtHR in *Spencer v UK* (1998), where the Court said that Contracting states are obliged to provide a measure of protection to the right of privacy of an individual affected by others' exercise of their right to freedom of expression. This was confirmed in *von Hannover v Germany* (2005), where the ECtHR ruled there was an infringement of the privacy of Princess Caroline of Monaco by publication of photos of her in the German press. The photos did not contribute to any debate in the public interest, and so the right to privacy prevailed over the right of the press to freedom of expression under Art.10. These decisions are ones which the courts of England and Wales ought to take into account under the HRA 1998, s.2.
- In the absence of a specific right to privacy a claimant may be able to use the law on defamation, malicious falsehood, trespass, nuisance, copyright or breach of confidence.
- Breach of confidence has been developed by the courts so as to provide some protection for privacy.
- Expansion of breach of confidence - courts have dropped the requirement to find a specific relationship of confidence between the parties - a duty of confidence will arise whenever the person subject to the duty knows, or ought to know, that the claimant can reasonably expect his privacy to be protected: Lord Woolf in *A v B and C*; Lord Goff in *A-G v Guardian Newspapers (No.2)*.
- *Venables v News Group Newspapers* - confidence can arise independently of any relationship between the parties - injunctions imposed to protect the claimants' rights under Art.2 and Art.3
- Examples of cases: *Prince Albert v Strange*; *Argyll v Argyll*; *Stephens v Avery*; *Douglas v Hello!*; *Campbell v MGN*; etc.
- Recent use of "super injunctions" to protect the identity of the claimant.

	AO1
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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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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
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Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Q.4 The Human Rights Act 1998 is far from perfect in protecting human rights. Discuss. [25]

Credit reference to:

- HRA 1998 incorporates the rights given in the ECHR into UK law, with a few exceptions.
- The HRA 1998 provides positive rights and not just residual liberties.
- Rights under the ECHR are directly enforceable in the UK without need to apply to the ECtHR in Strasbourg.
- Section 6 imposed 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 as 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: e.g., -
- HRA 1998 reflects the limitations as the ECHR, e.g., only really protects civil and political rights; doesn't provide the kinds of rights people need in today's society such as right to housing, income, etc.
- Only really protects people from actions of state and public authorities - the narrow scope of public authorities - today, the need for protection is often against powerful private institutions like the banks.
- The powers of the courts are circumscribed so that in the last analysis, government is not constrained by the HRA 1998.
- Alternatively, the powers of the courts allow them too much scope to interfere with the will of democratically elected bodies, e.g., cases such as *R v A.*, *A and X v Sec. of State for the Home Department*; *Re MB*.
- The HRA 1998 cannot prevent any government from acting in violation of the rights it enshrines or even abolishing the HRA 1998 itself. L

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SECTION B

Answer **one** question.

Q.5. “A new Equality Act came into force on 1 October 2010. The Equality Act brings together over 116 separate pieces of legislation, not to mention the outcomes of numerous decisions of the courts, into one single Act. Combined, they make up a new Act that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. “

(a) Explain what is meant by indirect discrimination. [11]

Credit reference to:

- Equality Act 2010
- Difference between direct and indirect discrimination.
- Direct discrimination: s.13 - A treats B less favourably than others because of a protected characteristic.
- Indirect discrimination: s.19 - A discriminates against B if he applies to B a provision criteria or practice which is discriminatory in relation to a relevant protected characteristic of B's. A provision etc. is discriminatory if A applies it would apply it to people with whom B does not share the protected characteristic, and it puts or would put people with whom B does share the protected characteristic at a particular disadvantage compared to people who do not share that characteristic, and it puts or would put B at that disadvantage, and A cannot show it to be a proportionate means of achieving a legitimate aim.
- It is not necessary for candidates to be able to reproduce the convoluted wording of s.19 so long as they know that indirect discrimination means applying a provision, criterion or practice to everyone, and that the effect is to put people who share a particular characteristic at a disadvantage. The claimant must be put at a disadvantage, and it must be the case that it cannot be shown to be a proportionate means of achieving a legitimate aim.
- Examples of case law, e.g., *Mandla v Dowell Lee*,

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(b) Evaluate the importance of precedent in the development of the law in England and Wales. [14]

Credit reference to:

- Meaning of precedent: doctrine of stare decisis: judges must follow the decisions of higher courts and in some cases courts at the same level.
- Hierarchy of the courts: who binds who - Supreme Court bound by its own decisions, subject to the Practice Statement of 1966 which allowed the House of Lords to depart from its own previous decisions; Court of Appeal bound by Supreme Court and its own previous decisions, apart from the exceptions in *Young v Bristol Aeroplane* (the Civil and Criminal Divisions do not bind each other) ; High Court bound by Supreme Court and Court of Appeal; Crown Court bound by all courts above it and not bound by its own decisions; magistrates courts and county courts bound by courts above and not by own decisions.
- Distinction between binding and persuasive precedent.
- Ratio decidendi and obiter dicta
- Following, distinguishing, reversing and overruling.
- Importance of precedent: enables the courts to create new law (original precedent) when necessary, e.g., *Donoghue v Stevenson*; binding ensures that the most qualified judges have the greatest authority; creates certainty in the law; provides more detail than statutes: adds flexibility to the law.
- Disadvantages: creates huge volume and complexity of law; rigidity in the sense that courts may be bound by precedents which are out of date or clearly unjust; the techniques of avoidance can result in fine and illogical distinctions; development of case law depends on the accident of a case on a particular topic coming to court.

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	Skills
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Q.6 Rights and Liberties are the inverse of one another. A person has a liberty allowing him or to do something only if there is no one who has a right to prevent him or her from doing it. Likewise if a person has a right against someone else, that other person’s liberty is therefore limited. But what if the “person” is the state? Does the state have a liberty to act as it pleases, or does the Rule of Law guarantee citizens a minimum set of rights which even the state cannot take away?

(a) Explain the distinction between liberties and right. [11]

Credit reference to:

- Candidates may, but must not, refer to W.N. Hohfeld’s analysis of rights.
- Credit should be given for references to other authors.
- A right imposes a duty on others to do something or refrain from doing anything which interferes with the exercise of the right. Hohfeld sees this as the only proper use of the term “right”.
- A liberty exists where no other has a right to prevent a person from doing something, as in the case of Malone. Hohfeld calls this a “privilege”. There is no duty imposed on any other; it is simply that no other has a right to interfere with the exercise of the liberty.
- The importance of the distinction in the context of human rights: the Human Rights Act 1998 imposes a positive duty upon the courts and other public authorities (s.6) to give effect to the rights contained in the European Convention on Human Rights. The creation of such a duty means that mere liberties are converted into enforceable rights.
- The state - Parliament and the executive - are not bound by the HRA 1998 except in political terms: in legal terms, they can still enact laws which infringe or remove the rights of citizens.

•	AO3
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(b) Evaluate the importance of the Rule of Law in protecting human rights. [14]

Credit reference:

- Meaning the Rule of Law: candidates are likely to refer to the work of A.V. Dicey and perhaps other theorists such as Joseph Raz.
- The Constitutional Reform Act 2005 expressly states that its reforms do not adversely affect the existing constitutional principles of the rule of law.
- The Rule of Law is a constitutional principle which underlies the British constitution and not a positive law or set of laws.
- According to Dicey the Rule of Law has three elements: nobody should be punished except for the breach of a positive law; one law should govern everyone, including citizens and those who make up the state; the rights of the individual are not secured by a written constitution but by the decisions of the judges in the ordinary courts.
- The importance of the Rule of Law is that the state must use its power according to rules having the status of law, and not arbitrarily; state officials should be bound by the rules of law in the same way as everyone else.
- Candidates may offer a variety of arguments for the importance of the Rule of Law in protecting human rights and should be credited for these.

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