



GCE MARKING SCHEME

**LAW
AS/Advanced**

JANUARY 2014

INTRODUCTION

The marking schemes which follow were those used by WJEC for the January 2014 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 role of the European Commission in the development of EU law. [14]

Credit reference to:

- Twenty seven Commissioners who are supposed to act independently of their National origin.
- Each Commissioner heads a Department with special responsibility for one area of Union policy such as economic affairs, agriculture or environment.
- Assumptions relate to promoting Union policy.
- The Commission is the guardian of the Treaties and can initiate action through the ECJ.
- 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.
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Q. 1 (b) Discuss the significance of the European Court of Justice in the development of EU Law.

[11]

Credit reference to:

- The emphasis is on preventing cases on paper.
- The use of the Advocate General.
- Deliberation for the judges are secret and where necessary the decision will be made by a majority vote.
- The European Court of Justice is not bound by its own previous decisions.
- The role of the European Court of Justice in interpreting statutes where a teleological approach is adopted.
- 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 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 factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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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 factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
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Q.2 (a) Explain the emergence of Equity in the historical development of the Common Law. [14]

Credit reference to:

- The development of the common law is the product of a particular struggle for political power after 1066.
- The imposition of a unitary system under the control of the King.
- The development of the King's peace.
- Increasing formalisation of the common law through forms of action leading to the development of equity.
- The role of the Lord Chancellor, for example, the *Earl of Oxford's* case.
- The emergence of the Judicature Acts 1873-1875.
- Credit will be given for relevant citation.

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(b) Discuss the extent to which Equity has made an impact upon modern law. [11]

Credit reference to:

- Outline of the contribution of equity.
- Remedies available in all courts.
- Development of new types of remedies such as the Freezing Order.
- Development of equitable remedies and the recognition of equitable principals in new courses of action.
- Recent attempts to extend the jurisdiction of equity.
- Candidates will be rewarded for accurate and relevant citation.

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Q.3 (a) Explain the role of jury trial in the English and Welsh legal system.

[14]

Credit reference to:

- The jury is seen as the bastion of liberty.
- The attitude of juries has been known to mitigate the harshness of the criminal law.
- Examples of jury verdicts which are extraordinary, for example, that of Clive Ponting in the UK.
- Disadvantages of a jury trial are that jurors can be intimidated which led to the suspension of jury trial for terrorist offences in Northern Ireland
- Jury nobbling remains a problem.
- The difficulty that juries have in understanding evidence, particularly in complicated cases.
- Reform of jury trial and the politicisation of jury trial.

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(b) To what extent, if at all, are jurors representative of the general public? [11]

Credit reference to:

- Candidates should be able to refer to the principle of juries being summoned at random.
- Accurate identification of participation in jury trials by reference to the criteria.
- The reforms made to ensure that the jurors are representative of society.
- The qualifications for jury trial, for example, people must be between the ages of 18-70 and registered to vote.
- Credit will be given for accurate citation.

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

[14]

Credit reference to:

- The models of criminal justice, for example, the dual process model and the crime control model.
- Understanding the significance of the approaches arising out of the models.
- High profile miscarriage of justice cases.
- Wrongful convictions could be avoided through introduction of corroboration rule for confession evidence; stricter control of the activities of police in the police station and more money for the defence to challenge forensic evidence.
- Criminal Appeal Act 1995.
- Credit will be given for relevant citation.

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(b) Discuss the impact of the Criminal Cases Review Commission on the appeal process. [11]

Credit reference to:

- Candidates should refer to what the Commission is and also the reasons for its creation, notably the problems arising out of well known miscarriages of justice cases.
- Candidates should refer to the membership, function and powers of the Commission.
- The Commission is not an appeal court.
- Candidates should refer to the extent to which the Commission solve the problems that it was set up to address.
- There is evidence of a serious backlog of cases emerging?

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Q.5 (a) Explain the various methods of alternative dispute resolution.

[14]

Credit reference to:

- Distinction between adjudication and consensual. Adjudication as an aspect of the civil procedural rules; consensual forms are less reliant on adjudicating the decisions and are designed more to promote the parties to reach an agreement.
- Arbitration.
- Mediation.
- Conciliation.
- Candidates will be rewarded for discussion and relevant citation.

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(b) Discuss the advantages and disadvantages of alternative dispute resolution.

[11]

Credit reference to:

- ADR offers an opportunity to avoid litigation with all the disadvantages that this can bring.
- Formality versus informality.
- Timeliness.
- Cost.
- Expertise of the arbitrator.
- Limited period.
- Disadvantages include privacy; the role of precedent; increasingly costly.
- The Human Rights dimension which promotes a right of access to the courts and not just a fair trial.
- Candidates will be rewarded for appropriate citation.

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Q.6 (a) Explain the role of the Legal Aid Agency.

[14]

Credit reference to:

- Executive arm of the Ministry of Justice.
- Different levels of help and representation are available.
- Means test for representation.
- Problems including capping of funding; number of solicitors is decreasing.
- Financial level of eligibility excludes people on modest means.
- An understanding of the policy context and emerging legislation.

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(b) Discuss the extent to which there are unmet legal needs.

[11]

Credit reference to:

- Citizen's Advice Bureau and the significance of Government funded advice.
- Law centres.
- Schemes run by lawyers, for example, cheap free interviews and related schemes.
- Debt advice schemes.
- Free accident legal advice services.
- The rise of the pro bono movement.

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GCE LAW
PAPER LA2 (AS)
UNDERSTANDING LEGAL REASONING, PERSONNEL AND METHODS

Answer two questions.

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

“The mandatory duty imposed on domestic courts by S2 of the Human Rights Act 1998 is to take into account any judgement of the Strasbourg Court and any opinion of the Commission. Thus they are not strictly required to follow Strasbourg rulings as they are bound by S2 (1) of the European Communities Act 1972 and as they are bound by the rulings of superior courts in the domestic curial hierarchy.”

Source: Lord Bingham in Price v Leeds City (2006)

(a) Explain the rules of precedent with particular reference to the hierarchy of courts [14]

Credit reference to:

- The authoritative hierarchy of the court structure in the UK legal system.
- The distinction between the European Court of Justice and the European Court of Human Rights.
- The rule of the Supreme Court and the Practice Statement 1966.
- The difference in status between decisions of the European Court of Justice and the European Court of Human Rights.

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(b) Discuss the advantages and disadvantages of the doctrine of precedent.

[11]

Credit reference to:

- It saves the time of the judiciary.
- It provides a measure of certainty to law.
- It provides for a measure of formal justice.
- It provides an opportunity for the judges to develop the common law.
- The degree of certainty provided by the doctrine is undermined by the absolute number of cases.
- Law may become hampered by an unjust precedent.
- The constitutional ambiguity in judges making law.

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

“On 1 March 2012 the European Council adopted a (fictitious) Directive concerning the protection of young people in particular types of employment. The Directive provided that no person under the age of 16 years old shall be required to work when there was no sunlight and member States were given one year in which to implement the Directive. The British Government was opposed to the Directive on the basis that it would stop young people being able to deliver newspapers in the winter months when it was dark in the early morning.”

- (a) Explain what steps can be taken against the United Kingdom to ensure that the Directive is implemented. [14]**

Credit reference to:

- Consideration of the facts in particular that the UK has one year to implement the Directive.
- The Commission entitled to commence a formal action under Article 226 if it was unable to convince the UK that it should implement the Directive.
- Procedure adopted by the Commission.
- The role of the Court of Justice under Article 228.
- Sanctions of the Commission as there is no defence because member States are required to fulfil all community law obligations – Article 10.

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(b) Discuss the impact of European Community Law on the law of England and Wales.

[11]

Credit reference to:

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

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

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

“The introduction to the Protocol sets out the joints aims of the Lord Chancellor and Chairman of the Law Commission to create law that is fair, modern, simple and accessible and to increase the momentum of law reform. The Protocol lays down the procedure for deciding on projects to be included in a programme of law reform; and on projects referred to the Commission by Ministers. It also sets out the role and procedures to be followed by both the sponsoring Government Department and the Law Commission during the currency of a law reform project and after a project is completed.”

Source: The Law Commission Eleventh Programme of Reform (2011)

(a) Explain the role of the Law Commission with particular reference to the Law Commission Act 2009. [14]

Credit reference to:

- The Law Commission Act 2009 has introduced a requirement for the Lord Chancellor to prepare and lay before Parliament an annual report setting out the extent to which Law Commission proposals have been implemented by Government over the preceding years including reasons why any proposal should not be implemented.
- The House of Lords has approved a new procedure for the handling of Law Commission Bills.
- The Law Commission Act 2009 gave statutory backing to a protocol between the Lord Chancellor and the Law Commission setting how the Government and the Law Commission should work together on law reform.
- 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) Assess the success of the Law Commission in implementing the reform of English and Welsh Law. [11]

Credit reference to:

- Since its establishment in 1965 over one hundred of its law reports have been implemented.
- Credit will be given for relevant citation for example the Trustee Act 2000.
- A significant number of reports recommending reform have yet to be implemented.
- Credit reference to appropriate citation.

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

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

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

“In addition to the main rules of interpretation of statutes there are a number of presumptions and aids used by judges which are rebuttable.”

(a) Explain the presumptions and aids.

[14]

Credit reference to:

- Against the alteration of the common law.
- That a mental element is required for criminal offences.
- Against retrospective effect of a new law.
- Presumption against deprivation of liberty.
- Presumption against breaking international law.
- Presumption in favour of words taking their meaning from the context in which they are used.
- 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) **Using your knowledge of statutory interpretation, explain how a court might approach the interpretation of this section in the light of the facts set out below.** [11]

Inshore (fictitious) Fishing Act 2013.

The long title of the Act describes it as: “An Act to preserve fish stocks from over exploitation of commercial fishing by vessels adapted for this purpose.”

Section 1 provides that “Fishing vessels in the course of a business within three miles of the coast requires a fishing licence from the Ministry of Fishing.”

William operates a pleasure cruise vessel which he uses to take tourists on sightseeing trips around the coast. In order to boost his business William decides to offer fishing trips for tourists restricted to five tourists at a time who fish from the vessel within sight of the coast with fishing rods. He is now being prosecuted for breach of the Act.

Credit reference to:

- Application of different rules for the scenario.
- Application of other ways of interpretation.
- Discussion of the purpose of the Act.
- Credit will be given for relevant citation.

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

Marks	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 factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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 factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question 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 factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-3	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 COMMERCIAL LAW

Answer two questions.

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

Alison decided to sell her rare penny black postage stamp. On Tuesday she wrote to Benny who she knew had always wanted it, telling him that he could buy it for £25,000 and that the offer would remain open until Saturday. Benny wanted to buy the stamp but did not reply immediately because he was unsure that he could afford it. On Wednesday morning, Alison sold the stamp to Carys for £26,000. On Wednesday afternoon Benny heard at a meeting of stamp collectors that Carys had bought a rare penny black stamp. This made him even more enthusiastic to buy a penny black stamp so he hurried home and posted a letter to Alison saying that he would buy the stamp for £25,000. Whilst the letter was posted, the sorting office lost the letter and it did not reach Alison until four weeks later.

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

Credit reference to:

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

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 role of law reform bodies.

[11]

Credit reference to:

- Discussion of the role of the Law Commission and the significance of agreeing a programme for law reform.
- Identification of other law reform pressure groups and bodies.
- The distinction between the work of the Law Commission and pressure groups.
- Appropriate citation of the work of the Law Commission and in particular its role in prompting reform in technical areas of law.
- The relevance of the postal rule and law reform.

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 and answer the questions based on it.

Suzanne is a manufacturer of specialised machine tools. She contracted with Clair to supply her with a new machine to use her factory based in Cardiff. Suzanne's goods are so specialist that she has a full order book and her goods are always in high demand. The new machine that Clair agreed to supply Suzanne would increase her capacity to produce her goods. However, Clair was late in delivering the machinery and during the delay, Suzanne could have taken on an unusually profitable contract if she had had the additional capacity. Because of the specialist nature of her machine tool business, Suzanne could not find a means of meeting the demands of the extra contract. She had however included a clause in the contract with Clair stating that Clair would pay her £10,000 per day for every day that she was awaiting delivery of the machine. Suzanne's normal profit is £2,000 per day and would have been £4,000 per day under the unusual contract which she has now failed to deliver.

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

Credit reference to:

- The principle behind the damages award is that it is generally compensation rather than punishment.
- The distinction between expectation interest and reliance interest.
- The rule of remoteness; What is meant by a loss being "within the reasonable contemplation of the parties"?
- Credit reference for appropriate citation, for example, *The Heron II* (1969); *Jackson v Royal Bank of Scotland* (2005); *Hadley v Baxendale* (1854).

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

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

- (b) Explain the means available for Suzanne, outside of litigation, to resolve this dispute. [11]

Credit reference to:

- The significance of civil procedure rules and pre-action protocols; discussion of alternative dispute mechanisms.
- Advantages and disadvantages of alternative dispute resolution mechanisms.

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

Ann wanted to purchase a piece of antique furniture. She went to Keith's shop which was world renowned for selling antique furniture. She saw a cupboard which she particularly liked. It had only come in that morning and Keith's new assistant, Ian, who had never worked in an antiques shop before had brought it into the main showroom of the shop. Ann asked Keith if she could see the cupboard and examine it. She said that she liked the cupboard but would only buy it if it was a genuine antique. Although Keith had not examined the cupboard properly, he assured her that in his opinion it was a 17th century antique cupboard. In fact, the cupboard is a late 20th century reproduction. Ann has now discovered this to be the case and the cupboard is worth less than 10% of the price that she paid for it. Furthermore, had the cupboard been genuine it would now be worth more than twice the price that she paid for it.

(a) In the light of reported case law and other sources of law, advice Ann.

[14]

Credit reference to:

- Nature of misrepresentation and differentiating between types of misrepresentation.
- Is this an express term of a contract.
- Sale by description.
- The distinction between fact and opinion.
- Credit will be given for relevant citation.
- Damages available including rescission.

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

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

(b) Explain the role of statutory interpretation in the development of law.

[11]

Credit reference to:

- The approaches to statutory interpretation.
- The co-existence of the common law and statute.
- Misrepresentation Act 1967.
- Credit will be given for relevant citation.
- The fiction of fraud under the Misinterpretation Act and the significance of statutory interpretation.

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.

Steven contracted to purchase an Elite Z motorbike from Julia. He wanted to use the motorbike immediately and she agreed to let him have it if he would pay her four instalments of £3,000 every three months for twelve months. After nine months, Steven unfortunately lost his job. Julie felt sorry for Steven and told him that if he paid £1,500 on time by the end of the twelve month period, she would not ask for more. Steven paid the £1,500 on time but since this time Julie has heard that Steven has found a new job and is insisting that he pay her the remaining £1,500.

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

Credit reference to:

- The doctrine of past consideration and also promissory estoppel.
- Credit will be given for relevant citation.
- The question of the enforceability of the promise.
- Economic duress.
- Unjust enrichment.

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.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given fact situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

(b) Explain the role of the doctrine of precedent.

[11]

Credit reference to:

- The significance of case law and the doctrine of precedent.
- Hierarchy of Courts.
- Relevance of case law and the law of equity.
- Candidates will be rewarded for relevant citation
The role of judicial personalities in this regard, for example, Lord Denning.

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

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

LAW – PAPER LA3 (A2)

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

OPTION 2: CRIMINAL LAW AND JUSTICE

Answer two questions.

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

A charity which helps ex-offenders began renovating an old house in a pleasant suburb and turning it into a hostel for former prisoners with mental health problems. Many of the people who lived nearby were opposed to the hostel, as they feared that its presence would affect the value of their own houses and make them harder to sell. One local resident, Matt, decided to take matters into his own hands. Under cover of darkness, he broke into the hostel and began to damage the fittings and throw paint all over the walls. Suddenly one of the social workers Karen, appeared with her mobile phone in her hand, ready to call the police. To stop her, Matt punched her as hard as he could, knocking her unconscious. Thinking he had killed her, Matt tried to make it look as if Karen had died in an arson attack by setting fire to a heap of paint-soaked rags before running from the burning building. It so happened that Karen's phone had already connected with the emergency services before she fell unconscious, and the ambulance and fire brigade were there within minutes. Karen was brought alive from the building, but died when the ambulance taking her to hospital was involved in a serious road accident.

- (a) **In the light of reported case law and other sources of law, consider whether Matt may be criminally liable for the death of Karen.** [14]
- (b) **Explain how a jury would be selected if Matt were to be tried in the Crown Court.** [11]

Credit reference to:

- Part (a)
- Elements of homicide: actus reus and mens rea.
 - Causation – factual and legal causation, e.g.. *White Dalloway*.
 - Coincidence of actus reus and mens rea: the “same transaction” principle: *Thabo Meli*, *Church*, *Le Brun*.
 - *Novus actus interveniens*: circumstances which would be sufficient to break the chain of causation – act of a third party which is “free, deliberate and informed” (*Pagett*); unforeseeable natural events either could cover the situation of an ambulance crashing.
 - In the event that the chain of causation is not broken, Matt may be liable to be convicted of involuntary manslaughter. Two possibilities:
 - Unlawful act manslaughter: *Franklin*, *Lamb*, or (perhaps less likely).
 - Gross negligence manslaughter on the *Miller* principle: a duty to act where D has created a situation that puts V in danger.

- Part (b)
- Mode of jury selection: random list of potential jurors generated by computer at the Central Summoning Bureau from the electoral register; summonses sent out to confirm that the individual is not in a disqualified category; jury for a particular case chosen by random ballot; first 12 names called out are sworn in.
 - Qualification for jury services: 18-70, resident in UK for at least 5 years since 13th birthday, not within a disqualified category.
 - Criminal Justice Act 2003: only the over 65s and members of the armed forces are exempt. Those who are disqualified: anyone who has been sentenced at any time to 5 or more years' imprisonment; or in the past 10 years has served any part of a sentence of imprisonment, or had a suspended sentence or a community order.
 - People who suffer from mental illness or handicap and are being treated regularly may not serve. The judge can discharge anyone who is not fit to serve through physical ability (blind or deaf) or does not have sufficient understanding of English.
 - Summoning officer has a discretion to excuse anyone or allow them to defer their service to another time for good reason.
 - Jury vetting: routine police check to exclude those disqualified because of a criminal record; in exceptional cases the Attorney General may authorise vetting of background and political views.
 - A jury must random; a judge may not attempt to create a racial balance on a jury: R v Ford.

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

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

Percy's girlfriend Natasha was injured in a car accident and had to spend a few days in hospital. To cheer her up, Percy and his friend went to the hospital to visit her, taking with them some cans of lager. It was a warm day, and by the time they reached the hospital they had drunk all the lager. Percy thought he knew which room Natasha was in, and flung open the door with a shout of "Hello, gorgeous?" The eighty-one year old woman in the bed got a severe fright, and had to be given treatment for the shock. Percy and Tyrone apologised and were shown to Natasha's room. Natasha was in a foul mood, having been told that she would need crutches for several weeks. When Percy admitted that he had no lager for her, she picked up her water jug meaning to throw the contents over him, but threw the jug as well. Percy ducked, and the jug hit Tyrone, cutting his forehead. At that moment a female police officer, PC Sweet, entered the room to interview Natasha about the accident. Percy, who by now was rather drunk from all the lager he had consumed, jumped to the conclusion that PC Sweet had come to arrest him for frightening the old woman. Percy ran for the door, knocking PC Sweet to the ground and causing her to suffer permanent damage to her back.

- (a) **In the light of reported case law and other sources of law, consider whether Percy or Natasha may have committed any offence.** [14]
- (b) **Explain what sources of legal advice and funding might be available to them if they were to be prosecuted.** [11]

Credit Reference to:

- Part (a)
- Assault and battery at common law: summary offences – Criminal Justice Act 1988, s.39.
 - Percy may be guilty of assault against the old lady, by analogy with *Smith v Superintendent of Woking Police Station*. But the prosecution would have to show that he intended to cause fear or was reckless in so doing.
 - Offences Against the Person Act 1861: sections 47, 20 and 18.
 - 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 reckless – D must foresee a degree of harm, but not necessarily the degree of harm which occurred: *Mowatt*, *Savage*; *Parmenter*.
 - The facts are very similar to *Savage*; *Parmenter*. Natasha can only be convicted of s.20 if she intended or foresaw some harm. If all she intended or foresaw was to throw water on Percy, then she is guilty of the s.47 offence.
 - The principle of transferred malice applies: *Latimer*.
 - 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. Here, Percy intends to evade arrest.
 - Intoxication: *Majewski*; distinction between crimes of basic and specific intention; *Kingston*.

- Part (b)
- 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.
 - Abolition of the Legal Services Commission by LAPS0 2012 and consequences for availability of criminal legal aid.
 - Levels of state funding: advice and assistance, advocacy assistance and representation.
 - Means test and merits test.
 - Public Defender Service (in four areas only).

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

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

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

PC Knabb saw a man in the street who he thought he recognised as one of a family of regular offenders. PC Knabb stopped the man and said, "Aren't you Jac Jones?" Jac Jones replied, "No sir, never heard of him." PC Knabb said, "I think you're lying", and proceeded to search him. PC Knabb found nothing suspicious, but he was still not satisfied, so he arrested Jac in order to establish his identity. When they arrived at the police station, the custody officer said, "Hello, Jac, how's it going?" PC Knabb said, "He says he's not Jac, so let's put him in a cell until he tells us who he is." Jac sat in the police cell for twenty four hours. He did not ask to contact his family or obtain legal advice, and the police did not offer. After twenty four hours Superintendent Slack came on duty and wanted to know why there was no custody record for Jac. When the custody officer explained the circumstances, Superintendent Slack told him to give Jac bail and send him home.

- (a) **In the light of reported case law and other sources of law, consider the legality of the actions of police.** [14]
(b) **Explain the powers of the police to grant bail.** [11]

Credit reference to:

- Part (a)
- Police and Criminal Evidence Act 1984, as amended.
 - Police powers to stop and search: PACE ss.1-3 and Code A.
 - Power of arrest: PACE s.24 and Code G.
 - Role of custody officer; rights of the suspect when brought to the police station; Code C.
 - Fingerprints and non-intimate samples: PACE s.60 and s.65.
 - Rights of the suspect during detention: PACE sa.56 – right to have someone informed of detention; s.58 – right to legal advice; the circumstances in which these rights can be delayed.
 - Time limits on detention: PACE s.41.
 - Reviews of detention: PACE s.40.
- Part (b)
- Police and Criminal Evidence act 1984, ss.37 and 38: powers of custody officer to grant bail.
 - Bail should be granted after 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.
 - Power of Police to grant "street bail" under s.4 of the Criminal Justice Act 2003.
 - Coroners and Justice Act 2009, s.115: only a Crown Court judge may grant bail on a charge of 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: under s.27 of the Criminal Justice and Public Order Act 1994 the police may grant bail subject to conditions: candidates may give examples of conditions.
 - Power to arrest for breach of conditions of police bail is given to the police by s.29 of the Criminal Justice and Public Order Act 1994.
 - The Police (Bail and Detention) Act 2011 provides retrospectively that the police can keep someone on bail without charge for as long as they consider necessary – reverses Greater Manchester Police v Hookway 2011.

Marks	AO3
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 factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Q.4 Study the text below and answer the questions based on it.

Brian was woken up in the middle of the night by the sound of somebody moving around downstairs. Brian's wife was still asleep, so not wishing to alarm her Brian went quietly into the bedroom where his two little daughters slept, to check that they were safe. The bed of his younger daughter, Chloe, was empty, and Brian thought he could hear her crying downstairs in the living room. Full of fear and anger, Brian raced down the stairs and burst into the living room. He found Chloe sobbing and cuddling the family's little dog, which was bleeding from a blow to the head. Near to her stood a frightened-looking young man with a baseball bat in his hand. The young man tried to run past Brian and escape, but Brian picked up the nearest hard object he could find, which happened to be his electric guitar, and struck him with such force that he later died from his injuries.

- (a) **In light of reported case law and other sources of law consider whether Brian may have any defence to a charge of murder.** [14]
- (b) **Explain the tests which the Crown Prosecution Service would use in deciding whether Brian should be prosecuted.** [11]

Credit reference to:

- Part (a)
- Self defence and defence of another at common law; prevention of crime: Criminal Law Act 1967, s.3 – according to Cousins, there is no difference between the requirements of the two defences.
 - Self defence has been codified in s.76 of the Criminal Justice and Immigration Act 2008, but the section does not purport to change the common law, but only to provide clarity as to its application (especially where householders attack burglars).
 - Self defence is a complete defence leading to acquittal.
 - The defendant must honestly believe that the force was necessary: Palmer.
 - The force used must be reasonable in the circumstances – an objective test to be decided by the jury.
 - In assessing whether the force was reasonable, the jury “should not use jewellers’ scales” (Read v Wastie). In Palmer, it was said that if D had only done what he honestly and instinctively thought was necessary this would be the most potent evidence that the force was reasonable.
 - There is no duty to retreat: this is merely a factor to be considered when deciding whether the force used was reasonable (amendment to s.76 by LAPS0 2012).
 - Force cannot be reasonable if it is not necessary: Palmer, Clegg.
 - If self defence fails, Brian may put forward the partial defence of loss of control: sections 54 and 55 of the Coroners and Justice Act 2009 – reduces murder to manslaughter.
 - Qualifying trigger – fear of serious violence from V towards D or another (s.55(3)); things said or done which constituted circumstances of an extremely grave character and caused D to have a justifiable sense of being seriously wronged.
 - A person of D's sex and age and in the circumstance of D: s.54(1)(c) would be likely to act in the same way.

- Part (b)
- 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. Revised version reissued January 2013.
 - This consists of two tests, the evidential test and the public interest test, which must be applied in that order. If the evidential test is not passed, then the case should not be proceeded with at that time. If the evidential test is passed, the Crown Prosecutor should go on to consider the public interest test. Only if both tests are passed should proceedings be brought.
 - Evidential test – is there a realistic prospect of conviction, i.e., would a court be more likely than not to convict. The CP must consider two issues: can the evidence be used in court, and is it reliable.
 - Whether evidence can be used in court – is it likely to be excluded because of the way it was obtained; is it hearsay; does it relate to the bad character of the accused.
 - Whether evidence is reliable – is it consistent with an innocent explanation; are there doubts about the reliability of a confession; is the identity of the suspect likely to be questioned; are there doubts about the reliability of any witnesses’ does a witness have any ulterior motive; does a witness have convictions which cast doubt on his/her reliability; is there a need to gather more evidence.
 - If it would be helpful in assessing a witness’s reliability, an appropriately trained Crown Prosecutor may conduct a pre-trial interview with the witnesses.
 - Public interest test – it will usually be in the public interest to prosecute unless the prosecutor is satisfied that the public interest is better served by not bringing a prosecution or by offering an out-of-court disposal.
 - Examples of factors tending in favour of prosecution: e.g., offence likely to result in a significant sentence; committed with a weapon; committed by a group; committed against someone serving the public; committed against a vulnerable person; the accused’s previous record, etc.
 - Factors tending against prosecution: sentence likely to be small; prosecution would have a bad effect on the victim; offence was the result of a genuine mistake; accused has made reparation; accused suffers from significant physical or mental ill-health, etc.
 - The prosecutor may take account of the views of the victim and his/her family. However, the prosecutor does not act for the victim or his/her family, and must form an overall view of the case.

Marks	AO3
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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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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 factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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LAW - PAPER LA3

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

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

Answer two questions

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

A woman went up to PC Tumbrill in the street and told him that she had just seen her neighbour, Karen, whom she knew to be unemployed, walking down the street with a carrier bag full of clothes that she could not possibly have had the money to pay for. PC Tumbrill caught up with Karen and ordered her to show him the contents of her bag. From Karen's appearance and the value of the clothes in the bag, PC Tumbrill thought that the woman who had tipped him off was probably right in assuming that Karen had stolen the clothes. He therefore arrested Karen and took her to the police station. Karen was placed in a cell and left there for ten hours. Her request to be allowed access to legal advice was refused. She was then interviewed for a further fourteen hours without a break. Karen claimed that the money to pay for the clothes had been given to her by her mother, but the police refused to check her story or allow Karen to contact her mother on the ground that her mother would probably lie to protect Karen. Eventually, after Karen had been in custody for thirty-six hours, she was charged with theft and released on bail.

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

Credit Reference to:

- Police and Criminal Evidence Act 1984, as amended.
- Police powers to stop and search: PACE ss.1-3 and Code A.
- Power of Arrest: PACE s.24 and Code G.
- Role of custody officer; rights of the suspect when brought to the police station; Code C.
- Rights of the suspect during detention: PACE s.56 – right to have someone informed of detention; s.58 right to legal advice; the circumstances in which these rights can be delayed.
- Conditions of detention: Code C.
- Time limits on detention: PACE s.41.
- Reviews of detention: PACE s.40.

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

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

[11]

Credit reference to:

- Police and Criminal Evidence Act 1984, ss.37 and 38: powers of custody officer to grant bail.
- Bail should be granted after a suspect has been charged with an offence (s.38) unless: there is doubt about the name and 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, s.115: only a Crown Court judge may grant bail in a charge of 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.
- Power of police to grant street bail under s.4 of the Criminal Justice Act 2003.
- Bail conditions: under s.27 of the Criminal Justice and Public Order Act 1994 the police may grant bail subject to conditions: candidates may give examples of conditions.
- Power to arrest for breach of conditions of police bail is given to the police by s.29 of the Criminal Justice and Public Order Act 1994.
- The Police (Bail and Detention) Act 2011 provides retrospectively that the police can keep someone on bail without charge for as long as they consider necessary – reverses Greater Manchester Police v Hookway 2011.

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

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

Kate is a civil servant working for the Ministry of Defence. Kate was instructed to prepare a press release which revealed the date of a planned British attack in the Middle East. Kate was specifically instructed not to release the information to the press until the following week, in order to safeguard the troops involved. However, Kate was going on holiday the next day, so she sent the press release in an email to her friend Martha Mutton, the editor of the Daily Probe, and told her not to print it until the specified day. Martha could not resist the chance of a scoop, and printed the information four days early.

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

Credit reference to:

- Official Secrets Act 1989 – protected category: defence (s.2).
- Kate is a Crown servant under s.12 of the OSA 1989, so she may be liable under s.2 for making a damaging disclosure of any information etc. to which she has access by virtue of being a Crown servant.
- The information here clearly falls within the list of possible effects which make a disclosure damaging for the purpose of s.2.
- Defences – under s.7(4) it is a defence for Kate to prove that at the time of the alleged offence she believed that she had lawful authority to make the disclosure in question and had no reasonable cause to believe otherwise. Whether the defence would succeed would depend on whether she reasonably believed she had the authority to disclose the press release to Martha at the time when she did (probably not, if she was told not to release it before a certain date.)
- Awareness of likelihood of damage – by virtue of s.2(3) it would be a defence for Kate to prove that she did not know, and had no reasonable cause to believe, that the information was within the relevant category, or alternatively that the disclosure would be damaging. The first clearly would not apply, but Kate might argue that she had no reason to believe that this particular disclosure would be damaging.
- Martha – not a Crown servant, so her case comes with s.5 of the OSA 1989. Whether she commits an offence by publishing the material depends on how it was acquired.
- If Kate's disclosure was without authorisation, Martha's disclosures may be covered by s.5(1)(a)(i) – information acquired as a result of an unauthorised disclosure by a Crown servant.
- More likely, she would be charged with disclosing material entrusted to her in confidence, or with a reasonable expectation of confidence, by a Crown servant, under s.5(1)(a)(ii).

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 factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
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(b) Explain how a jury would be selected if Kate or Martha were to be tried in the Crown Court. [11]

Credit reference to:

- Mode of jury selection: random list of potential jurors generated by computer at the Central Summoning Bureau from the electoral register; summonses sent out to confirm that the individual is not in a disqualified category; jury for a particular case chosen by random ballot; first 12 names called out are sworn in.
- Qualification for jury service: 18-70, resident in UK for at least 5 years since 13th birthday, not within a disqualified category.
- Criminal Justice Act 2003: only the over 65s and members of the armed forces are exempt. Those who are disqualified: anyone who has been sentenced at any time to 5 or more years' imprisonment; or in the past 10 years has served any part of a sentence of imprisonment, or had a suspended sentence or a community order.
- People who suffer from mental illness or handicap and are being treated regularly may not serve. The judge can discharge anyone who is not fit to serve through physical disability (blind or deaf) or does not have sufficient understanding of English.
- Summoning officer has a discretion to excuse anyone or allow them to defer their service to another time for good reason.
- Jury vetting: routine police check to exclude those disqualified because of a criminal record; in exceptional cases the Attorney-General may authorise vetting of background and political views.
- A jury must be random; a judge may not attempt to create a racial balance on a jury: R v Ford.

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

AO1	
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content <i>making an entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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Q.3 Study the text below and answer the questions based on it.

Following some unpleasant racist incidents, Parveen and Hari organised a march to call for peace and reconciliation. The march was to be followed by an open-air gathering in the town centre with music and dancing to celebrate harmony between different cultures. Around a thousand people took part in the march. As they approached the town centre, the police officer in charge of the march, Superintendent Ahmed, received information that a rowdy group of individuals known to be responsible for previous racist attacks was on its way to the town centre to confront the marchers. Superintendent Ahmed therefore gave instructions to the marchers to alter their route to avoid going anywhere near the town centre. Parveen and Hari protested that this would make it very difficult for people to take part in the planned gathering. Superintendent Ahmed told them that, with great regret, he had banned the gathering as well. In the town centre itself, police officers ordered everyone who had already arrived for the gathering to leave the town centre immediately. Those who objected were arrested for taking part in a banned assembly and brought before the magistrates the following day.

(a) In the light of reported case law and other sources of law, consider whether the police were acting within their powers. [14]

Credit reference to:

- Public Order Act 1986 and Criminal Justice and Public Order Act 1994.
- Powers of police in relation to processions: s.12 of the POA 1986.
- Power to impose conditions on processions: s.12(1) – the “four triggers” – where the senior officer present at the scene reasonably believes that the procession may result in serious public disorder, serious damage to property, or serious disruption to the life of the community, or that the purpose of the procession is intimidation.
- Conditions which can be imposed: the senior officer can impose such conditions as appear to him necessary to prevent the disorder, damage, disruption or intimidation that is feared. There is no requirement that the officer’s decision be based on reasonable grounds.
- There is no list of conditions that can be imposed, but the section specifically mentions that they may include the route to be followed, and a condition not to enter a given public place.
- Organisers of the procession under s.12(4) and those who take part under s.12(5) commit an offence if they refuse to comply with a condition.
- Power to impose conditions on assemblies are contained in s.14 and are virtually the same as in s.12.
- S.14 only applies to static assemblies: *DDP v Jones* 2002, so cannot be used to impose conditions on movement – but in *Jones* the court held it could sever any conditions which was ultra vires and leave the other conditions intact.
- There is no power for the senior officer at the scene to ban an assembly, so strictly speaking Superintendent Ahmed is acting outside of his powers. However, the order to leave the town centre may be treated as a condition imposed under s.14, as in *Brehony v CC of Greater Manchester*, *DPP v Jones*, *Broadwith v CC of Thames Valley Police*, etc.
- The organiser and participants in an assembly commit an offence by refusing to comply with a condition: s.14 (4) and (5).
- Under s.14A-C, inserted by the CJPOA 1994, assemblies which are classed as trespassory may be the subject of an advance ban. The assembly here could be classed as trespassory – it is on the highway (s.14A(9)), and one of the grounds on which an assembly can be banned is that there is reason to believe that it may result in serious disruption to the life of the community. Once a ban is in force, it is an offence knowingly to organise or participate in a banned assembly.
- The power to ban lies with the chief constable, subject to approval by the Home Secretary in London and the local authority elsewhere.
- Convention rights: the rights to freedom of expression (Art. 10) and freedom of assembly (Art. 11) must be taken into account.
- Candidates may discuss breach of the peace powers.

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 factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
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(b) Explain the route of appeal from the magistrates' court.

[11]

Credit reference to:

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

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

AO1	
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content making an <i>entirely convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content <i>making a convincing synoptic connection</i> with elements of knowledge gained in understanding legal reasoning and methods and understanding legal structures and processes. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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Q.4 Study the text below and answer the questions based on it.

Jenny Jones, a professor of geology, wrote a book about climate change in which she claimed that this was mainly caused by changes in the earth itself rather than by human activity. Jenny's former teacher from the days when she was an undergraduate, Professor Stone, was asked to write a review of the book for the Daily Probe, a serious broadsheet newspaper. In his review, Professor Stone wrote: "Jenny Jones' book displays all the charm which has 'enabled' her to succeed in an academic career despite her complete lack of intelligence. Like the professor herself, it looks pretty on the outside but turns out to be full of empty-headed nonsense on the inside." Martha Mutton, the editor of the Daily Probe, felt that it was in the public interest that a dispute between two eminent Professors on such an important subject as climate change should be given greater publicity than to be tucked away in the review column of the paper. She therefore devoted half a page to the review, under the headline: "Clash of the Boffins – Stone Slams Jones Over Climate Change." The story was picked up by a national television network, with the result that Jenny was sacked from her job at the university.

(a) In the light of reported case law and other sources of law, consider whether Jenny could sue for defamation. [14]

Credit reference to:

- Candidates may or may not refer to the Defamation Act 2013. Answers purely on the basis of pre-DA 2013 law should be credited.
- Meaning of defamation: *Sim v Stretch*, *Byrne v Dean* – statement likely to lower the claimant in the eyes of right thinking members of society.
- Defamation Act s.1 imposes a requirement of serious harm to the reputation of the claimant. A statement is not defamatory unless its publication has caused, or is likely to cause, serious harm to the claimant's reputation. Almost certainly the damage to Jenny's reputation would be considered serious, as she lost her job.
- Candidates may cite cases on what can amount to defamation, e.g.,
- *Cassidy v Daily Mirror*, *Charlesworth v NGN*, etc.
- Elements of defamation: the statement must be defamatory; it must refer to the claimant, and it must have been published.
- Reference to the claimant – candidates may cite cases like *Hulton v Jones* or *O'Shea v MGN* – for a mistaken identity case to succeed now, the claimant would have to show serious harm to his/her reputation.
- Defences – pre-Defamation Act 2013 –
- Justification – has to show that the statement is substantially true.
- Fair comment – rebranded 'honest' comment" in *Spiller v Joseph* – now replaced with "honest opinion" under the DA 2013.
- Absolute privilege – statements made in court, Parliament, etc – s.14 of the DA 1996.
- Qualified privilege – where there is a duty to disclose – s.15 of the DA 1996.
- Reynolds defence – publication in the public interest – *Reynolds v Times Newspaper* – now replaced with defence of Publication on a matter of public interest, under s.4 of the DA 2013.
- Post Defamation Act 2013 –
- Defence of justification abolished and replaced with defence of Truth s.2.
- Honest opinion under s.3 – imposes 3 conditions similar to the *Spiller* criteria – the statement must be a statement of opinion; the statement must indicate the basis for that opinion, and it must be the case that an honest person could have held that opinion on the basis of any fact which existed at the time the statement was published, or anything asserted as a fact in a privileged statement before the statement was published.
- The defence fails if the defendant did not hold that opinion.
- A publisher who is not the author will not have the defence if he knew or should have known that the author did not hold that opinion.
- Publication on a matter of public interest: s.4 – it is a defence to show that the statement was on a matter of public interest and that the defendant reasonably believed that it was in the public interest to publish the statement – may help Martha.
- Where the statement is a fair and accurate report of a dispute involving the claimant, the fact that D took no steps to verify the truth of the imputation in the statement will not prevent it being reasonable for him to have believed that publication was in the public interest. The statement can be one of fact or opinion.

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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
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(b) Explain how a civil action differs from a criminal prosecution. [11]

Credit reference to:

- Candidates should be given credit for answers which convincingly demonstrates knowledge, irrespective of whether they cover all the points mentioned here or include others not mentioned here.
- The purpose of a civil action is to rectify the harm to the claimant: so far as is possible, to put the claimant in the position he/she would have been in if the civil wrong had not appeared. The purpose of a criminal prosecution is to determine on behalf of the state and society at large whether the defendant is guilty of an offence, and if so to impose a penalty specified by law.
- Civil actions are brought by the claimant or someone on his/her behalf.
- Criminal prosecutions are brought mainly by the CPS, plus various other bodies with prosecution powers such as HMRC and DPA.
- Burden of proof – a civil claim must be proved on the balance of probabilities; in a criminal trial the prosecution must prove its case beyond all reasonable doubt.
- Differences as to the court structure and routes of appeal Jury trial – mainly confined to criminal trials in the Crown Court and to the coroner's court: very rare nowadays in civil actions.

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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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 connected lender liability provision of Section 75 of the Consumer Credit Act. [25]

Credit reference to:

- The credit industry regards this provision as a flawed provision.
- The EU Consumer Credit Directive 2008 permits the UK to retain the provision.
- The basic requirements of Section 75 and 75A which applies both to three party arrangements and also four party arrangements where this is a consumer/supplier/merchant acquirer/credit card company.
- Role of the Office of Fair Trading.
- Credit will be given for relevant citation.

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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 Consider the impact on consumer protection law brought about by the Enterprise Act 2002.

[25]

Credit reference to:

- The scope of the 2002 Act applied to Consumer Law enforcement.
- The injunction regime.
- Enhancing the role of the Office of Fair Trading.
- The approach to codes of practice.
- Credit will be given for relevant citation.

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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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Q.3 Critically discuss the approach of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 in regulating exclusion clauses. [25]

Credit reference to:

- The ambit of the Unfair Contract Terms Act, e.g. Section 3 and Schedule 2.
- Credit will be awarded for appropriate citation, e.g. Mitchell v Finney Lock Seeds (1983).
- The various regulations and approach of EU Law under the 1999 regulations.
- Credit will be given for discussion on limitations in terms of the scope of both the UCTA and the 1999 regulations.

	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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Q.4 Critically evaluate the protection provided to consumers through the implied contractual obligation that goods should be of satisfactory quality. [25]

Credit reference to:

- The common law position which is that of caveat emptor.
- Discussion of the historical position.
- Sale & Supply of Goods Act 1994 and amendments made.
- Sale & Supply of Goods for Consumer Regulations 2002.
- Discussion of Section 13, 14 & 15 Sale of Goods Act 1979 (as amended).

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

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

SECTION B

Answer **one** question.

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

“What is the problem under consideration? Why is government intervention necessary?”

Consumers are not always provided with the information they need to make informed buying choices, for example, in relation to transparency over additional charges such as freight, delivery or postal charges. Even when these matters are clear in national laws, divergent consumer laws across the EU, including on the minimum level of information to be provided before a consumer commits to buy, reduce consumer confidence in shopping cross-border and dis-incentivise businesses from engaging in cross-border trade in the first place. The CRD (Consumer Rights Directive) is intended to consolidate EU consumer protection legislation on these matters, bringing clarity and lowering the burden of disparate information requirements for both businesses and consumers.

“What are the policy objectives and the intended effects?”

The UK Government is required to implement the CRD (Consumer Rights Directive) by December 2013 and to bring the measures into force by June 2014. It is clear that consumers need transparent, accessible information on the nature and price of the product or service they are considering purchasing, if they are to make good choices. Research such as that commissioned by OFT, suggests that lack of transparency may be used by unscrupulous businesses to draw consumers to make less than optimal choices. Easier access to clear information about prices and reliable information on quality and post-contractual arrangements will ensure that consumers and honest businesses can enjoy the benefits of trade in the UK and across the EU.

Source: BIS EU Consumer Rights Directive: Pre-contractual information requirements for contracts other than distance or off-premises impact assessment, August 2012.

(a) Explain the impact of the Consumer Rights Directive. [11]

Credit reference to:

- This was agreed by the European Commission in 2011 and focusing on simplifying and harmonising rules by key consumer rights areas.
- It clarifies that consumers have the information and time they need to make good decisions; help make consumers fully aware of the costs they are committing to and the implications of any contract; ensure that traders who treat consumers fairly are not disadvantaged by those who uses less transparent practices to lure consumers to less competitive offers.
- The consumer rights directive contains provisions on information; cancellation rights and responsibilities; delivery times; post contract customer help lines; additional payments; fees.
- Candidates will be rewarded for appropriate citation.

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

(a) Assess the role of European Directives in the development of Consumer Law. [14]

Credit reference to:

- The role of European law and the distinction between directives and regulations.
- The role of European law and the development of both consumer protection and contract law.
- Candidates will be rewarded for knowledge of the EU context and particularly the treaty frameworks.
- The general framework for EU activities in favour of consumers.
- Relevant citation in consumer law of directives will be rewarded.

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 factual situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation, making a convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way, making a limited synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
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Q.6 Study the text below and answer the questions based on it.

“The purpose of contract remedies is to place a disappointed promisee in as good a position as he would have enjoyed had his promisor performed.”

Contract law has two methods of achieving this “compensation goal”: requiring the breaching party to pay damages, either to enable the promisee to purchase a substitute performance or to replace the net gains that the promised performance would have generated; or requiring the breaching party to render the promised performance. Although the damages remedy is always available to a disappointed promisee under current law, the remedy of specific performance is available only at the discretion of the court. Moreover, courts seldom enforce contract clauses that explicitly provide for specific performance in the event of breach.

Source Alan Schwartz – “The Case for Specific Performance” 1979 Yale Law School Faculty Scholarship Series

(a) Explain the role of specific performance as a remedy for consumers.

[11]

Credit reference to:

- The order of specific performance as an equitable remedy.
- Criteria for exercising the discretion.
- Adequacy of damages, e.g. personal supervision; personal services; the issue of mutuality.
- Candidates will be rewarded for appropriate citation.

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

	A01
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical applications of the law.

(b) Assess the role of equity in the development of the common law.

[14]

Credit reference to:

- The historic position and the role of the Chancellor.
- The maxims of equity.
- The administration of law and equity that would be achieved through the Judicature Acts 1873-75 after which equity could be obtained in any division of the High Court.
- Reward will be given for accurate citation.
- The role of equity in legal reform, e.g. the doctrine of unconscionability.

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, 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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LAW – PAPER LA4 (A2)

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

OPTION 2: CRIMINAL LAW & JUSTICE

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

SECTION A

Q.1 Critically evaluate the aims behind the sentencing of young offenders.

[25]

Credit Reference to:

- The purposes of sentencing young offenders are set out in the Criminal Justice and Immigration Act 2008 s.9 as being: punishment, reform and rehabilitation, the protection of the public, and the making of reparation by offenders to people affected by their offences.
- The Criminal Justice and Immigration Act 2008 says that when a court is sentencing a young offender, it 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.
- Candidates may refer to the aims of sentencing adults, which are set out in s.142 of the Criminal Justice Act 2003 – to prevent reoffending and rehabilitate the offender while making reparation for the harm caused.
- Candidates may refer to the guidance for the sentencing of young offenders produced by Sentencing Council (set up under the Coroners and Justice Act 2009 to replace the Sentencing Guidelines Council – it should not be regarded as a serious fault if candidates still refer to the Sentencing Guidelines Council).
- The guidance includes aims and factors to be taken into consideration: that the main aim of the youth justice system is to prevent reoffending, and the welfare of the child. The court must consider the offender's age, the seriousness of the offence, any aggravating factors, any mitigating factors, whether the defendant pleaded guilty, and the relevant sentencing guidelines for the particular offence.
- Candidates may offer an explanation and discussion of the traditional aims of sentencing: retribution, deterrence (individual deterrence and general deterrence), protection of society, rehabilitation/reform, and reparation. A thorough and well reasoned discussion, may be regarded as sound even if it does not include the details mentioned above.
- Candidates may refer to specific dispositions and relate these to the aims of sentencing of young offenders, e.g., non-court dispositions (reprimand, final warning, penalty notice for disorder); youth rehabilitation order (ss.1-4 Criminal Justice and Immigration Act 2008); first-tier sentencing (referral order, reparation order); detention and training order; custodial sentences that can only be imposed by the Crown Court for very serious offences under the Powers of the Criminal Courts Act 2000, ss.90-91.

	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 factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
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Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Q.2 “The Crown Prosecution Service is both an essential and a highly esteemed element within the criminal justice system.” Discuss. [25]

Credit reference to:

- Background and reasons for the establishment of the CPS (e.g., Justice Report, Phillips Commission).
- Prosecution of Offences Act 1985.
- Role of the CPS within the criminal justice system: taking the decision whether to prosecute; advising the police, conducting prosecutions in the magistrates’ courts and Crown Court.
- Early problems and proposals for reform: Glidewell Report, Narey review.
- Major reforms: the Narey fast-track system; establishment of Criminal Justice Units; closer collaboration with the police.
- Present structure of the CPS: 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 of the statement.

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

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

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 “The law relating to bail has all but abandoned the principle that everyone should be treated as innocent unless proven guilty in court.” Discuss. [25]

Credit reference to:

- Bail Act 1976, s.4 – presumption of entitlement to bail.
- Police and Criminal Evidence Act 1984, s.37 – custody officer has power to release on bail a person who has been arrested but not charged in order for the police to pursue their enquiries.
- 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.
- PACE 184 s.38 – power of custody officer to grant bail from the police station following charge.
- Circumstances in which bail need not be granted: Bail Act 1976 Schedule 1 (e.g., defendant is likely to fail to surrender, commit further offences or interfere with witnesses or the administration of justice).
- Circumstances in which police bail may be refused: s.38 – e.g., where the custody officer has reasonable grounds to believe that the name or address given by the suspect may not be genuine; where the custody officer has reasonable grounds to believe that the suspect will commit further offences, interfere with witnesses or the administration of justice; where detention is necessary for the suspect’s own protection or for the protection of others; where the charge is murder (Coroners and Justice Act 2009).
- Factors to be taken into account when considering whether bail should be granted.
- Modification of the general presumption in favour of bail – e.g., bail can only be granted in exceptional circumstances where the defendant is charged with murder, manslaughter or rape, or where previously charged with a specified serious offence or where the offence was committed while already on bail (Criminal Justice and Public Order Act 1994 s.25 as amended by Crime and Disorder Act 1998).
- Right of the prosecution to appeal against grant of bail: Bail Amendment Act 1993.
- Powers of police and courts to impose bail conditions.
- Powers of arrest for breach of bail conditions.
- Evaluation of when it is appropriate to refuse bail; bail bandits, cases of Hogans and Weddell.

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

Q.4 To what extent does the law accept duress as a defence to a criminal charge?
[25]

Credit reference to:

- Two types of duress: duress by threats and duress of circumstances.
- Duress by threats: where a person is forced to commit a crime by threats of death or serious injury to oneself or someone for whom one reasonably feels oneself to be responsible: Hasan, Shayler, Valderama-Vega.
- Extent of defence: does not apply to murder: Howe; or attempted murder: Gotts.
- Nature of threat: must be of death or serious injury; in Quayle and others, A-G's Ref. No.2 of 2004) the CA held that a threat to cause severe pain not associated with serious injury would not suffice; in Singh the CA held that a threat to expose immorality would not suffice; since 1746 in McGrowther it has been taken as axiomatic that a threat to harm property does not suffice (so not your dog, or the Mona Lisa).
- The threatened harm must be (or be believed to be) imminent: Hudson and Taylor, Hasan – in Hasan, the HL disapproved Hudson and Taylor as too favourable to D: the harm must be immediate or almost immediate with no possibility of evasive action.
- The two-part test: created in Graham but restricted in Hasan – a subjective element and an objective element.
- Subjective element: was D forced to act as he did because he believed that death or injury would follow either to him or someone for whom he reasonably felt himself to be responsible? In Hasan, the HL reiterated that the belief must be not merely genuine but also reasonable.
- Objective element: would a sober person of reasonable firmness, sharing the defendant's characteristics, have acted in the circumstances in the way that the defendant did?
- Characteristics: Bowen – age, sex, pregnancy, serious physical disability, recognised mental illness or psychiatric condition.
- Defence not available to D if, as a result of his voluntary association with others involved in criminal activity, he foresaw or ought reasonably to have foreseen the risk of being subjected to compulsion by threats of violence – Hasan. Also Cole – the CA said that the defence only applies where the duressor has demanded the very offence D commits – a general demand for money would not suffice.
- Duress of circumstances: essentially the same two part test applies where D claims he was forced by circumstances to commit an offence.
- Cases: Willer, Conway, Martin.

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

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

SECTION B

Answer one question from this section.

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

“It might be expected that all crimes nowadays would be defined in a criminal code, or at least in a statutory enactment. Yet even some serious offences such as murder and manslaughter are still solely the creation of the Common Law. The actus reus and mens rea of Common Law offences – of which there are nowadays rather few – have been developed by judges dealing with events that arose in real life, and not by philosophers and moralists concerned with matters of principle. This is both a weakness and a strength. On the one hand, the actus reus and mens rea can be changed without notice. On the other hand, it means that the law retains the essential flexibility to achieve justice in individual cases that come before the courts.”

- (a) **Explain the meaning of the terms actus reus and mens rea.** [11]
- (b) **Evaluate the importance of the relationship between law and morality.** [14]

Credit reference to:

- Part (a)
- Meaning of actus reus: every part of the definition of an offence apart from the mens rea.
 - Wider than just a physical action: includes any consequences of the action which are included in the definition, and any surrounding circumstances (apart from the mens rea and any defence).
 - Omissions: express offences of omission; also in some offences the causation element can be satisfied by an omission.
 - Omissions in the context of whether there is a duty to act – some statutes impose specific duty; duty can arise from contract: Pittwood; or where D holds a public office that requires certain actions: Dytham.
 - Duty to act arising from relationship, e.g., parent and child, employer and employee; duty arising from voluntary undertaking to care for V: Stone and Dobinson.
 - Causation: how far D is made liable for consequences flowing from his action – causation in fact and in law, intervening acts.
 - Mens rea: the state of mind expressly or implicitly required by the definition of the offence.
 - Courts have generally tended to understand this in subjective terms: what D actually knew or indeed, rather than what a reasonable person in D’s position would have known or intended. (However, modern statutes tend to use objective language: what a reasonable person would have believed, etc.)
 - Kinds of mens rea: intention, recklessness, negligence.
 - Direct and oblique intention: Maloney, Woollin, etc.
 - Offences of specific/further intention, e.g., OAPA 1861, s.18.
 - It is not expected that candidates would cover every aspect of mens rea and actus reus. Credit should be given for use of examples and cases.

- Part (b)
- Distinctions between law and morality – moral beliefs and values tend to be diffuse within a society, and not laid down in a single code for everyone; law tends to be framed in terms of rules laid down by the institutions of a governing political authority. Morality tends to focus on certain “core” issues that matter to most people in a given society, whereas law is also concerned with regulation in areas that are morally (relatively) neutral. Both law and morals change over time, but a change in the law requires some formal procedure. Law and morals don’t necessarily coincide: some things can be regarded as immoral which are not illegal, and vice versa – etc.
 - Nature of relationship between morality and law: social morality tends to have an influence on law but not determine it completely. Distinction between values of popular morality and legal values focused on justice and human rights.
 - Debates about what the relationship of law and morality should be, e.g., the Hart-Devlin debate; should law and morality be separate?
 - Importance of relationship between morality and law: maintains respect for the law; limits the utilitarianism of legal systems; make space for values such as compassion which are impossible to express in rigid rules; etc.

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

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

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

“The tests set out by Lord Scarman, giving the option of the Privy Council in *Gammon (Hong Kong) Ltd v A-G of Hong Kong*, have proved invaluable for determining whether or not an offence is one of strict liability. In particular, Lord Scarman’s fourth and fifth tests have highlighted what might be thought of as the only acceptable justification for imposing liability without fault. However, in some subsequent cases the courts seem to have given too much weight to the fourth and fifth tests. Whereas Lord Scarman’s opinion states that the presumption of mens rea can only be displaced where the statute is concerned with an issue of social concern, and only then if it can be shown that the imposition of strict liability will have the effect of encouraging greater vigilance to prevent the prohibited act, the courts have tended to treat this as tantamount to saying that if a statute deals with an issue of social concern and is intended to promote vigilance, then this of itself is sufficient to show that Parliament must have intended the presumption of mens rea to be rebutted.”

- (a) Explain what is meant by a strict liability offence. [11]
- (b) Evaluate the role of judicial precedent in the development of the law.[14]

Credit reference to:

- Part (a)
- Nature of strict liability; distinction between strict and absolute liability, e.g., *Larsonneur*, *Winzar* – desirable but not essential.
 - 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*.
 - Justifications given for strict liability: makes it easier to enforce the law; applies to issues of social concern; promotes vigilance; benefits outweigh the injustice – penalty usually relatively small, not considered true crimes, no social stigma.
 - Arguments against: ease of enforcement not generally a reason for disregarding mens rea; most crimes involve issues of social concern, e.g., murder, but still need proof of mens rea; strict liability only promotes vigilance up to a point – if no amount of care can save people from conviction, then less incentive to improve one’s practice; injustice is never acceptable; penalty not always small, e.g., *Gammon* itself; not true that there is no social stigma – a firm’s business can be badly affected, and an individual ends up with a criminal record that follows you for life.

- Part (b)
- 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 follow its own previous decisions; Court of Appeal bound by Supreme Court and own previous decisions apart from exception in *Young v Bristol Aeroplane*; Divisional Court bound by same rules as Court of Appeal (Criminal Division) when hearing appeals by way of case stated; Crown Court and magistrates' court bound by superior courts and do not make precedent themselves.
 - Practice Statement of 1966: Supreme Court can depart from a previous decision where it appears right to do so, e.g., *Anderton v Ryan* overruled by *Shivpuri*. Court of Appeal (Criminal Division) will also depart from its own previous decisions to avoid an injustice.
 - Following, distinguishing, disapproving, avoiding, overruling, reversing.
 - Importance of precedent generally: promotes consistency in the law; promotes rationality because it requires judges to give reasons for their decisions; promotes fairness because like cases are treated alike; enables people to know what the law is and assess the legal consequences of their actions; assists lawyers to advise clients, etc.
 - Importance of precedent in criminal law: enables the superior courts to adjust (sometimes change) the criminal law when necessary to achieve justice.
 - Examples of precedent and departure from precedent in criminal cases, e.g., *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
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar , punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

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

LAW – PAPER LA4 (A2)

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

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

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

SECTION A

Q.1 Examine the arguments for and against the introduction of a Bill of Rights into the United Kingdom. [25]

Credit reference to:

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

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

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

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

Q.2 To what extent are the powers of the police to carry out secret surveillance constrained by laws designed to ensure respect for privacy? [25]

Credit reference to:

- Police Act 1997: s.92 – police not liable for actions authorised under the Act; s.93 – authorisation requirements.
- The circumstances in which surveillance can be authorised.
- The role of the authorising officer: authorisation in an emergency.
- Circumstances when authorisation must be given by, or confirmed by, the Surveillance Commissioner.
- RIPA 2000: the distinction between direct and intrusive surveillance.
- Authorisation under RIPA.
- Changes to conform to ECHR requirements: the action must be necessary and proportionate.
- Role of the Surveillance Commissioner.
- Role, powers and limitations of the RIPA tribunal.

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

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
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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 “The Equality Act 2010 provides every individual with complete protection against all forms of discrimination.” Discuss. [25]

Credit reference to:

- Equality Act 2010 – codifies and clarifies previous legislation.
- Protected categories – sex, race/ethnicity, religion, age, disability, sexual orientation, gender reassignment, marital status, pregnancy, maternity.
- Meaning of direct discrimination with examples from case law.
- Meaning of indirect discrimination with examples from case law.
- Discrimination on the basis of presumed characteristics.
- Discrimination on grounds of association (e.g., carers).
- Victimisation
- Harassment
- Post–employment discrimination (not essential for full marks, but credit if mentioned).
- Remedies: Employment Tribunal can now make recommendations going beyond the instant case. Cases not relating to employment heard in the county court. Lack of legal aid to enforce rights. (Again, not essential for full marks, but credit if mentioned.)

	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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0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

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

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

Q.4 “The law of England and Wales achieves a satisfactory balance between respect for the freedom of the media and respect for the right of individuals to be protected against intrusion into their private lives.” Discuss. [25]

Credit reference to:

- No specific right to privacy in UK law: *Kaye v Robertson*.
- ECHR Art.8 – right to private and family life.
- Elements of the tort of breach of confidence.
- Examples of case law, e.g., *Albert v Strange*, *Stephens v Avery*, *Argyll v Argyll*, *Douglas v Hello!*, *Campbell v MGN*, etc.
- Extent to which breach of confidence has developed into a remedy for breach of privacy.
- Remedies: injunction.
- Development of “super injunctions”–cases such as *Ryan Giggs*.
- Cost of obtaining a remedy – a law for the rich.
- Outcome of the Leveson Inquiry: refusal of the Coalition Government to introduce any legal restrictions upon the media with regard to privacy.

	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
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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.

SECTION B

Answer **one** question.

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

‘Subject to paragraph 2 of Article 10, it [Article 10.1] is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.’

Handyside v UK (the Little Red Schoolbook case), Eur. CT. HR, Series A, No.24, Judgment of 7 Dec.1976, 1 EHRR 737 at para.49.

- (a) Explain how the European Convention on Human Rights provides for the protection on freedom of expression. [11]
- (b) Evaluate the importance of the courts in upholding human rights within the United Kingdom. [14]

Credit reference to:

- Part (a)
- Relationship of the ECHR to UK Law: Convention rights are enshrined in UK law via the Human Rights Act 1998; judges obliged to interpret the law in a way which is compatible with Convention rights, and have regard to Strasbourg jurisprudence.
 - Art. 10(1) of the ECHR: everyone has the right to freedom of expression, including the freedom to hold opinions and to receive and impart information.
 - Art. 10(2) states that since the exercise of these freedoms carries with it duties and responsibilities, it may be subject to ‘such conditions or restrictions as are prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the rights or reputation of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’. (Candidates are not expected to reproduce Art. 10(2) verbatim – just the essence is sufficient.)
 - The ECtHR has stressed the importance of freedom of expression as a mainstay of liberal democratic society: Handyside.
 - Wide meaning given to “expression” – includes speech, written material, demonstrations, artistic expression, political expression e.g. Bowman v UK (giving money to support anti-abortion candidate), commercial expression such as advertising, e.g. R(British American Tobacco) v Sec of State for Health held by High Court to be protected.

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

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

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

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

“Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the state, notably in its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9...”

Otto-Preminger-Institut v Austria, Eur. Ct. HR, Series A, No.295-A, Judgement of 20 September 1994, 19EEHR 34, at para.47.

- (a) **Explain how freedom of religious expression is protected in the law of England and Wales.** [11]
- (b) **Evaluate the impact of the Human Rights Act 1998 on the law of the United Kingdom.** [14]

Credit reference to:

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

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

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

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

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

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



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