

**A-level**

**LAW**

**7162/3B**

Paper 3B Human Rights

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**Mark scheme**

June 2020

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Version: 1.0 Final Mark Scheme

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **false** statement about Article 2 of the European Convention on Human Rights (the right to life).

[1 mark]

**Marks for this question: AO1 = 1**

**C** Article 2 permits killing by agents of the State, such as the police, when they believe it to be reasonable.

**02** Select the **true** statement about various aspects of the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR).

[1 mark]

**Marks for this question: AO1 = 1**

**A** A government minister responsible for a Bill in Parliament must publish a statement indicating whether a bill is compatible with the ECHR.

**03** Select the **true** statement about judges in criminal cases.

[1 mark]

**Marks for this question: AO1 = 1**

**B** Crown Court judges hear some appeals.

**04** Select the **false** statement about the independence of the judiciary.

[1 mark]

**Marks for this question: AO1 = 1**

**D** The Lord Chancellor is the only government minister allowed to influence the decision of a judge in a case.

**05** Delegated legislation in the form of statutory instruments is subject to various controls. Select the **true** statement about controls on statutory instruments.

[1 mark]

**Marks for this question: AO1 = 1**

**C** Many statutory instruments become law unless Parliament votes to reject them within a specified time (usually 40 days) of being issued.

- 06** Explain **two** reasons why a large amount of law is made by delegated legislation. Use an example to illustrate one of your reasons.

**[5 marks]**

**Marks for this question: AO1 = 5**

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

Explanation of any **two** of the following:

- lack of Parliamentary time to deal with detailed rules, necessitating a method by which Parliament can lay down the policy and others can fill in the detail
- the need for expert knowledge on a very wide range of issues requiring consultation with interested and/or technically knowledgeable bodies and individuals (perhaps leading, also, to formal consultation requirements in the delegated legislation itself)
- the need for knowledge of local areas and specific issues that arise therein
- the need to respond quickly to emergency situations, in circumstances where Parliament would be too slow to respond
- an appropriate example to illustrate any one of the above.

**Note:** credit as **two** reasons answers which distinguish between the need for expert knowledge and the need specifically to build in formal consultation requirements

**Note:** the answer requires:

- reason 1
- reason 2
- example
  - all 3 = max 5
  - any 2 = max 4
  - reason 1 = max 3
  - example only = max 2

Credit any other relevant point(s).

- 07** Suggest why the failure of the police to respond quickly to Beth's call probably amounts to a breach by the United Kingdom of Article 2 of the ECHR (the right to life).

**[5 marks]**

**Marks for this question: AO1 = 2 and AO2 = 3**

	Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)
Mark range	Description
4–5 Band 3	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
2–3 Band 2	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
0	Nothing worthy of credit.

### Indicative content

#### AO1

- Explanation that the ECtHR has interpreted ECHR Article 2 as imposing a positive obligation on States to preserve/protect life not just to avoid taking life.
- The obligation will exist where, say, police knew or ought to have known at the time of the existence of a real and immediate threat to the life of an identified individual or individuals from the criminal acts of a third party, and where measures within the scope of police powers might reasonably have been expected to avoid the risk.

#### AO2

- Application to argue that in the light of the evidence of the previous history, and of the emergency telephone call, the Police knew or ought to have known at the time of the existence of a real and immediate threat to Beth's life.
- Application to suggest that the failure to respond quickly was evidence of either a serious systemic or a serious operational failure, amounting to breach (violation) by the State (UK) of Article 2.
- Use of a relevant case to assist explanation/application – for example, **Osman v UK, Commissioner of Police of the Metropolis v DSD and another**.

**Note:** Use of a case enhances explanation/application of any relevant element.

Credit any other relevant point(s).

**08** Advise Darren on whether publication of Callum's racist history would amount to the tort of misuse of private information (breach of privacy) in English law.

In your answer, take into account the relevance of Article 8 (the right to respect for private life and correspondence) and Article 10 (the right to freedom of expression) of the European Convention on Human Rights.

**[10 marks]**

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Outline explanation of the tort of misuse of private information – arises where there is a reasonable expectation of privacy about information which is revealed (breach of the duty of confidentiality is a possible alternative on these facts, or confidentiality may be a stronger way of establishing the privacy requirements).
- Outline explanation of relevant aspects of Article 8 (right to respect for private life and correspondence) and Article 10 (right to freedom of expression).
- Outline explanation of the justifications for prima facie infringements of Articles 8 and 10: for example, protection of the rights and freedom of others (Article 8); protection of the reputation or rights of others (Article 10); and prevention of the disclosure of information received in confidence (Article 10).

**AO2**

- Application to suggest that Callum would have a definite expectation of privacy but that this may not be reasonable, given the nature of the material in question (though there is probably a relationship of confidence).
- Application to suggest that, if there is a reasonable expectation of privacy, it will be opposed by Darren's right to freedom of expression, so that the ultimate determination of whether the tort has been committed will turn on whether, on the facts, Callum's Article 8 rights prevail over Darren's Article 10 rights, or vice versa.
- Application to suggest that the cross justifications for infringement must be judged on the notion of pressing social need and proportionality, taking into account factors such as Callum's status as a private individual of limited public profile (but noting the contradiction between the public profile of his business and his youthful views); his youth and the lapse of time since the conduct in question; the need for control of information as part of autonomy; the possibility that the information could make a contribution to political debate in a democracy (the nature of the material which Callum seeks to protect from disclosure), tempered by the knowledge of the lack of any such obvious aim on the part of Darren.

**AO3**

- Analysis and evaluation of the balance to be struck, within the application of the tort of misuse of private information, between Article 8 and Article 10 rights, acknowledging that, in principle, neither has priority over the other.
- Analysis and evaluation of the requirement in the justifications for prima facie infringement of Articles 8 and 10 to show that the interference was in accordance with/prescribed by law and necessary in a democratic society (a pressing social need and proportionate).
- Reference to relevant case(s) – for example, **Axel Springer v Germany**, **Von Hannover v Germany**, **Campbell v MGN**, **McKennitt v Ash**, **PJS v NGN Ltd**.

Credit any other relevant point(s).



<b>09</b>	<p>Law now plays an important role in society in protecting and promoting human rights.</p> <p>Examine the meaning and nature of ‘human rights’. Discuss the reasons for regarding freedom of expression as a human right.</p> <p style="text-align: right;"><b>[15 marks]</b></p>
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**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>10–12</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>7–9</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>4–6</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–3</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>Minimal analysis and evaluation of legal concepts and issues.</p> <p>No chain of reasoning is attempted.</p>

<b>0</b>	Nothing worthy of credit.
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**Distribution of marks for substantive and non-substantive law:**

<b>Substantive</b>	<b>Non-substantive</b>	<b>Total marks</b>
5	10	15

**Indicative content****AO1**

- Basic explanation of the notion of human rights as rights deriving inherently from the quality of being human, and as being claim-rights.
- Basic explanation of the possible implications of the above, for instance in the alleged universality and inalienability of such rights.
- Basic explanation of the right to freedom of expression under the ECHR Article 10.

**AO3**

- Analysis of the nature of human rights, exploring the notions of universality and inalienability (for example, is 'rights-thinking' essentially a product of liberal western democracies) and the search for some principle of recognition of what rights can be regarded as sufficiently fundamental to qualify as human rights, if, indeed, any such principle exists – promotion, for example, of human dignity, of human agency/autonomy, of human development.
- Analysis of the nature of rights in relation to corresponding duties ('claim-rights' contrasted with 'liberties' etc) and of the implications of designating rights as 'human' rights, in terms of their alleged superior status ('fundamental' rights) over other rights, obliging compliance and compatibility in the development of domestic law; possible issues around doubts about the potential encroachment by rights-based thinking into the true sphere of political decision-making in democratic societies.
- Analysis and evaluation of the right to freedom of expression: moral autonomy or moral independence, and self-fulfilment, permitting individuals the right to choose the conduct in which they may engage, with little restraint in the exercise of choice. This form of the argument favours self-expression and personal development.
- Analysis and evaluation of the right to freedom of expression: freedom of expression serves the ends of a democratic society; open debate and discussion tend to promote truth essential to a functioning democratic society, and also suggests a strong argument for access to information which is incorporated into Article 10. This form of the argument is particularly important in relation to open debate on political issues.
- Conclusion perhaps to suggest that there it is important for the functioning of society both from an individual and communal perspective that freedom of expression is protected.

Credit any other relevant point(s).

**ICGs**

1. Meaning and nature of human rights.
2. Freedom of expression as a human right.

<b>10</b>	Taking a human rights perspective, consider the rights, duties, liability and remedies arising out of the incidents involving Priya, Rose, Steve and the group.	<b>[30 marks]</b>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>19–24</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>13–18</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>7–12</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority. There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
<b>1–6</b> <b>Band 1</b>	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Indicative content****AO1**

- Identification and outline explanation of the elements of the offence of aggravated trespass under the Criminal Justice and Public Order Act 1994 s68.
- Identification and outline explanation of the offences of harassment and stalking under the Protection from Harassment Act 1997 ss1-4A.
- Identification and outline explanation of the provisions of the Public Order Act 1986 ss11-12 giving police power to control (though not ban or stop) marches.
- Identification and outline explanation of the common law powers of the police in connection with actual and anticipated breaches of the peace.
- Identification and outline explanation of the provisions of Articles 10 and 11 of the ECHR (right to freedom of expression/right to freedom of assembly and association) and the limitations thereon.
- Identification and explanation of the provisions of the Human Rights Act 1998 ss6-7 for challenging acts of public authorities which are incompatible with ECHR rights (possible reference also to judicial review).

**AO2**

- Application of the rules on aggravated trespass to argue that, prima facie, Priya and her group committed the offence in going into the meeting as trespassers and achieving their aims under any or all of the Criminal Justice and Public Order Act 1994 s68(1)(a)-(c) by persistently shouting and bringing the meeting to an end.
- Application of the rules on harassment and stalking to argue that, prima facie, Priya at least committed offences under the Protection from Harassment Act 1997 s1(1), s2, s2A (offences under s4 and s4A are also possible).
- Application of the provisions of the Public Order Act 1986 ss11-12 to argue that the police had powers to control the conduct of the march, including the route and destination, and that refusal to comply would be an offence.
- Application of the rules on breach of the peace to suggest that, in view of the incidents of violence during the march organised by Steve, there had been, and were likely to be further, breaches of the peace, prima facie entitling police officers to take steps to preserve the peace, including bringing the march to an end and instructing everyone to disperse but subject to an objection that the police should target the troublemakers (motorbikers) first, not peaceful protesters provoked into retaliatory/defensive violence.
- Application of the provisions of Articles 10 and 11 of the ECHR to argue that, in all of the cases above, Article 10 will be engaged, and Article 11 for all cases except that of Priya in relation to Rose, and that the outcome in each case will turn on whether the State can sufficiently justify convictions for offences identified, and for police instructions in connection with breach of the peace, as being as prescribed by law, necessary in a democratic society and, probably, with the aim of preventing disorder or crime and/or protecting the rights and freedoms of others.
- Application of the rules in the Human Rights Act 1998 ss6-7, to argue that those charged with criminal offences could defend themselves by reference to Articles 10 and 11, whilst the decision by the police to call off the march could be challenged (a possible action for judicial review might be brought, as one mechanism of achieving this).

### AO3

- Analysis and evaluation of the provisions of the Criminal Justice and Public Order Act 1994 s68.
- Analysis and evaluation of the provisions of the Protection from Harassment Act 1997 in relation to harassment and stalking.
- Analysis and evaluation of the powers of the police under the Public Order Act 1986 ss11-12 to control marches.
- Analysis and evaluation of the common law powers of the police in relation to breach of the peace.
- Analysis and evaluation of the requirements of Articles 10 and 11 of the ECHR, and, in particular, of the permitted justifications for infringement which determine whether or not there has ultimately been a violation (examining the balance between the right to freedom of expression and to assembly and association in a democratic society and the need to preserve order, restrict crime, and protect rights and freedoms of others).
- Use of relevant cases in support – for example, **DPP v Chivers**, **Laporte v Chief Constable of Gloucestershire Constabulary**, **Ollinger v Austria**, **Ezelin v France**, **Platform ‘Arzte fur das Leben’ v Austria**, **Beatty v Gillbanks**.

Credit any other relevant point(s).

### ICGs

1. Priya and the group and Priya and Rose - aggravated trespass (Criminal Justice and Public Order Act 1994)/harassment (Protection from Harassment Act 1997).
2. Steve and the group – Public Order Act 1986, breach of the peace.
3. Articles 10 and 11 of the ECHR.

- 11** Taking a human rights perspective, consider the rights, duties, liability and remedies of Lucas and Nathan, and of the police officers where relevant.
- In relation to any trial of Nathan for the offence of assaulting a police constable, assess what options are open to Nathan to pay for any legal representation that he may need for the court case.
- [30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10).</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b> <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b> <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b> <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

<b>Substantive</b>	<b>Non-substantive</b>	<b>Total marks</b>
23	7	30

**Indicative content****AO1**

- Identification and outline explanation of the provisions on stop and search by police constables in the Police and Criminal Evidence (PACE) Act 1984 ss1-3.
- Identification and explanation of common law powers of the police in connection with breach of the peace, including the meaning of breach of the peace and the notion of 'imminence'.
- Identification and outline explanation of the provisions concerning arrest by police constables in PACE Act 1984 s24.
- Identification and outline explanation of the requirements of Article 8 of the ECHR (right to respect for private life) and of Article 5 of the ECHR (the right to liberty and security of person).
- Identification and explanation of rights and remedies under the Human Rights Act 1998 ss6-8.
- Identification and outline explanation of possible means of funding legal representation, including own funding, pro-bono (possibly also crowd funding), duty solicitor and state funding.

**AO2**

- Application to the case of police officers and Lucas to argue that it is highly doubtful if there were reasonable grounds for the police officers to suspect that they would find prohibited articles and that they did not comply with statutory requirements as to identification and subsequent recording. Consequently, the search might constitute an offence in itself (battery) and would probably be a breach of Article 8 rights in relation to intrusion into Lucas's physical integrity (and not being 'in accordance with law'), so giving rise to an action, and remedies, under the Human Rights Act 1998 ss6-8.
- Application to the instruction to the gang to walk out of the park and back to the housing area to argue that this may be consistent with a suspected imminent breach of the peace, and so be a lawful requirement, and with insufficient evidence of deprivation of liberty to engage Article 5 (see below).
- Application to the case of the arrest of Nathan by the police officer to argue that, prima facie, there appear to be grounds under PACE Act 1984 s24 but that this will depend upon whether the initial restraint of Nathan within the group was itself lawful.
- Application of the requirements of Article 5 of the ECHR to the case of Nathan: the ECtHr accepts that not all restraint amounts to deprivation of liberty, and this may mean that Article 5 is not engaged initially in Nathan's case, though his innocence of involvement in the gang, and police refusal to listen, render this conclusion more problematic. If Article 5 is engaged then the deprivation would have to be justified under Article 5.1b (his subsequent arrest could be justified under 5.1c but only if lawful in the first place). In the event that the initial restraint of Nathan engaged Article 5 without justification, he would have an action, and remedies, under the Human Rights Act 1998 ss6-8 (including raising a defence to any prosecution for the offence of assaulting a police constable).

**AO3**

- Analysis and evaluation of the of the provisions on stop and search by police constables in the Police and Criminal Evidence (PACE) Act 1984 ss1-3, especially in relation to 'reasonable grounds for suspecting'.
- Analysis and evaluation of the PACE Act 1984 powers of arrest under s24.
- Analysis and evaluation of the requirements of Articles 5 and 8 of the ECHR, including the circumstances in which prima facie infringements may be justified by virtue of, respectively, Article 5.1b-c and Article 8.2, and including the remedies provided by the Human Rights Act 1998 ss6-8 where violations of ECHR rights by public authorities would constitute acts which are incompatible with ECHR rights.
- Analysis and evaluation of the funding options in relation to the probable costs that would be incurred, suggesting that in the absence of sufficient personal funds or pro bono representation (or crowd funding), Nathan would have to seek duty solicitor help and/or state funding, meeting both the 'interests of justice' test and a means test.
- Use of relevant cases in support – for example, **Wainwright v Home Office**, **Austin v UK**, **Austin v Commissioner of Police for the Metropolis**, **Mengesha v Commissioner of Police for the Metropolis**, **Ostendorf v Germany**, **R (Hicks) v Commissioner of Police for the Metropolis**.

Credit any other relevant point(s).

**ICGs**

1. Lucas – PACE Act 1984 on stop and search; Article 8 ECHR.
2. Nathan – PACE Act 1984 on arrest; Article 5 ECHR
3. Funding for representation.



**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

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**A-level**  
**LAW**  
**7162/3B**

Paper 3B Human Rights

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**Mark scheme**

June 2021

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**Version: 1.0 Final Mark Scheme**



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

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## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **false** statement about Article 2 of the European Convention on Human Rights (the right to life).

[1 mark]

**Marks for this question: AO1 = 1**

**C** It permits an exception when the killing is because a person refuses to obey a lawful instruction given by a police officer.

**02** Select the **true** statement about the effect of the European Convention on Human Rights on English law and the English legal system.

[1 mark]

**Marks for this question: AO1 = 1**

**A** A private individual cannot directly enforce European Convention rules against another private individual in an English court.

**03** Select the **false** statement about delegated legislation.

[1 mark]

**Marks for this question: AO1 = 1**

**B** Delegated legislation is made by a person or body under powers given by the Government.

**04** Select the **false** statement about judges.

[1 mark]

**Marks for this question: AO1 = 1**

**D** Supreme Court judges can only be removed from office by the Prime Minister.

**05** Select the **true** statement about advice and funding in criminal cases.

[1 mark]

**Marks for this question: AO1 = 1**

**D** Conditional fee agreements are not permitted in criminal cases.

**06** Explain **three** aspects of the rule of law.

**[5 marks]**

**Marks for this question: AO1 = 5**

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

Explanation of any **three** of the following:

- persons are subject to law rather than arbitrary exercise of power by individuals/institutions
- no individual/institution is above the law
- laws are clear and accessible
- there is equality before the law
- law is made and administered fairly by accessible processes
- all have access to legal processes for resolution of disputes
- rules and procedures ensure the independence of the judiciary.

Credit any other relevant point(s).

**Answers which do not explain three aspects cannot achieve marks higher than band 2.**

<b>07</b>	Suggest why, according to English law (Police and Criminal Evidence Act 1984), Arvin could lawfully arrest Brett in these circumstances.	<b>[5 marks]</b>
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**Marks for this question: AO1 = 2 and AO2 = 3**

	<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Explanation that a police constable can arrest a person without a warrant if he/she reasonably suspects that an offence has been committed and reasonably suspects that person of having committed it (Police and Criminal Evidence Act 1984 s24(2)).
- Explanation that, in addition, the arrest must be necessary for one of a number of specified reasons, for example, that the suspect's name or address cannot be ascertained (Police and Criminal Evidence Act 1984 s24(4)–(5)(a)).
- Possible reference to an appropriate case, for example **Castorina v Chief Constable of Surrey**, **Hayes v Chief Constable of Merseyside Police**.

#### **AO2**

- Application to argue that what Arvin has seen and heard would give him reasonable grounds to suspect that an offence involving personal violence has been committed by Brett on an, as yet, unidentified female victim.
- Application to argue that Brett's response when asked by Arvin for his name indicates that Arvin will not be able to get the required information about Brett's identity.
- Application to suggest that Arvin's reasonable suspicion as to the offence and the perpetrator is supported by the necessity to make an arrest because of the issue as to identity, so that the arrest will be lawful.

**Reference to a case is not required but may enhance explanation and/or application.**

Credit any other relevant point(s).



<b>08</b>	<p>Assuming that actions in defamation and prosecution for harassment offences go ahead, advise Elena on the use that she might make of Article 10 of the European Convention on Human Rights (the right to freedom of expression).</p> <p style="text-align: right;"><b>[10 marks]</b></p>
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**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles.</p> <p>Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>Good explanation of relevant legal authority to support the application.</p> <p>A good legal argument is presented using appropriate terminology to support advice.</p>
<b>3–6</b>  <b>Band 2</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles.</p> <p>Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>Satisfactory explanation of relevant legal authority to support the application.</p> <p>A satisfactory legal argument is presented using some appropriate terminology to support advice.</p>
<b>1–2</b>  <b>Band 1</b>	<p>A limited demonstration of knowledge.</p> <p>Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.</p>
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Outline explanation of the scope of the right to freedom of expression under Article 10.1.
- Outline explanation of the limitations on the right to freedom of expression under Article 10.2, including for the prevention of disorder or crime and the protection of the reputation or rights of others.
- Outline explanation of an action for defamation (including defences contained in the Defamation Act 2013) and of the crime of harassment (Protection from Harassment Act 1997).
- Reference to relevant cases such as **Handyside v UK**, **Surek v Turkey**.

**AO2**

- Application to argue that ‘expression’ extends to all forms of expression and that it applies to all forms of content, “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.”
- Application to argue that expression which is political in content and relates strongly to ideas of pursuit of truth and support for democracy is likely to be viewed as inherently more worthy of protection.
- Application to argue that, prima facie, Elena should be entitled to express her views to contribute to a public debate without fear of any kind of penalty.
- Application to argue that Article 10.2 recognises limitations on the right which gives individuals the right to protect their reputations, and for which the English law of defamation makes appropriate provision, including defences designed to recognise the right to freedom of expression.
- Application to argue that some forms of expression may threaten personal safety, physical or mental and so amount to crimes such as harassment, for which Article 10.2 recognises a permissible limitation on the right to freedom of expression.
- Application to conclude that Elena is probably more likely to be able to rely on Article 10 rights to protect her from civil than from criminal liability but that it will depend on the precise circumstances in terms of proportionality (‘necessary in a democratic society’).

**AO3**

- Analysis and evaluation of the meaning and scope of expression (further analysis of **Handyside v UK**), **Jersild v Denmark**, particularly in relation to different content, political, commercial, artistic and the strength of protection accorded to each.
- Analysis and evaluation of the limitations on freedom of expression embodied in Article 10.2, particularly for the prevention of disorder or crime and the protection of the reputation or rights of others, as well as the corresponding rights and limitations under Article 8.1 and 8.2 (further analysis of **Surek v Turkey**), **Bedat v Switzerland**.

Credit any other relevant point(s).

- 09** Examine what is meant by 'justice' and discuss the extent to which the legal rules on the right to liberty and security of person, under Article 5 of the European Convention on Human Rights, may achieve justice for all concerned.

**[15 marks]**

**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>10–12</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>7–9</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>4–6</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–3</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of Law and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>Minimal analysis and evaluation of legal concepts and issues.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Basic explanation of possible meanings of justice.
- Identification and basic explanation of various philosophical approaches to justice.
- Basic explanation of the rules on the right to liberty and security of person, including limitations, contained in Article 5.1–5 (possible reference to cases such as **HM v Switzerland**, **Austin v UK**, **Ostendorf v Germany**).

**AO3**

- Analysis of varying levels of complexity of approaches to the meaning of justice, from the simple ‘fairness’ approach to more sophisticated philosophical treatment, for example, distributive justice, utilitarianism, social justice, using examples from any area of law, whether civil or criminal. Perhaps particular reference to achieving justice in resolving disputes between the State and private individuals, where the general public interest in preserving order may conflict with the general public interest in preservation and promotion of individual autonomy and dignity.
- Analysis of the rules on the right to liberty and security of person to determine the basis of the right to liberty (in particular) as a fundamental requirement of the protection of the autonomy and physical integrity of the individual and the capacity to participate in society.
- Evaluation to determine whether the rules promote or obstruct justice, for example, does the scope of the right in terms of what is ‘deprivation of liberty’ give adequate protection to the individual; are the limitations sufficiently restricted and appropriate to be consistent with support for the serious right being protected.

Credit any other relevant point(s).

**ICGs**

1. The meaning of justice
2. Justice and Article 5 ECHR

<b>10</b>	<p>Taking a human rights perspective, consider the application of English law and the European Convention on Human Rights to the incidents arising out of the events described.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–6</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the provisions of the Public Order Act 1986 ss11–12 and s14, requiring notice of marches ('public processions') and giving police power to control (though not ban or stop) marches and to control various aspects of static demonstrations ('public assemblies').
- Identification and outline explanation of the common law powers of the police in connection with actual and anticipated breaches of the peace.
- Possible identification and outline explanation of the elements of the offence of aggravated trespass under the Criminal Justice and Public Order Act 1994 s68.
- Identification and outline explanation of the provisions of Articles 10 and 11 of the ECHR (right to freedom of expression/right to freedom of assembly and association) and the limitations thereon.
- Identification and outline explanation of the provisions of Article 2 of the ECHR (the right to life).
- Identification and explanation of the provisions of the Human Rights Act 1998 ss6–7 for challenging acts of public authorities which are incompatible with ECHR rights (possible reference also to judicial review).
- Reference to cases such as **Osman v UK**, **Laporte v Chief Constable of Gloucestershire Constabulary**, **Platform 'Arzte fur das Leben' v Austria**.

**AO2**

- Application of English law rules to argue that the planned event falls within the scope of the Public Order Act 1986 s11 as a 'public procession' and that the intended occupation of the petrol stations would constitute 'public assemblies' within s14.
- Application to argue that Deon and Faith must give 6 days' notice of their intention to hold the march (public procession) at or to a police station in the area. Failure to give this notice amounts to a criminal offence committed by both Deon and Faith.
- Application of ss12 and 14 to argue that (assuming conditions specified in s12(1)(a) or (b) and/or s14(1)(a) or (b) are met) the chief officer of police has power to dictate the route of the march and to specify any places where Stopcar may not go, and to impose conditions as to maximum duration and maximum number of participants on any planned public assembly (the occupation of the petrol stations). Deon and Faith commit offences under s12 and s14 in ignoring the instructions of the chief officer of police, as do other Stopcar protesters who do so.
- Application to argue that breaches of the peace took place during the event and that the police could have believed that there was a real danger that more could be anticipated. This would justify action by the police which could include stopping the march, arresting for breach of the peace and prosecuting for obstruction.
- Possible application to argue that the occupation of the petrol stations would have constituted the offence of aggravated trespass under the Criminal Justice and Public Order Act 1994 s68.
- Application of the provisions of Articles 10 and 11 of the ECHR to argue that, in all of the applications of English law above, Articles 10 and 11 will be engaged, so that restrictions on the march and demonstrations, and any resulting offences, could be challenged. The consequence in each instance, then, will depend on whether State interference with the rights (via police and the legal system) can be justified as being sufficiently prescribed by law, necessary in a democratic society and with the aim of preventing disorder or crime and/or protecting the rights and freedoms of others.

- Application of the provisions of Article 2 of the ECHR to argue that, in view of the ECtHR expansive interpretation of the ECHR, imposing positive obligations on States, Faith may be able to argue a breach of Article 2 in the failure to afford her adequate protection from a known, imminent risk to life.
- Application of the rules in the Human Rights Act 1998 ss6–7, to argue that Deon, Faith and any other Stopcar members alleged to have committed criminal offences could defend themselves by arguing that restrictions on the marches and demonstrations were in breach of Articles 10 and 11. Similarly, instruction to the Stopcar members to disperse for breach of the peace could be challenged for the same reason (perhaps alleging a disproportionate response in dealing with Stopcar rather than Oilheads). Judicial review could possibly be used, too.
- Application of the rules in the Human Rights Act 1998 ss6–7 to argue breach and remedies for the failure by the police to protect Faith's right to life.

### AO3

- Analysis and evaluation of the powers of the police under the Public Order Act 1986 ss11–12 to control marches ('public processions').
- Analysis and evaluation of the powers of the police under the Public Order Act 1986 s14, to control various aspects of static demonstrations ('public assemblies').
- Analysis and evaluation of the common law powers of the police in relation to breach of the peace.
- Analysis and evaluation of the requirements of Articles 10 and 11 of the ECHR, and, in particular, of the permitted justifications for infringement which determine whether or not there has ultimately been a violation (examining the balance between the right to freedom of expression and to assembly and association in a democratic society and the need to preserve order, restrict crime, and protect rights and freedoms of others).
- Analysis and evaluation of the positive obligations on the State in respect of the right to life under Article 2 of the ECHR, with reference to cases such as *Osman v UK* (and *MPC v DSD* and another).
- Use of relevant cases in support (including further analysis of cases, where relevant) – for example, **DPP v Chivers**, **Laporte v Chief Constable of Gloucestershire Constabulary**, **Ollinger v Austria**, **Ezelin v France**, **Platform 'Arzte fur das Leben' v Austria**, **Beatty v Gillbanks**.

Credit any other relevant point(s).

### ICGs

1. English law provisions, particularly Public Order Act 1986 requirements and breach of the peace, including appropriate remedies across whole range.
2. ECHR provisions, particularly Articles 2, 10 and 11.

- 11** Taking a human rights perspective, consider what rights and remedies Jack may have against Lucy and The Clarion, and against the police, arising out of the incidents described.
- Assess the contribution of different sources of law to the rules which you have explained and applied in considering Jack's rights and remedies.
- [30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>



<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Outline explanation of the action for the tort of misuse of private information (as developed out of the action for breach of the duty of confidentiality, modified by European Convention on Human Rights (ECHR) requirements).
- Brief explanation of the requirements of the Human Rights Act 1998 s12 in relation to the significance to be accorded to freedom of expression in any action which may restrict it.
- Outline explanation of the stop and search provisions in PACE Act 1984 ss1–2.
- Outline explanation of ECHR Article 8, the right to respect for private life.
- Outline explanation of the permitted limitations on the right, including recognition and explanation of ECHR Article 10, right to freedom of expression, as a possible relevant limitation.
- Brief explanation of remedies for the tort of misuse of private information, as being damages and injunctions, and of remedies arising out of the action against a public authority for breach of ECHR Article 8 under the Human Rights Act 1998 s6 and s7.
- Reference to relevant supporting case interpretation (for example, **Von Hannover v Germany**, **Campbell v MGN**, **PJS v NGN Ltd**).
- Identification and outline explanation of the sources of law in this area of human rights as being common law, statute and the ECHR (as an international treaty).

## AO2

- Application to argue that the disclosure by Lucy and The Clarion of Jack's identity and parentage prima facie amount to the tort of misuse of private information.
- Application to argue that there is no obvious evidence to justify police in stop and search activities in relation to Jack, which may therefore contravene the requirements of PACE Act 1984.
- Application to argue that, in considering the tort of misuse of private information, the court will have to consider the balance between Article 8 and Article 10 rights, in the context of journalism and freedom of expression.
- Application to conclude that it is strongly arguable that there is no public interest justifying Lucy and The Clarion's publication of the story, and no compelling reason for favouring their Article 10 rights over Jack's Article 8 rights, so that an action for the tort of misuse of private information may result in an injunction against further disclosures and damages for any loss suffered (in which Lucy is likely to be of much less significance as a defendant, given The Clarion's likely financial resources).
- Application to argue that the actions of the police in relation to stop and search amount to breaches of Jack's Article 8 rights in that they are an interference with his right to respect for private life which are not 'in accordance with' the law since they do not appear to conform to PACE Act 1984 requirements. They are, therefore, redressable by an action under the Human Rights Act 1998 ss6–7, which could result in an award of damages.

## AO3

- Analysis and evaluation of the tort of misuse of private information: imposed in circumstances where there is a reasonable expectation of privacy, in respect of various kinds of information; the significance of the requirement under the Human Rights Act 1998 to have regard to freedom of expression.
- Analysis and evaluation of the balance to be struck between ECHR Article 8 and Article 10 rights, including the justifications for interference with each, and recognising that neither takes precedence over the other, and the implications for the interpretation of the rights and remedies available under the tort of misuse of private information.
- Analysis and evaluation of the right to respect for private life under Article 8 in relation to physical integrity.
- Further development and use of supporting case interpretation of relevant ECHR and English law provisions, including those cited above and, for example, **S v UK**, **McKennit v Ash**, **Weller v Associated Newspapers**.
- Analysis of the scope of common law and statutory rules, and of the ECHR in relation to the rules relevant to the application of law to the facts of the scenario.
- Evaluation of the respective contributions of the sources, perhaps reaching an assessment that there is an intricate balance between all three sources of law, especially in relation to the tort of misuse of private information.

Credit any other relevant point(s).

## ICGs

1. English law provisions, particularly the tort of misuse of private information and the PACE Act 1984 provisions on stop and search, including appropriate remedies across whole range.
2. ECHR provisions, particularly Articles 8 and 10.
3. Contribution of different sources of law

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

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**A-level**  
**LAW**  
**7162/3B**

Paper 3B Human Rights

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**Mark scheme**

June 2022

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Version: 1.0 Final Mark Scheme



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **false** statement about the European Convention on Human Rights. [1 mark]

**Marks for this question: AO1 = 1**

**B** The European Court of Human Rights has generally interpreted Convention obligations very restrictively.

**02** Select the **true** statement about the effect on English law and the English legal system of the European Convention on Human Rights. [1 mark]

**Marks for this question: AO1 = 1**

**C** An excessively large award of damages by a court may violate the right to freedom of expression under Article 10 of the Convention.

**03** Select the **false** statement about the rule of law. [1 mark]

**Marks for this question: AO1 = 1**

**C** Public officials should be given maximum freedom to make decisions affecting the legal rights of citizens.

**04** Select the **true** statement about the independence of the judiciary. [1 mark]

**Marks for this question: AO1 = 1**

**C** Judges in superior courts cannot easily be removed from office.

**05** Select the **false** statement about delegated legislation. [1 mark]

**Marks for this question: AO1 = 1**

**B** It is generally well-publicised.



<b>06</b>	Explain <b>two</b> characteristics of the common law as a source of law and provide an example to illustrate <b>one</b> of those characteristics.	<b>[5 marks]</b>
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**Marks for this question: AO1 = 5**

<b>Levels of response mark scheme 5 marks – AO1 only</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

Explanation of any **two** characteristics and use of **one** supporting example:

- common law has been made by judges, when making and following decisions in cases (may contrast with statutes)
- common law is subservient to statute law by which it can be abolished or amended
- as the foundation of common law, precedent operates on the basis of stare decisis in relation to key elements in a judgment and employs a hierarchy of courts
- common law represents rules based on decisions that have been developed over a period of time and have traditionally been the basis of important areas of law
- common law deals with actual, concrete instances and so is practical in its application and reach
- common law is limited in scope by the (relatively) narrow issues raised in individual cases and so is not particularly suitable in achieving large scale change or reform in the law
- common law applies retrospectively to incidents which have already occurred or issues which have already arisen
- common law, since it is based on precedent, promotes predictability and, perhaps, confidence in interpretation and application to future cases
- suitable examples to illustrate any of the above – for example, significant areas of criminal law (such as unlawful homicide) continue to be based on common law; significant areas of tort, such as negligence, are based on common law; the requirements for a valid contract rely on common law; in some areas, rules of common law have been completely replaced by statute (for example, defences to murder, occupier's liability in tort, consumer protection in contract).

Credit any other relevant point(s).

**Answers which do not explain two aspects cannot achieve marks higher than band 2, even if an eg is provided for one characteristic.**

**Answers which do not provide an example cannot achieve maximum marks.**

- 07** Suggest why, despite the threat of violence and disorder, the action by the police was probably a violation of the rights of Ava, Brett and Cian under Article 11 of the ECHR (the right to freedom of assembly and association).

**[5 marks]**

**Marks for this question: AO1 = 2 and AO2 = 3**

<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Explanation that Article 11.1 requires a state to ensure that there is freedom of peaceful assembly, and that it particularly supports the right to freedom of expression in making protests and the like.
- Explanation that Article 11.2 provides a justification for interference with the right under Article 11.1, inter alia, for the prevention of disorder or crime but that ECtHR interpretation insists that this must not be used to permit counter-protesters to threaten disorder and crime so as to stifle protest.
- Possible reference to/use of a case such as **Plattform ‘Arzte fur das Leben’ v Austria, Ollinger v Austria, Faber v Hungary**.

#### **AO2**

- Application to argue that Ava, Brett and Cian were exercising the right to freedom of assembly (with possible reference to its relationship with the right to freedom of expression).
- Application to argue that, in view of their apparently entirely peaceful conduct, Ava, Brett and Cian should not have been denied their right to protest about the proposed plans for the ‘fast food’ shop.
- Application to suggest that the intervention against their protest by the police, though prima facie justified by Article 11.2, would probably amount to a violation of Article 11.1 since the police misdirected their actions and should have controlled the counter-protest.

Credit any other relevant point(s).

**Reference to a case is not required but may enhance explanation and/or application.**

<b>08</b>	With regard to Article 2 of the ECHR (the right to life), advise Dora of her rights and remedies against the police under the Human Rights Act 1998 ss 6–8.
	<b>[10 marks]</b>

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Outline explanation of the scope of the right to life under Article 2.
- Outline explanation of the interpretation of Article 2 by the ECtHR, imposing not only a negative obligation on states not to take life but a positive obligation on states to protect and preserve life.
- Explanation of the provisions of the Human Rights Act 1998 ss6–8.
- Reference to, and use of, relevant cases: **Osman v UK**, **Oneryildiz v Turkey**, **Opus v Turkey**, **Commissioner of Police of the Metropolis v DSD** and another.

## AO2

- Application to argue that, under Article 2, the police, as agents of the state, owed Dora a positive obligation to protect her life which could not necessarily be satisfied simply by asserting the existence of rules establishing homicide offences and a structure for investigating, prosecuting and imposing sanctions for their breach.
- Application to suggest that it is arguable that the police were under a duty to take steps to protect Dora's life since they knew or ought to have known that there was a real and immediate risk to Dora's life from the criminal acts of the youths, given her age and health, and that there were steps that could have been taken which might reasonably have been expected to avoid the risk (credit the alternative argument that one or more of these requirements was not satisfied, or an approach which balances the arguments).
- Application to suggest that, if the police have breached the requirements, then, under the Human Rights Act 1998 s6 they will have acted incompatibly with Article 2 rights. This will entitle Dora, as a 'victim', to bring an action under s7 seeking an award which, under s8, is within the court's powers and which it deems 'just and appropriate', including compensation.

## AO3

- Analysis and evaluation of the positive obligations on the State in respect of the right to life under Article 2 of the ECHR.
- Analysis and evaluation of the particular requirements in relation to knowledge of the State (the police) as to risk to life to an individual posed by the criminal activities of a third party, with further analysis of cases such as **Osman v UK** and **Commissioner of Police of the Metropolis v DSD and another**.

Credit any other relevant point(s).

- 09** Examine the suggestion that the law has an important role to play in balancing conflicting interests. Discuss the extent to which this role is evident in the context of human rights.

**[15 marks]**

**Marks for this question: AO1 = 5 and AO3 = 10**

<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>10–12</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>7–9</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>4–6</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
<b>1–3</b> <b>Band 1</b>	Knowledge is minimal and demonstrates a minimal understanding of the Nature of Law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Basic explanation of the concept of law as operating to balance conflicting interests.
- Simple illustration drawn from any area(s) of law.
- Identification of the interests involved in human rights – both private/individual and the State/society, perhaps with some reference to the significance of different kinds of groupings in society, majority or minority.
- Possible reference to the views of theorists, for example Jhering, Pound.
- Identification of appropriate areas of the law and supporting legal authority to illustrate specifically an assessment of the extent to which rules of human rights law may play a role in balancing conflicting interests.

**AO3**

- Analysis of the meaning and kinds of interests that may be in conflict in issues that arise in law, as identified above under AO1.
- Analysis of the mechanisms by which law may seek to balance interests, including substantive and procedural rules of law, and access to justice.
- Possible evaluation of the extent to which law may have succeeded in achieving an appropriate balance between interests in selected areas which may not be specific to human rights but will be relevant to the process of balancing conflicting interests as a whole.
- Analysis of the rules in any area(s) of human rights, to attempt to demonstrate how and where a balance may have been struck between different interests.
- Evaluation of the extent to which attempts to balance conflicting interests are evident in interpretation and application of human rights law.
- Credible conclusions based upon the analysis and evaluation presented above.

Credit any other relevant point(s).

Indicative Content Groups (ICG)

ICG1 concept

ICG2 substantive law

<b>10</b>	<p>Taking a human rights perspective, consider the application of English law and the European Convention on Human Rights to the incidents described.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–6</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Outline explanation of the action for the tort of misuse of private information as developed out of the action for breach of the duty of confidentiality, modified by European Convention on Human Rights (ECHR) requirements.
- Outline explanation of the provisions of the Protection from Harassment Act 1997.
- Brief explanation of the requirements of the Human Rights Act 1998 s12 in relation to the significance to be accorded to freedom of expression in any action which may restrict it.
- Outline explanation of ECHR Article 8, the right to respect for private life.
- Outline explanation of the permitted limitations on the right, including recognition and explanation of ECHR Article 10, right to freedom of expression, as a possible relevant limitation.
- Brief explanation of remedies for the tort of misuse of private information, as being damages and injunctions, and of remedies arising out of the action against a public authority for breach of ECHR Article 8 under the Human Rights Act 1998 s6 and s7.
- Credit possible outline explanation of PACE 1984 requirements for lawful arrest and of article 5 right to liberty.
- Reference to relevant supporting case interpretation (for example, **ZXC v Bloomberg**, **Richard v BBC**, **Von Hannover v Germany**, **Campbell v MGN**, **PJS v NGN Ltd**).

**AO2**

- Application to argue that the disclosure by Julian and The Tempest that Hakeem had been arrested for (though not yet charged with) fraud offences, prima facie, amounted to the tort of misuse of private information.
- Application to argue that the publication of photographs taken in those circumstances, also prima facie, amounted to the tort of misuse of private information.
- Application to argue that the conduct of journalists and members of the public could amount to offences of harassment under the 1997 Act (providing that sufficient instances could be proved against any individual).
- Application to argue that, in considering the tort of misuse of private information, the court will have to consider the balance between Article 8 and Article 10 rights, in the context of journalism and freedom of expression.
- Application to conclude that it is strongly arguable that there is no public interest justifying Julian and The Tempest's publication of the story and the photographs, and no compelling reason for favouring their Article 10 rights over Hakeem's Article 8 rights, so that an action for the tort of misuse of private information may result in an injunction against further disclosures and damages for any loss suffered (in which Julian is likely to be of much less significance as a defendant, given The Tempest's likely financial resources).
- Application to argue that the actions of the police in revealing the details of the proposed arrest and search, as well as in failing to intervene to control the conduct of journalists and members of the public, may amount to a breach of Hakeem's Article 8 rights in that they are a violation of his right to private life and which are, therefore, redressable by an action under the Human Rights Act 1998 ss6–7, which could result in an award of damages.



- Credit possible application of the provisions of PACE and of art 5 to the lawfulness of Hakeem's arrest.

### AO3

- Analysis and evaluation of the tort of misuse of private information: imposed in circumstances where there is a reasonable expectation of privacy, in respect of various kinds of information, including here both written and photographic; the significance of the requirement under the Human Rights Act 1998 to have regard to freedom of expression.
- Analysis and evaluation of the balance to be struck between ECHR Article 8 and Article 10 rights, including the justifications for interference with each, and recognising that neither takes precedence over the other, and the implications for the interpretation of the rights and remedies available under the tort of misuse of private information.
- Analysis and evaluation of the right to respect for private life under Article 8 in relation to physical integrity.
- Credit possible analysis and evaluation of the lawfulness of Hakeem's arrest.
- Further development and use of supporting case interpretation of relevant ECHR and English law provisions, including those cited above and, for example, **S v UK, McKennit v Ash, Weller v Associated Newspapers**.

Credit any other relevant point(s).

Indicative Content Groups (ICG)

ICG1: relevant English law, including s6-8 HRA; discussion of any Convention articles other than 8 and 10; remedies.

ICG2: articles 8 and art 10.

- 11** Taking a human rights perspective, consider the application of English law and the European Convention on Human Rights to the incidents described.

Assess the extent to which justice may have been achieved by application of the law to the incidents considered above.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)	
Mark range	Description
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Identification and outline explanation of the provisions on stop and search by police constables in the Police and Criminal Evidence (PACE) Act 1984 ss1–3.
- Identification and outline explanation of the provisions concerning arrest by police constables in the PACE Act 1984 s24.
- Identification and outline explanation of the requirements of Article 5 of the ECHR (the right to liberty and security of person).
- Possible identification and outline explanation of the requirements of Article 8 of the ECHR (right to respect for private life).
- Identification and explanation of rights and remedies under the Human Rights Act 1998 ss6–8.
- Outline explanation of the concept of justice.
- Reference to, and use of, relevant cases, such as **Castorina v Chief Constable of Surrey**, **Hayes v Chief Constable of Merseyside Police**, **Austin v Commissioner of Police for the Metropolis**.

**AO2**

- Application to the issues of stop and search in general to argue that action by police officers could be lawful within the provisions of PACE Act 1984 since stolen and/or, perhaps, prohibited items (offensive weapons, for example) might be found. The lawfulness would depend upon the police officers having reasonable grounds to suspect such items would be found (and so upon some sensible comparison between the description of the alleged suspects and those being targeted for search) and observing other requirements such as provision of information and keeping a record.
- Application to the case of Luca, in particular, to suggest that, in view of his age and the presence of his family for the celebration, stop and search would be unlikely to meet the statutory requirements and so could be unlawful. Possible further suggestion that it would probably be a breach of Luca's Article 8 rights, so giving rise to an action, and remedies, under the Human Rights Act 1998 ss6–8.
- Application to the case of the arrest of Kelsey by the police officer to argue that, prima facie, there appear to be grounds under PACE Act 1984 s24 in that Kelsey was committing the offence and there were reasonable grounds to believe that she might cause physical injury.
- Application of the requirements of Article 5 of the ECHR to the containment of visitors by police officers: the ECtHR accepts that not all restraint amounts to deprivation of liberty, and this may mean that Article 5 is not engaged (as in cases of 'kettling').
- Application of the requirements of Article 5 to the specific case of Kelsey in respect of the arrest and detention in the police vehicle. Article 5 is engaged and the police would have to justify the deprivation of liberty under Article 5.1b or 5.1c. In the event that actions against visitors in general, or Kelsey in particular, were held to be a violation of Article 5, there would be an action, and remedies, under the Human Rights Act 1998 ss6–8 (including, in Kelsey's case, raising a defence to any prosecution for the offence of obstructing a police constable).

**AO3**

- Analysis and evaluation of the provisions on stop and search by police constables in the PACE Act 1984 ss1–3, especially in relation to 'reasonable grounds for suspecting'.
- Analysis and evaluation of the PACE Act 1984 powers of arrest under s24.
- Analysis and evaluation of the requirements of Article 5 (and possibly of Article 8) of the ECHR, including the circumstances in which prima facie infringements may be justified by virtue of, respectively, Article 5.1b–c (and Article 8.2), and including the remedies provided by the Human Rights Act 1998 ss6–8 where violations of ECHR rights by public authorities would constitute acts which are incompatible with ECHR rights.
- Analysis and evaluation of the concept of justice, suggesting the significance of the relationship between individual interests in liberty and integrity of the person and the interests of society at large in the preservation of order and prevention of crime, assessing the extent to which justice may be achieved in reconciling the two by the combination of rules of English law and ECHR-derived obligations.
- Use of relevant cases in support – for example, **Wainwright v Home Office**, **Austin v UK**, **Austin v Commissioner of Police for the Metropolis**, **Mengesha v Commissioner of Police for the Metropolis**, **Ostendorf v Germany**, **R (Hicks) v Commissioner of Police for the Metropolis**.

Credit any other relevant point(s).

Indicative Content Groups (ICG)

ICG1: stop and search of Luca

ICG2: arrest and detention of Kelsey; containment of visitors

ICG3: justice

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>

**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>

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**A-level**  
**LAW**  
**7162/3B**

Paper 3B Human Rights

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**Mark scheme**

June 2023

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Version: 1.0 Final



Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts. Alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this mark scheme are available from [aqa.org.uk](http://aqa.org.uk)

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## Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

### Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

### Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

**01** Select the **true** statement about various Articles of the European Convention on Human Rights (ECHR).

[1 mark]

**Marks for this question: AO1 = 1**

**B** The right to freedom of expression under Article 10 of the ECHR is strongly protected in the case of journalists dealing with issues of public concern.

**02** Select the **false** statement about the European Court of Human Rights (ECtHR), the European Convention on Human Rights (ECHR), and the Human Rights Act 1998.

[1 mark]

**Marks for this question: AO1 = 1**

**A** Claims can be brought in the ECtHR by individuals but not by States.

**03** Select the **true** statement about proof of liability.

[1 mark]

**Marks for this question: AO1 = 1**

**A** The burden of proof in a civil case is on the claimant.

**04** Select the **false** statement about the role of a judge (or judges) in a criminal case.

[1 mark]

**Marks for this question: AO1 = 1**

**A** A District Judge in the Magistrates' Court does not decide questions of fact.

**05** Select the **false** statement about delegated legislation.

[1 mark]

**Marks for this question: AO1 = 1**

**A** The Scrutiny Committee (the Parliamentary Joint Select Committee on Statutory Instruments) can alter a statutory instrument.

**06** Explain **two** ways in which the law tries to achieve judicial independence.

**[5 marks]**

**Marks for this question: AO1 = 5**

	Levels of response mark scheme 5 marks – AO1 only
Mark range	Description
<b>4–5</b> <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
<b>0</b>	Nothing worthy of credit.

### Indicative content

#### AO1

Explanation of any **two** of the following:

- security of tenure for superior judges (inferior judges may be mentioned but this is not necessary) – Senior Courts Act 1981, Constitutional Reform Act 2005 (power to remove in the hands of the monarch on petition by both Houses of Parliament) – independent office to investigate complaints
- appointment of judges contributing to securing independence
- financial security related to arrangements for determining and paying judicial salaries (including prohibition on reducing salaries and on any performance-related element)
- immunity from suit – immunity from criminal and civil actions in relation to acts carried out in performance of judicial function, including immunity from actions in defamation; **Sirros v Moore**
- freedom from interference by the executive and separation from legislative law-making (separation of powers) – Constitutional Reform Act 2005 s3
- prohibition on participation in cases where a judge may have a personal or other special interest – In **Re Pinochet**.

Credit any other relevant point(s).

**Note: max. 3 for good explanation of one way only.**

- 07** Suggest why Axebury City Council's failure to undertake and publish the results of research into the effects of the changes is unlikely to be a violation of Bekka's right to freedom of expression under Article 10 of the European Convention on Human Rights. **[5 marks]**

**Marks for this question: AO1 = 2 and AO2 = 3**

<b>Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)</b>	
<b>Mark range</b>	<b>Description</b>
<b>4–5</b> <b>Band 3</b>	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
<b>2–3</b> <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
<b>1</b> <b>Band 1</b>	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Statement that ECHR Article 10 includes within freedom of 'expression' the 'freedom to receive ... information', so that it is not confined to 'imparting'.
- Statement that ECHR Article 10 may therefore entitle a person to receive/acquire information which is available but not impose an obligation on another to collect/generate such information.

#### **AO2**

- Application to argue that Bekka would be seeking to compel Axebury City Council to generate/create information.
- Application to argue that the ECtHR has refused to extend the positive obligation under Article 10 to require the generation/creation of information in such an instance.
- Application to suggest, therefore, that Bekka would not succeed in a claim that Axebury City Council's failure violated her right to freedom of expression.

Credit any other relevant point(s), including use of any case to assist explanation/application: for example, **Guerra v Italy**.

<b>08</b>	Advise Cal of his rights against Eden, with reference to the tort of misuse of private information, and taking into account Article 8 (the right to respect for private life and correspondence) and Article 10 (the right to freedom of expression) of the European Convention on Human Rights.
	<b>[10 marks]</b>

**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

	<b>Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)</b>
<b>Mark range</b>	<b>Description</b>
<b>7–10</b>  <b>Band 3</b>	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
<b>3–6</b>  <b>Band 2</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
<b>1–2</b>  <b>Band 1</b>	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
<b>0</b>	Nothing worthy of credit.

### **Indicative content**

#### **AO1**

- Outline explanation of the tort of misuse of private information – arises where there is a reasonable expectation of privacy about information which is revealed (breach of the duty of confidentiality as a possible alternative, or confidentiality may be a stronger way of establishing the privacy requirements).
- Outline explanation of relevant aspects of Article 8 (right to respect for private life and correspondence) and Article 10 (right to freedom of expression).
- Outline explanation of the justifications for prima facie infringements of Articles 8 and 10: for example, protection of the rights and freedom of others (Article 8); and prevention of the disclosure of information received in confidence (Article 10).
- Identification of, and reference to, supporting case authority: for example, **Campbell v MGN**, **Axel Springer v Germany**.

**AO2**

- Application to suggest that Cal would have an expectation of privacy derived from his relationship with Della and the nature of the subject matter and that this expectation would be preserved through the specific request by Della to her friend to delete the message.
- Application to suggest that, if there is a reasonable expectation of privacy, it will be opposed by Eden's right to freedom of expression, so that the ultimate determination of whether the tort has been committed will turn on whether, on the facts, Cal's Article 8 rights prevail over Eden's Article 10 rights, or vice versa.
- Application to suggest that the cross justifications for infringement must be judged on the notion of pressing social need and proportionality, taking into account factors such as Cal's status as a public figure with a high public profile; his deliberate efforts to deceive the public about his true beliefs; the need for control of information as part of autonomy; the possibility that the information could make a contribution to political debate in a democracy; the circumstances in which Eden acquired the information.

**AO3**

- Analysis and evaluation of the balance to be struck, within the application of the tort of misuse of private information, between Article 8 and Article 10 rights, acknowledging that, in principle, neither has priority over the other.
- Analysis and evaluation of the requirement in the justifications for prima facie infringement of Articles 8 and 10 to show that the interference was in accordance with/prescribed by law and necessary in a democratic society (a pressing social need and proportionate).
- Further use of case authority, including cases referred to above, and, for example, **Von Hannover v Germany, McKennitt v Ash, ZXC v Bloomberg LP**.

Credit any other relevant point(s).

<b>09</b>	Examine the extent to which legal rules and moral rules are related. Discuss the extent to which rules in Human Rights law reflect rules of morality.	<b>[15 marks]</b>
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**Marks for this question: AO1 = 5 and AO3 = 10**

	<b>Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>13–15</b> <b>Band 5</b>	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
<b>10–12</b> <b>Band 4</b>	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
<b>7–9</b> <b>Band 3</b>	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
<b>4–6</b> <b>Band 2</b>	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
<b>1–3</b> <b>Band 1</b>	Knowledge is minimal and demonstrates a minimal understanding of the Nature of Law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

- Basic definitions of legal rules (in simple terms, such as rules created by authority within a given jurisdiction, or by reference to theorists such as Austin) and of moral rules (for example as a set of expectations concerning behaviour which is right or wrong, as customary practices, as social manners, as rules based on religion, as beliefs, values, principles and standards of behaviour).
- Outline explanation of the relationship between legal rules and moral rules for instance by identifying similarities and differences.
- Identification of appropriate examples drawn from civil and/or criminal law to illustrate the relationship between legal rules and moral rules.
- Identification of appropriate examples and supporting case authority to illustrate the extent to which rules in human rights law may be founded on moral rules.

**AO3**

- Analysis of similarities and overlap between legal and moral rules, developed through illustration; for instance what is illegal is often also immoral, rules of law can influence the morality of society and vice versa and the notion that to break the law is of itself immoral.
- Analysis of differences between legal and moral rules, developed through illustration; for instance the sources of legal and moral rules, the consequences on infringing legal and moral rules and the idea that legal rules are subject to rules of recognition, change and adjudication.
- Analysis of appropriate examples to illustrate the differences and the possible relationship between moral rules and legal rules.
- Analysis of relevant legal rules in human rights law: for example, the right to life, the right to freedom from arrest and detention, the right to private life, the right to freedom of expression, supported by relevant legal authority.
- Evaluation of the relevant legal rules; for example, human rights may be said to be rights which derive from a fundamental moral vision of the potential in human life, implying equality, universality, and inalienability. As aspects of the realisation of this moral vision, the right to life, the right to liberty and security of person, and to private life may be seen as based on a moral rule respecting and protecting the integrity of the individual in the broadest possible sense; the right to freedom of expression may be seen as respecting a moral injunction to permit development and self-realisation of the individual; the question of whether the various exceptions to rights contained within the ECHR can be seen as morally (as well as legally) justified.
- Conclusion perhaps to suggest that many of the rules in human rights law can be associated with specific moral rules or implement a moral vision.

Credit any other relevant point(s).

ICG1: law and morality

ICG2: human rights law



<b>10</b>	<p>Taking a human rights perspective, consider the rights, duties, liability and remedies arising out of the incidents involving Faisal and the various members of the group.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology. A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–6</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

- Identification and outline explanation of the elements of the offence of aggravated trespass under the Criminal Justice and Public Order Act 1994 s68.
- Identification and outline explanation of the provisions of the Public Order Act 1986 ss11–12 and s14 giving police power to control various aspects of marches ('processions') and static meetings ('assemblies').
- Identification and outline explanation of the common law powers of the police in connection with actual and anticipated breaches of the peace.
- Identification and outline explanation of the provisions of Articles 10 and 11 of the ECHR (right to freedom of expression/right to freedom of assembly and association) and the limitations thereon.
- Identification and explanation of the provisions of the Human Rights Act 1998 ss6–8 for challenging acts of public authorities which are incompatible with ECHR rights (possible reference also to judicial review).
- Identification of, and reference to, supporting case authority: for example, **Chivers v DPP**, **Kudrevicius v Lithuania**, **Laporte v Chief Constable of Gloucestershire Constabulary**.

**AO2**

- Application of the rules on aggravated trespass to argue that, prima facie, the three members of the group committed the offence in entering as trespassers the grounds in which the fund-raising event was being held. In relation to that event, their intent was clearly to deter participation and to obstruct and disrupt within the Criminal Justice and Public Order Act 1994 s68(1)(a)–(c) by chaining themselves to the fencing.
- Application of the provisions of the Public Order Act 1986 s11, to argue that Faisal will have committed an offence in failing to observe the notification requirements for the planned march to the public park.
- Application of the provisions of the Public Order Act 1986 s12 and s14 to argue that the police had powers to control the conduct of the march (procession) and the meeting (assembly), including the route of the march, and the numbers present at, and the duration of, the meeting and that refusal to comply would be an offence.
- Application of the rules on breach of the peace to suggest that the arrest of the three at the fund-raising event appears to have been in anticipation of breach of the peace, though it could have been for aggravated trespass, a charge which might subsequently follow. It might be doubtful whether any further breach of the peace could have taken place.
- Application of the provisions of Articles 10 and 11 of the ECHR to argue that both Articles 10 and 11 will be engaged, and that the outcome in relation to police action and resulting prosecutions (if any) arising out of the incidents will depend on whether the State can sufficiently justify the actions taken and any prosecution/conviction for offences identified, as being as prescribed by law, necessary in a democratic society and, probably, with the aim of preventing disorder or crime and/or protecting the rights and freedoms of others.
- Application of the rules in the Human Rights Act 1998 ss6–8, to argue that those charged with criminal offences could defend themselves by reference to Articles 10 and 11, whilst the decision to impose severe limits on the meeting in the public park could be challenged (say, via an action for judicial review) on the same basis.

**AO3**

- Analysis and evaluation of the provisions of the Criminal Justice and Public Order Act 1994 s68.
- Analysis and evaluation of the powers of the police under the Public Order Act 1986 ss11–12 to control marches, and under s14 to control meetings.
- Analysis and evaluation of the common law powers of the police in relation to breach of the peace.
- Analysis and evaluation of the requirements of Articles 10 and 11 of the ECHR, and, in particular, of the permitted justifications for infringement which determine whether or not there has ultimately been a violation (examining the balance between the right to freedom of expression, and to assembly and association, and the need to preserve order, restrict crime, and protect rights and freedoms of others, reaching a valid conclusion).
- Further use of case authority, including cases referred to above, and, for example, **Ollinger v Austria**, **Ezelin v France**, **DPP v Ziegler**.

Credit any other relevant point(s).

ICG1: Aggravated trespass / breach of the peace / arrest

ICG2: Public Order Act 1986

ICG3: Articles 10 and 11 / Human Rights Act 1998 ss6-8 / judicial review

- 11** Taking a human rights perspective, consider the rights and remedies of Hugh and of Ivan's family, **and** the duties of the Police in relation to this incident.

Assess the extent to which the rules you have applied in relation to Ivan's death achieve an appropriate balancing of the interests involved.

**[30 marks]**

**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

	<b>Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)</b>
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>There is excellent analysis and evaluation of legal concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>There is good analysis and evaluation of legal concepts and issues.</p> <p>Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>There is satisfactory analysis and evaluation of legal concepts and issues.</p> <p>Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>

<p><b>7–12</b></p> <p><b>Band 2</b></p>	<p>Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>There is limited analysis and evaluation of legal concepts and issues.</p> <p>Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<p><b>1–6</b></p> <p><b>Band 1</b></p>	<p>Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.</p>
<b>0</b>	Nothing worthy of credit.

**Distribution of marks for substantive and non-substantive law:**

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

- Outline explanation of the provisions of the Police and Criminal Evidence (PACE) Act 1984 s24 relating to the legal basis in English law for arrest and detention.
- Outline explanation of the meaning of the right to liberty and security of person under Article 5 of the European Convention on Human Rights (ECHR).
- Outline explanation of the justification for deprivation of liberty under Article 5.1c and 5.2, and requirements of 5.5.
- Identification and description of the basic obligation on States and their agents not to take life (Article 2.1), and of the positive obligation to protect life in the case of known and imminent threats.
- Identification and outline explanation of the qualifications to the basic obligation, including exceptions (a) in defence of any person from unlawful violence, (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, and of the requirement that force used for such purposes must be 'no more than absolutely necessary' (Article 2.2).
- Identification and outline explanation of actions under the Human Rights Act 1988 ss6–8, and possibly also of common law negligence (not required).
- Reference to appropriate case interpretation of the obligations and remedies (for example, **Castorina v Chief Constable of Surrey**, **Hayes v Chief Constable of Merseyside**, **McShane v UK**, **McCann v UK**, **Bubbins v UK**, **Osman v UK**, **Robinson v Chief Constable of West Yorkshire Police**, **MPC v DSD**).

- Identification and outline explanation of the interests raised by the death of Ivan which require balancing.

## AO2

- Application to suggest that Hugh's arrest may have been lawful under PACE Act s24 because Hugh was wearing clothing similar to the description of the suspects given to the police and was running from the location of the shop just after a gunshot sound had been heard. Possible application of the three-part test from *Castorina*, or the two-part test from *Hayes*. Credit alternative application suggesting arrest was not lawful under PACE Act s24 as not based on reasonable grounds given that Hugh was wearing a blue, not a black hoodie, and if the Police Officers had listened to him he could have explained why he kept running.
- Application to suggest that, *prima facie*, there was an interference with Hugh's right to liberty under ECHR Article 5.1 when he was arrested and detained for 2 hours (a deprivation of his liberty).
- Depending on the approach taken to the arrest, application to suggest either that the requirements for justified deprivation of liberty under Article 5.1c and 5.2 were met, or were not met, and in the latter case the arrest constituted a violation of Hugh's rights under Article 5.1.
- Application to suggest that, as a police officer/agent of a public authority, if the arrest was unlawful and so a violation of Hugh's rights under Article 5, the Police would have been in breach of their obligations under the Human Rights Act 1998 s6, entitling Hugh to sue for damages under s7, compliant with ECHR Article 5.5.
- Application to suggest that, since state agents were involved (the police), Article 2 was directly engaged with both an obligation not to take life, but also to take steps to investigate threats to life and, where appropriate, protect from imminent danger.
- Application to suggest that in failing to follow up the tip-off about planned armed robberies, the police failed to anticipate and minimise threat to life and so may be in breach of their obligations under Article 2.
- Alternative application to suggest that the Police had an honest and reasonable belief that the use of deadly force was 'absolutely necessary' to protect the lives of the customers in the shop since a perceived gunshot sound had been heard, there had been a report of a suspect carrying a gun, and Ivan did not put his arms up when instructed to do so, but instead reached towards his pocket as if to draw a gun. The fact that the actual gun found was not capable of firing bullets would not negate this as the police who attended on the day had no way of knowing the gun was only capable of firing blanks; they could rely on the test from **McCann v UK**: an honest belief in the necessity of lethal force, which is perceived for good reasons to be valid at the time, even though it subsequently turned out to be mistaken.
- Application to suggest that, in view of Ivan's death, there were issues concerning the planning of the operation – ie the failure to follow up on the tip-off, so that an independent investigation which could be effective in determining the reasons for the death must be undertaken.
- Credit application to suggest that Ivan's death may have resulted from common law negligence – the failure to follow up the tip-off from a reliable source.
- Conclusion that there was a possible breach of Article 2 which would give rise to an action for compensation under the Human Rights Act 1998 ss6–8 by John's family, and possibly an action in the tort of Negligence for compensation.

## AO3

- Analysis and evaluation of the requirements to justify arrest under PACE Act 1984 s24 and of the obligations imposed on the State by the Article 5 right to liberty and security of person.
- Analysis and evaluation of the extended obligations imposed by ECHR interpretation of Article 2: investigation of crime and protection from imminent threats to life; training, planning and control by state agents of operations posing a risk to life.
- Analysis and evaluation of the extended obligations imposed by ECHR interpretation of Article 2: an effective and independent investigation of death attributable to state agents.

- Credit analysis and evaluation of common law actions in negligence in relation to injury/damage to victims resulting from police actions in the execution of duty.
- Further use of supporting case authority (for example further development of cases cited above, and others such as **Murphy v Oxford**, **Matzarakis v Greece**, **Armani Da Silva v UK**).
- Analysis of the concept of balancing interests, and of what would represent an appropriate balance between the interests to be protected (here, related to the interests of individuals, in particular their safety and right to life, against the interests of the State in preventing crime and protecting the public at large).
- Evaluation of the balance struck by reference to the provisions analysed above, possibly concluding that the right to life, being one of the most fundamental human rights, requires very compelling reasons for an interference to be lawful – as reflected in the wording of Article 2(2), but if the right to life of one individual has to be weighed against the right to life of members of the public, then the latter would take precedence.

Credit any other relevant point(s).

ICG 1: Arrest under PACE / Article 5

ICG 2: Article 2 / HRA ss6-8 / judicial review (credit Ng)

ICG 3: Balancing

**Assessment Objectives Grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>	<b>Total</b>
1	1			<b>1</b>
2	1			<b>1</b>
3	1			<b>1</b>
4	1			<b>1</b>
5	1			<b>1</b>
6	5			<b>5</b>
7	2	3		<b>5</b>
8	3	4	3	<b>10</b>
9	5		10	<b>15</b>
10	10	10	10	<b>30</b>
11	10	10	10	<b>30</b>
<b>Paper Total</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>



**Distribution of marks for substantive and non-substantive law**

<b>Question</b>	<b>Substantive</b>	<b>Non-substantive</b>	<b>Total Marks</b>
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
<b>Total</b>	<b>75</b>	<b>25</b>	<b>100</b>
<b>Total %</b>	<b>75</b>	<b>25</b>	<b>100</b>