

A LEVEL

Candidate Style Answers

LAW

H415

For first teaching in 2017

H415/03 Further Law – Section B **Option 1: Human rights law**

Version 1

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Introduction

Please note that this resource is provided for advice and guidance only and does not in any way constitute an indication of grade boundaries or endorsed answers. Whilst a senior examiner has provided a possible level for each response, in a live series the mark a response would get depends on the whole process of standardisation, which considers the big picture of the year's scripts. Therefore the level awarded here should be considered to be only an estimation of what would be awarded. How levels and marks correspond to grade boundaries depends on the Awarding process that happens after all/most of the scripts are marked and depends on a number of factors, including candidate performance across the board. Details of this process can be found here: <http://ocr.org.uk/Images/142042-marking-and-grading-assuring-ocr-s-accuracy.pdf>

The sample assessment material used in this resource is here: <http://www.ocr.org.uk/Images/315219-unit-h415-03-further-law-sample-assessment-material.pdf>

Section B

Option 1 – Human rights law

Part 1

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Pavel Wronski is a famous artist and anti-war campaigner who uses photography and video to create controversial works of art. His latest exhibition is about the atrocities of war. It contains many pictures and film clips taken from the aftermath of the recent bombing of a city involved in an ongoing conflict. Some of the pictures and film clips are shocking. Many of the images are available on the internet. The exhibition divides opinion. Some people claim it is a challenging but vital work whilst many others are offended and outraged. The local council asks Pavel to remove the most offending images. He refuses to make changes to his work claiming this is 'an act of censorship'. The council imposes a temporary suspension of the gallery's licence. This effectively closes the exhibition.

A famous actress, Sophia Battista, has struggled with depression and drug addiction in recent years. She booked herself into a recovery centre for treatment. The family kept this information secret in order to give her the best chance of recovery. A nurse working at the centre recently contacted Galaxy magazine with details about Sophia's treatment. A photographer secretly took some very intrusive photographs of Sophia looking distressed and unwell as she attempts to recover. Galaxy plans to print them and run the story in its next edition. Sophia has become aware of the photographs. She is very distressed about the possibility that details of her personal life will be published. She asks the court for an injunction to prevent publication.

- 3 Advise whether Pavel has a strong legal case to challenge the ban or whether the council can prevent him from exhibiting. [25]
- 4 Advise how Sophia could use Article 8 ECHR to secure an injunction against Galaxy. [25]

Essay question on human rights law

- 5* Discuss the key provisions of the Human Rights Act 1998 and the criticisms made of them. To what extent are the criticisms valid? [25]

Section B Question 3

Advise whether Pavel has a strong legal case to challenge the ban or whether the council can prevent him from exhibiting. [25]

Level 4 answer

Pavel's argument is that the council's decision to suspend the licence of the gallery is effectively an act of censorship. He could challenge the legality of the decision by pursuing a judicial review of the council's decision. If he is able to bring such an action he would be able to invoke his rights under Article 10(1) of the ECHR which protects freedom of expression. This is possible due to the passage of the HRA 1998 and in particular s6 which makes it unlawful for a public authority to act in a way which is incompatible with Convention rights unless authorised by legislation.

As an artist defending his right to present his art, Pavel would also rely upon s12(4) HRA which requires a court to have 'particular regard' to the importance of Article 10 in respect of matters affecting 'journalistic literary or artistic material'. Pavel's case is strengthened by the fact that much of the material is already on the internet although this would not be decisive. This suggests that any act of censorship would be ineffective in preventing the public from seeing the works.

Pavel's case involves freedom of expression which has been described as the 'cornerstone of any democratic society'. It supports the democratic values of 'pluralism and tolerance' and an infringement of this right will be examined carefully by the courts. It is seen as an 'intrinsic and instrumental right' meaning - it lays a foundation for other rights to be supported. *Handyside v United Kingdom* (1979-80) concerned the publication of the Little Red Schoolbook, containing material considered to be obscene and offensive. It was held that the interference with the Article 10 rights was justified because preventing publication of the book was aimed at protecting morals.

The council may well attempt to justify its actions as the protection of morals. There is a common law criminal offence of 'outraging public decency' which has been used on rare occasions such as *Gibson v Sylvieire* (1991). If the council could show that Pavel was breaking the law by exhibiting these images then this might justify their censorship on the grounds that they are preventing disorder or a crime. This looks highly unlikely as no prosecution has been brought.

The *Handyside* case also highlighted the importance of the concept of the doctrine of the 'margin of appreciation' allowed to states in interpreting the ECHR. Each state can have regard to the different views of its own society when interpreting the law. This gives a certain amount of flexibility to member states. In cases involving artistic expression this would also be broadly interpreted.

Further challenges to Article 10 may be made on the grounds that the right may clash with yet other articles. An example of this would be where freedom of speech clashes with the right to religion under Article 9 as then this may result in a successful challenge.

The Article 10 right is wider than it first appears and covers other forms of expression than merely speech, including artistic expression such as films, paintings, radio and television. It has been held to cover actions such as engaging in political protest, as in *Steel v UK* (1990), and disrupting a foxhunt, as in *Hashman and Harrup v UK* (2000); both were seen as the legitimate exercise of freedom of expression. Nothing in these cases suggest that Pavel's artwork would not be within the ambit of Article 10.

Article 10(2) sets out the situations in which this freedom may be limited. The only restrictions, which the council seeks to apply by effectively closing the exhibition, may be due to either the protection of health or morals or the prevention of crime.

Given the strength of the protection for this right, the width of the margin of appreciation and the reluctance of the court to limit freedom of expression in the absence of a clear Article 10(2) reason it is argued that Pavel would have strong grounds for winning a judicial review.

Examiner commentary

The answer gives a thorough account of the meaning and significance of Article 10, the limitations on its application and when these might be applicable. It does not rely solely on Article 10 but the reference to s6 HRA shows that the candidate understands the mechanism by which the HRA seeks to align domestic law with the ECHR.

There is a good range of supporting case law outlining the scope of the right and some of the principles which are likely to decide these cases.

In applying these principles to the facts the answer tries to achieve a balanced approach by including factors on both sides of the argument. It also includes and explains procedural points such as the concept of the 'margin of appreciation' and how this affects the interpretation of Article 10.

This answer is strong on both content (AO1) and application (AO2).

Section B Question 4

Advise how Sophia could use Article 8 ECHR to secure an injunction against Galaxy.

[25]

Level 4 answer

The enactment of the Human Rights Act 1998 gave people the possibility to enforce ECHR Convention rights directly in English courts. One of those is the right to a private life, protected under Article 8.

Article 8 protects four main areas of personal autonomy; private life, family life, home and correspondence. The right under Article 8 is qualified and can be limited in certain circumstances set out in Article 8(2). In this case Sophia would be seeking to protect her right to a private life. The right is not automatic. It has to be based on the existence of a cause of action.

s6 of the HRA creates a mechanism for individuals to enforce their rights against a 'public authority'. This is an example of vertical effect. It states that it is unlawful for a public authority to act in a way which is incompatible with the Convention. Galaxy, however, as a private company is not a public authority and therefore would not be directly covered by this right of action.

Sophia would have any protection afforded by statute but this would be unlikely to provide her with a specific remedy for this situation. An example might be the Protection from Harassment Act 1997 – however in this instance it is unlikely to be of much help as the intrusion would not amount to a 'course of conduct'.

It is important to note that the Human Rights Act does not create a new general right of privacy. Sophia would however be able to bring an action for breach of confidence and then invoke Article 8 to try to prevent Galaxy from publishing the article and photographs as to do so would infringe her privacy and cause her personal distress.

Any decision in this case will attempt to consider the relative strengths of two competing interests. Sophia will invoke Article 8 to strengthen her claim against Galaxy and they will rely on Article 10 to defend their right to publish.

A review of the principles developed in the cases below shows the likelihood of the outcome being in Sophia's favour.

There have been several cases involving celebrities attempting to preserve their privacy by invoking Article 8. These cases always involve a balancing of the competing interest of the media to exercise freedom of expression under Article 10.

In *von Hannover v Germany (No2)* (2012), a case brought before the ECtHR, the Grand Chamber of judges set out the guiding principles.

One of these principles is proportionality. Does Galaxy's right to publish the pictures outweigh Sophia's right to privacy? The courts have also drawn a distinction between what is 'interesting to the public' and what is in 'the public interest'. The public may well be interested in seeing the photographs but this fact alone doesn't mean the courts will allow it or that it is in the public interest.

In *Campbell v MGN* (2004) the model Naomi Campbell brought an action for breach of confidence against the Daily Mirror when they published details of her receiving treatment for drug addiction and published a picture of her leaving Narcotics Anonymous. The publication of the photographs was held to be too intrusive. This case would clearly support Sophia's claim as the photographs were taken at a very vulnerable moment when privacy would be expected.

In *Weller v Associated Newspapers Ltd* (2015) the musician Paul Weller successfully argued that the publication of pictures of his children out shopping with him breached their Article 8 rights.

The key factor in deciding such cases is the idea of a 'reasonable expectation of privacy'. As in the case above this supports Sophia's claim as she would be able to argue that as she was a patient in hospital it was not unreasonable that she should have the necessary privacy to recover.

In Sophia's case she wishes to prevent publication altogether by gaining an injunction. This will not be granted lightly by the courts as any injunction will be seen to have a chilling effect on the freedom of the press.

In deciding the merits of Sophia's case the court will also have to balance Galaxy's competing claims under Article 10 freedom of expression. S12(4) HRA requires a court to have 'particular regard' to the importance of Article 10 in respect of matters

affecting 'journalistic literary or artistic material'. Galaxy clearly would be defending their journalistic right to publish in the public interest.

In *Douglas v Hello* (2001) Michael Douglas and Catherine Zeta-Jones were unable to prevent unauthorised photographs of their wedding being published. This was partly due to the fact that photographs would be published albeit in a different publication.

However there is a world of difference between a celebrity couple wanting to control the release of publicity around a wedding for commercial reasons as much as for reasons of privacy and the publication of photographs which seek to make profit out of the suffering of a celebrity who is undergoing difficult treatment. Sophia's case will be stronger. Her expectation of privacy is arguably much stronger and more pressing. This means that Sophia is very likely to succeed in her claim against Galaxy.

Examiner commentary

The answer gives a clear understanding of the mechanism by which Article 8 provides protection under domestic law. It does this by highlighting the relevant sections of the Human Rights Act and explains how these sections interact with the European Convention on Human Rights. There is evidence of sophisticated statutory knowledge here.

It also sets out that there are clear tensions between competing rights under the ECHR and acknowledges that it is not easy to predict the outcome of such cases where both rights have protection under the law. The candidate concludes correctly that on balance Sophia's case is stronger than Galaxy's and she is likely to succeed.

The answer uses a good range of cases drawn from both the ECtHR and under the Human Rights Act to set out the main principles behind celebrity privacy cases. There is a good attempt to show the relative merits of Sophie's claim in relation to the case law, showing good application skills.

This answer is strong on both content (AO1) and application (AO2). It should be noted that candidates are not limited to the cases set out in the mark scheme; those relating to celebrities work particularly well in this scenario.

Section B Question 5 and 8

Discuss the key provisions of the Human Rights Act 1998 and the criticisms made of them. To what extent are the criticisms valid? [25]

Level 4 answer

The Human Rights Act 1998 was passed as part of the Labour government's manifesto pledge of 'Bringing Rights Home'. The idea was to make the rights under the European Convention of Human Rights (ECHR) available in domestic, English courts and to save time and money for individuals pursuing their rights.

The Act contains several mechanisms designed to bring domestic law into close alignment with the ECHR but they stop short of entrenchment. This means that although the Act gives strong guidance on the passing and interpretation of other legislation, it can still be repealed by parliament.

Some of the key sections of the Act are explained below.

Section 2 creates a duty on courts 'to take into account' any judgment or decision of the European Court of Human Rights (ECtHR) where relevant.

Section 3 requires that domestic legislation should be interpreted in a way which is compatible with the Convention rights.

Section 4 allows a court to make a declaration of incompatibility where the domestic legislation does not fit in with the Convention.

Judges do not have the power to strike down such legislation but they can act in an advisory capacity to warn parliament about any human rights shortcomings in legislation.

Other important sections include section 6 whereby public authorities must not act in a way incompatible with the Act and section 7 which sets out the limitations on when a case can be brought to court.

One of the main criticisms of the Act is that it has an irreversible impact on our legal system and contradicts the sovereignty of parliament by giving judges a power to make a declaration of incompatibility which they have not previously possessed.

The Act has faced hostile criticism from certain sections of the media over its perceived weakening of the law in relation to the 'war on terror' or in extending prisoner's rights, such as the proposal to give prisoners the right to vote.

In *Othman v UK* (2012) the ECtHR ruled that deporting Abu Qatada, a terrorist suspect, to Jordan to face trial would breach his human rights. He could not be guaranteed a fair trial under Article 6 because there was a risk that evidence obtained under torture would be used in the trial. The claimant took almost ten years to exhaust all possible human rights arguments before the courts. This case was seized upon by critics as clear evidence that the HRA was open to abuse.

These criticisms should be seen in the context of a press which had hoped for greater protection of free speech under Article 10 only to see that competing claims under Article 8 often prevented publication of lucrative stories about celebrities.

These criticisms led directly to the Conservatives' manifesto proposal for the 2015 election to repeal the Human Rights Act and replace it with a tailor-made British Bill of Rights. However, politicians have understandably been wary of explaining which specific rights would be limited or excluded under such a Bill. No specific proposals have yet been published. One danger of such a repeal would be the potential impact on the constitutional settlement in Northern Ireland as guaranteed by the Good Friday Agreement.

On the other side of this debate is the positive way human rights laws have been used to bolster rights and clarify legal protections for individuals in a wide variety of situations. These include mentally disabled patients being given the same protection as everyone else under the law as in *Cheshire West v P* (2014), families of soldiers killed in combat being able to sue for substandard equipment as in *Smith v MoD* (2013), and the parents of a child who died as a result of poor care being able to get compensation as in *Savage v South Essex Partnership NHS Trust* (2008).

These decisions might be less sensational than the high profile cases above, but they do give tangible rights to people who might otherwise not have been able to pursue their claims.

The Act represents a compromise between parliamentary sovereignty and the protection of human rights. Parliament can therefore knowingly pass legislation which is in direct contradiction to the Convention and it will still be lawful. This lack of entrenchment could be argued to be a weakness of the law protecting human rights as it could at any time, as has been proposed, be repealed.

Some critics have argued that the Act should go further and cover areas such as social and economic rights, although in the current climate this is seen as an unlikely development.

It is clear that the introduction of the Human Rights Act has significantly changed the legal landscape and not everyone is in favour of these changes. The critical voices have often over emphasised the impact of one or two headline grabbing cases to make their case. The better argument is that the impact of HRA on the everyday lives of individuals is very positive, despite the obvious drawbacks.

Examiner commentary

This is a very good attempt at a question with a very wide remit. The answer tries to strike a balance between dealing with the broader aims and political context of the Human Rights Act as well as with the more specific aspects of how it is working in practice.

It has good detail on the main sections of the statute, the constitutional impact of the Act and some key areas of society that have been affected since its inception, which places it in Level 4 for AO1.

There is a clear balance of opinion within the essay showing both strengths and weaknesses of the Act. This is also well

supported by examples from case law on both sides of the argument. There is a clear conclusion based on balancing the arguments on both sides of the debate, which places it in Level 4 for AO3.

It is worth pointing out that in such a question there will be a range of different arguments, developed through different cases, which will be credit worthy. The main strength of this essay is that it deals with both the broader aims of the Act and its implementation through specific cases.

Option 1 – Human rights law

Part 2

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are related.

Jacob and Max are brothers taking part in an anti-austerity march in London. About 3000 protestors plan to march peacefully to a rally outside the Bank of England. A smaller group of about 250 anarchists has already gathered outside the Bank of England. Their intention is to use disruptive violence to gain publicity. They are masked and throwing projectiles at the Bank. The chief police officer decides to keep the two groups separated for safety. He orders police to form a tight cordon around the main group of protestors and to keep them penned in until the violence at the bank has been dealt with. This takes well over five hours. Many of the protestors become abusive towards the police. Jacob suffers an asthma attack. He falls to the ground and is knocked unconscious. Max shouts at the police to let his brother out. An officer then strikes Max with a baton before pulling him from the crowd. He is photographed and then taken to a nearby police station along with several other protestors.

On arrival at the police station Max is searched. When he questions a police officer about why he is being detained he is told to 'shut up and keep quiet' if he 'knows what is best' for him. When he refuses to cooperate he is pushed forcibly into an unheated cell. Max is told that he will be kept there until he has calmed down. He is also told that he is suspected of being one of the ringleaders behind the violence. His phone is taken from him. Max is kept overnight in a cell without food. When he asks to see a solicitor he is told that they are 'far too busy' to deal with his request. The following morning he is released along with many other protestors without further explanation or charge.

- 6 Advise whether the police treatment of Jacob and Max during the protest was lawful. Refer to Articles 5 and 11 of the Human Rights Act in your answer. [25]
- 7 Advise on the possible legal grounds of any challenge Max might make against the police regarding his arrest and detention. [25]

Essay question on human rights law

- 8* Discuss the key provisions of the Human Rights Act 1998 and the criticisms made of them. To what extent are the criticisms valid? [25]

Section B Question 6

Advise whether the police treatment of Jacob and Max during the protest was lawful. Refer to Articles 5 and 11 of the Human Rights Act in your answer.

[25]

Level 4 answer

Jacob and Max have taken part in an anti-austerity demonstration which resulted in them being detained against their will for five hours.

Article 5 of the ECHR provides a right to liberty and security. It aims to provide protection for individuals who have been unlawfully deprived of their liberty. The ECtHR has stressed that the main aim of this right is to prevent any 'arbitrary' deprivation of liberty. Although there is no definitive list of what makes a decision arbitrary the case of *Saadi v United Kingdom* (2008) sets out the principles to be considered. These include, for example, lawfulness, illegal acts by the authorities, whether the deprivation was necessary and the purpose of the detention.

Although this is seen as a fundamental right it is nevertheless subject to many exclusions. These are set out under Article 5(1)(a) to 5(1)f.

The meaning of deprivation of liberty has been discussed in both the ECtHR and domestic courts. It has a much wider meaning than simply imprisonment. In *Guzzardi v Italy* (1981) a Mafiosi suspect was restricted to living in a space of 2.5 square kilometres, this was an article 5 issue. The court took into account the 'duration, effects and manner of implementation' of the measure. In a domestic case, *Cheshire West and Chester Council* (2014), about a vulnerable individual being cared for in a care home, Lady Hale explained that the essence of this deprivation was being 'under continuous supervision and not allowed to leave'.

Under these definitions it is arguable that Max and Jacob had passed the initial test of being detained. It would then fall to the police to show that the deprivation had a lawful reason to support it.

In a similar case involving the process of 'kettling' – a technique used by police to contain crowds during demonstrations in order to prevent violence – a different approach was taken by the domestic court and the ECtHR. In *Austin v Commissioner of Police of the Metropolis* (2009) the House of Lords emphasised that whether there had been a deprivation should depend upon the 'purpose' of the confinement and not the circumstances the person was in. The ECtHR took a different view in *Austin v UK* (2012), emphasising that the key factor was the 'circumstances' the individual found themselves in. Ultimately the police action would not be seen as a deprivation of liberty if it was implemented proportionately. The police would argue that the threat of violence was imminent if the two separate crowds were allowed to merge as violence had already broken out in one part of the demonstration. Therefore the measures they took to keep them separate, which resulted in Max and Jacob being detained, were both proportionate and necessary. This would strengthen the police case.

The court would examine what other options were available to the police. Had they exhausted all other options? They would also consider whether five hours was a disproportionate length of time. Time is clearly only one factor but in *Austin* the 'kettling' lasted seven hours and it was not seen as an unlawful deprivation. The perspective of the police at the time is the key. They would argue that the threat of violence and public disorder spreading was indeed imminent.

Article 11 would also play a part in this situation. It covers the right to freedom of peaceful assembly and association. It is a qualified right, subject to many lawful exemptions. A relevant exclusion here would be the prevention of disorder or crime. Once the violent element met up with the main crowd the risk of further crimes being committed was obvious.

The protections of Article 11 apply to peaceful assembly only. Max and Jacob would not be denied the right because of the violent actions of others. The police may take steps necessary to avoid a breach of the peace where such a breach is 'about to occur'.

In *R (Laporte) v Chief Constable of Gloucester Constabulary* (2006) the court emphasised that the police must have reasonable grounds to believe that breach was 'imminent' in the context of the demonstration. It is submitted that this was the case in the scenario as the violent part of the crowd was nearby.

The police also took photographs during the demonstration. The legality surrounding this action is more questionable. In *R (Mengesha) v Commissioner of Police of the Metropolis* (2013) this was said to go beyond the purpose of containment. This would be seen as unlawful. Any photographs taken should be destroyed.

On balance it can be seen that Max and Jacob would have some grounds to challenge the detention through either bringing a claim of false imprisonment or a judicial review hearing but their chances of success, examining the case law, are not strong.

Examiner commentary

This is a strong answer which sets out the importance attached to liberty under the English legal system, both under and outside the Human Rights Act. The question explains the broad idea of the meaning of liberty as discussed in appropriate case law which places it in Level 4 for AO1. It shows a level of sophistication in discussing the alternative interpretations and approaches taken by both the European Court of Human Rights and in the domestic courts.

The response also sets out balanced arguments between the police perspective and that of Jacob and Max. It tries hard to apply the guiding principles to the full facts in the question and the sophistication which it does so, along with the evaluative judgments, places it in Level 4 for AO2.

Section B Question 7

Advise on the possible legal grounds of any challenge Max might make against the police regarding his arrest and detention. [25]

Level 4 answer

Max has been detained and taken to the police station. He is given very limited information about why this is happening except to say that he is suspected of being one of the organisers of the violent part of the protest.

It is questionable as to whether there is any specific reason to select Max from the crowd and arrest him. Under Article 5 he has a right not to be deprived of his liberty except in accordance with due process. It must also be in this case that there is a reasonable suspicion of him having committed a crime. The police will use breach of the peace in this case, but it can be argued that due process has not been followed as set out below.

Max has clearly been deprived of his liberty under the test in *Cheshire West* (2014) but there are question marks as to whether his arrest would be seen as lawful or not.

His arrest does not appear to have been in accordance with the provisions of PACE 1984.

Any person who is arrested has a right to be informed of the reasons for his arrest and of any charge arising. This should be in simple non-technical language that he can understand. Max has not been told this at the outset although he has been given some - quite limited - information about what he is suspected of. Article 5(2) sets out this right, as do both the common law in *Christie v Leachinsky* (1947) and s28 Police and Criminal Evidence Act 1984; the latter says that a person being arrested has the right to be told in clear and unambiguous language of the reason for his arrest.

On arrest Max should have been cautioned in the correct formulation as set out in s34 Criminal Justice and Procedure Act 1994 and advised about his rights. This does not appear to have happened. A custody officer should have booked him into the custody area and informed him of his basic rights by giving him access to a copy of the codes of practice of PACE. A written record must be kept detailing all the checks relating to the detention. This does not appear to have happened.

Also, when Max asked for access to a solicitor for legal advice he was flatly denied this. Such a denial is seen as a particularly serious breach of s58 PACE 1984. In *R v Samuel* (1988) the defendant had been arrested on suspicion of armed robbery. He requested and was denied access to a solicitor. The judge stressed the importance of this saying, 'The right of a person detained by the police to have access to a solicitor was a fundamental right of the citizen.'

Failure to follow these procedures may result in a claim of false imprisonment. The force used during an unlawful detention could also be seen as a battery as it would have no justification in law.

Max has been denied the opportunity to contact anyone about the fact of his arrest. His mobile phone is taken away from him and this is standard procedure but he is not offered the chance to have anyone informed of his arrest. This is a right given under PACE s56.

Force has been used against Max, both when he was arrested and subsequent to this. The police are allowed to use such force as is reasonable in the circumstances. Max would be able to argue that the force used when he was struck with a baton was excessive as he was not posing a physical threat at the time.

Max is kept overnight seemingly without an appropriate check by the custody officer as to the legality of his continued detention. The custody officer is under a statutory duty to undertake regular checks. Under the PACE codes of practice Max would also have been entitled to refreshment and food when detained for such a long period of time.

If the police are simply seen to have been using the power of arrest as a fishing expedition to gain information this would be very likely to be seen as an abuse and rendering his detention unlawful as was the case in *Shimovolos v Russia* (2011). Looking at the breaches in totality would suggest that Max's detention is unlawful.

Examiner commentary

This is a good answer showing both breadth and balance of knowledge (AO1) and good application (AO2). The candidate looks broadly at the right to freedom and does not limit themselves to the ECHR but also includes domestic legislation and case law. There is a good understanding of what makes an unlawful detention too and this is set out in detail; these factors in combination place the response in Level 4 for AO1. There is also a good attempt to link this to the facts in the scenario and to reach appropriate conclusions about the legality of the arrest which places it in Level 4 for AO2.



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