

A Level Law

H418/03 The nature of law and Human rights

Sample Question Paper

Date – Morning/Afternoon

Time allowed: 2 hours

You must have:

- the OCR 12-page Answer Booklet (OCR12 sent with general stationery)



INSTRUCTIONS

- Use black ink.
- Answer **four** questions in total:
Section A: answer **one** question using examples from your full course of study.
Section B: choose Part 1 **or** Part 2 and answer the **three** questions below.
- Write your answers in the Answer Booklet. The question number(s) must be clearly shown.

INFORMATION

- The total mark for this paper is **80**.
- The marks for each question are shown in brackets [].
- Quality of extended response will be assessed in those questions marked with an asterisk (*).
- This document consists of **4** pages.

SECTION A**The nature of law**

Answer **one** question using examples from your full course of study.

1* 'The law should enforce morality'.

Discuss the extent to which you agree with this statement.

[20]

2* 'The aim of the law should be to achieve justice.'

Discuss the extent to which the English legal system achieves justice.

[20]

SECTION B**Human rights law**Choose **Part 1** or **Part 2**.**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. **[20]**

4 Advise how Sophia could use Article 8 ECHR to secure an injunction against Galaxy. **[20]**

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?

[20]

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 co-operate 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.

[20]

- 7** Advise on the possible legal grounds of any challenge Max might make against the police regarding his arrest and detention.

[20]

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?

[20]

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...day June 20XX – Morning/Afternoon

A Level Law

H418/03 The nature of law and Human rights

SAMPLE MARK SCHEME

Duration: 2 hours

MAXIMUM MARK 80

This document consists of 24 pages

SUBJECT–SPECIFIC MARKING INSTRUCTIONS

Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles, concepts and issues.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

When there are 2 marks per level

| Descriptor | Award mark |
|---|--------------------|
| On the borderline of this level and the one below | At bottom of level |
| Consistently meets the criteria for this level | At top of level |

When there are 3 marks per level

| Descriptor | Award mark |
|---|--------------------|
| On the borderline of this level and the one below | At bottom of level |
| Meets the criteria but with some slight inconsistency | Middle of level |
| Consistently meets the criteria for this level | At top of level |

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**Questions **1***, **2***

| | |
|------------------------|--|
| Assessment Objectives: | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks. |
|------------------------|--|

Section BQuestions **3**, **4**, **6**, **7**, **9**, **10**, **12** and **13**

| | |
|------------------------|---|
| Assessment Objectives: | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks. |
|------------------------|---|

Questions **5***, **8***, **11*** and **14***

| | |
|------------------------|---|
| Assessment Objectives: | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks. |
|------------------------|---|

Questions that have an asterisk (*) assess the quality of a candidate's extended response. Levels descriptors are identified in the AO3 column in italics.

Mark scheme continued on page 6.

Section A

1* 'The law should enforce morality'. Discuss the extent to which you agree with this statement.

| | |
|------------------------------|---|
| Assessment Objectives | <p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.</p> |
| Additional guidance | <p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p> |

AO1 Indicative content

Answers **may** include:

The distinction between law and morals

- Definition of legal rules e.g. John Salmon, John Austin, H. Hart or Karl Llewellyn and definitions of morals e.g. Durkheim or Philip Harris.

The legal enforcement of moral values

- Examples of laws that enforce morals (human rights, common law examples, statutory examples)

The diversity of moral views in a pluralist society

- Examples of controversial laws made by parliament and judges.
- How morality changes over time e.g. marital rape was not a crime until 1991.
- Pluralist societies contain a wide range of moral standards and values making it very difficult or impossible for the law to please everyone. Describe the main points of the Hart/Devlin debate using examples of laws supporting Devlin and laws which support Hart.
- Describe the Fuller/Hart debate.

The relationship between law and morals and its importance

- Theories of law and morals e.g. Natural law theorists (Aristotle, Aquinas, Fuller) and Positivist (Bentham), the overlap between law and morals, the divergence of laws and morals.

Examples from the whole course of study.

Credit any other relevant point(s).

AO3 Indicative content

Answers **may**:

- Discuss the difficulty of defining moral values in a pluralist society and how the law struggles to please everyone.
- Consider how politicians avoid passing controversial laws that will divide society and could change the way people vote.
- Discuss the use of Private Members' Bills as a way to pass controversial laws without the political parties having to state their position.

- Discuss how morality usually moves at a much faster pace and the law struggles to keep up with the views of society.
- Discuss the role of judges making moral decisions from a narrow social background. Consider criticisms of the judiciary being 'out of touch'.
- Discuss the strength and weaknesses of the views of Devlin's desire for the law to uphold a common morality to ensure society does not disintegrate. Compare with the utilitarian approach of Hart and his desire for the law to respect personal autonomy.
- Discuss the opposing views of Fuller and Hart.
- Discuss the strengths and weaknesses of the natural law theorists and the positivists.
- Discuss the difficulties of trying to enforce morals using the law and conclude whether the law should try to do this and how well it achieves it.

Credit any other relevant point(s).

| | AO1 | Mark | AO3 1b | Mark |
|----------------|---|-------------|--|--------------|
| Level 4 | <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. | 7–8 | <ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal concepts and issues. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p> | 10–12 |
| Level 3 | <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. | 5–6 | <ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal concepts and issues. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p> | 7–9 |
| Level 2 | <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. | 3–4 | <ul style="list-style-type: none"> • Basic analysis and evaluation of legal concepts and issues. • The response is partially focused on the question. • Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p> | 4–6 |
| Level 1 | <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. | 1–2 | <ul style="list-style-type: none"> • Limited analysis of legal concepts and/or issues. • The response has limited focus on the question. • Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p> | 1–3 |
| Level 0 | No response or no response worthy of credit. | 0 | No response or no response worthy of credit. | 0 |

2* 'The aim of the law should be to achieve justice.' Discuss the extent to which the English legal system achieves justice.

| | |
|------------------------------|---|
| Assessment Objectives | <p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.</p> |
| Additional guidance | <p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p> |

AO1 Indicative content

Answers may:

- Include definitions of justice (e.g. Chaim Perelman) and different types of justice: formal justice, substantive justice, distributive justice and corrective justice. Use examples from your full course of study
- Include theories of law and justice e.g. Natural Law theorists (Aristotle, Aquinas, Fuller) and Positivists (Bentham, Hart and Austin), John Rawls, Marxism, Nozick, Rule of Law etc. Credit any other relevant theories
- Explain examples of formal justice – legal institutions such as police, courts, judiciary, juries, and appeals
- Explain examples of substantive justice – legal rules e.g. fault and defences in criminal law, fault in tort law, rights and freedoms in the Human Rights Act
- Explain examples of distributive justice - the fair allocation of resources e.g. wealth, power, rights, resources further e.g. anti-discrimination laws, minimum wage and redistribution of wealth through taxation and the welfare state
- Explain examples corrective justice – sentencing in criminal law e.g. retribution; remedies in tort and contract

Credit any other relevant point(s).

AO3 Indicative content

Answers may:

- Discuss how the law tries to create a common definition of justice that is shared by all members of society
- Discuss the varied theories of law and justice and how they aim to achieve justice in a society
- Discuss the different types of justice with examples from the whole course of study:
 - Formal justice – the problems faced by the criminal justice system e.g. examples from the miscarriage of justice cases. The findings of the Runciman Commission and the creation of the Criminal Cases Review Commission. The Stephen Lawrence case and the findings of the McPherson Report. Criticisms could be made of the judiciary. Evaluation of the system of 'trial by your peers'
 - Substantive justice – discussion of any legal rule and whether it achieves justice e.g. does the current law of self-defence create justice?
 - Distributive justice – how the law struggles to create justice for everyone regardless of class, wealth, gender, race and disability.

| |
|--|
| <p>Discuss how this can lead to inequality e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, racism in the police force following the murder of Stephen Lawrence etc</p> <ul style="list-style-type: none"> ○ Corrective justice – discussion of the high re-offending rates. Inequality of bargaining power in civil cases • Reach any sensible conclusion <p>Credit any other relevant point(s).</p> |
|--|

| | AO1 | Mark | AO3 1b | Mark |
|----------------|---|-------------|--|--------------|
| Level 4 | <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. | 7–8 | <ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal concepts and issues. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p> | 10–12 |
| Level 3 | <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. | 5–6 | <ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal concepts and issues. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p> | 7–9 |
| Level 2 | <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. | 3–4 | <ul style="list-style-type: none"> • Basic analysis and evaluation of legal concepts and issues. • The response is partially focused on the question. • Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p> | 4–6 |
| Level 1 | <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. | 1–2 | <ul style="list-style-type: none"> • Limited analysis of legal concepts and/or issues. • The response has limited focus on the question. • Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p> | 1–3 |
| Level 0 | No response or no response worthy of credit. | 0 | No response or no response worthy of credit. | 0 |

Section B

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

| | |
|------------------------------|--|
| Assessment Objectives | <p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p> |
| Additional guidance | <p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p> |

AO1 Indicative content

Answers **may** include the following:

Prerequisites:

- Action against the local authority to be pursued by judicial review or as an element to another claim.

The relevant rights infringed:

- Article 10 ECnHR Freedom of expression 'the cornerstone of any democratic society'
- Includes artistic expression – films, painting, radio television etc.
- Relevant cases may include: *Handyside v UK* (1979-80), *Otto-Preminger v Austria* (1994) wide margin of appreciation in artistic expression case, *Observer v UK* (1992) *Spycatcher* case, *Steel v UK* (1999) Freedom of expression by way of protest was included in Article 10, *Hashman and Harrup v UK* (2000)
- S12 (4) HRA 1998 special importance granted to artistic expression.

Relevant limitations:

- Limitations - Article 10(2) National security, preventing disorder or crime, protecting health or morals, protecting the reputation or rights of others.

Credit reference to the common law offence of 'outraging public decency', *Gibson and Sylveire* (1991).

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- Basis of Pavel's claim will be Article 10
- Article 10 extends this to 'any media regardless of frontiers'
- Clearly covers Pavel's works of art
- Courts reluctant to restrict this freedom due its particular significance as an 'intrinsic and instrumental right'
- s12 (4) HRA 1998 also emphasises the particular importance of artistic expression. Images are already in the public domain on the internet
- Article 10 may still cover offensive expression: Pavel's work has clearly caused offense to many, but this alone will not mean it can be banned
- Article 10 creates 'duties and responsibilities'. Has Pavel met his responsibilities?
- Article 10(2) Limitations. 'Prescribed by law'. Apply to Pavel. Under *Gibson v Sylveire* he may be committing a common law offence
- 'Necessary in a democratic society'. Strongest argument may be on moral grounds
- Margin of appreciation in artistic expression quite broad.

Credit any sensible conclusion.

Credit any other relevant point(s).

| | AO1 | Mark | AO2 1a/1b | Mark |
|----------------|---|------------|--|--------------|
| Level 4 | <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. | 7–8 | <ul style="list-style-type: none"> • Excellent application of legal rules to a given scenario. • Excellent presentation of a legal argument which is accurate, fully developed and detailed. • Fully appropriate legal terminology is used. | 10–12 |
| Level 3 | <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. | 5–6 | <ul style="list-style-type: none"> • Good application of legal rules to a given scenario. • Good presentation of a legal argument which is detailed but not fully developed in places. • Appropriate legal terminology is used. | 7–9 |
| Level 2 | <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. | 3–4 | <ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. • Some appropriate legal terminology is used. | 4–6 |
| Level 1 | <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. | 1–2 | <ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. • Minimal legal terminology is used. | 1–3 |
| Level 0 | No response or no response worthy of credit. | 0 | No response or no response worthy of credit. | 0 |

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

| | |
|------------------------------|--|
| Assessment Objectives | <p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p> |
| Additional guidance | <p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p> |

AO1 Indicative content

Answers **may** include:

Prerequisites:

- Sophia may apply for an injunction preventing publication invoking Article 8. Courts will balance this against Article 10.

Relevant rights considered:

- Press freedom is protected under Article 10 ECHR
- In the loose hierarchy of rights it comes close to the top
- s12 (4) HRA 1998. Places special importance on journalistic expression
- *A v B* (2000): Flitcroft guidelines
- Relevant cases: *Wainwright v Home Secretary* (2003), *Campbell v MGN* (2004), *Thompson and Venables v News Corp* (2001), *Mills v News Group Newspapers Ltd* (2001), *CC v AB* (2006), *Mosley v News Group Newspapers Ltd* (2008).

Relevant limitations:

- Limitations possible under Article 10(2)
- May be formalities, conditions, restrictions and penalties as prescribed by law and necessary in a democratic society.

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- Press freedom is highly rated under Article 10 and s12(4) HRA 1998
- Any interference under Article 10(2) will need to be justified regardless of whether it is in the public interest
- Galaxy will be advised that decisions in this area are finely balanced
- Sophie has withdrawn from the public eye to raise family; she is particularly vulnerable and seeks to protect herself and her family against intrusion
- Does she have a reasonable expectation of privacy?
- Apply the cases above to reach any sensible conclusion.

Credit any other relevant point(s).

| | AO1 | Mark | AO2 1a/1b | Mark |
|----------------|---|-------------|--|--------------|
| Level 4 | <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. | 7–8 | <ul style="list-style-type: none"> • Excellent application of legal rules to a given scenario. • Excellent presentation of a legal argument which is accurate, fully developed and detailed. • Fully appropriate legal terminology is used. | 10–12 |
| Level 3 | <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. | 5–6 | <ul style="list-style-type: none"> • Good application of legal rules to a given scenario. • Good presentation of a legal argument which is detailed but not fully developed in places. • Appropriate legal terminology is used. | 7–9 |
| Level 2 | <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. | 3–4 | <ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. • Some appropriate legal terminology is used. | 4–6 |
| Level 1 | <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. | 1–2 | <ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. • Minimal legal terminology is used. | 1–3 |
| Level 0 | No response or no response worthy of credit. | 0 | No response or no response worthy of credit. | 0 |

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

| | |
|------------------------------|--|
| Assessment Objectives | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks. |
| Additional guidance | The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content. |

AO1 Indicative content

Answers **may** include:

- Rationale for the Act: 'Bringing Rights Home'. Making ECHR directly available in UK courts.
- Key Provisions of the Act
 - s1 Incorporating ECHR rights into domestic law
 - s2 Courts must 'take into account' prior decisions of ECHR where relevant
 - s3 Interpretation of domestic legislation: Need for compatibility of domestic and primary legislation with the ECHR
 - s4 Declaration of incompatibility when the court determine that it is incompatible with a Convention right
 - s6 Unlawful for 'public authority' to act in a manner which is incompatible with Convention rights
 - s7 Limitations on who may bring a claim
 - s8 Remedies
- Credit cases illustrating contentious application of the Act, e.g. *Bellinger v Bellinger* (2003)
- Reference to theory of human rights law, e.g. natural justice, universality, rule of law, due process.

Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

- Increased tension between judiciary and Parliament. Does HRA give judges potential to usurp sovereignty of Parliament?
- s2 'Take into account prior decision of ECtHR'. Conflicting approaches: *R (Alconbury) v Secretary of State for the Environment* (2001), *Kay v Lambeth* (2006) – does not change the normal rules of precedent
- s3(1) Compliance. Puts strain on judges to interpret legislation to avoid declarations of incompatibility.

Contentious areas:

- Absolute nature of rights
- Proposal to give the right to vote to prisoners. Heavily criticised
- Difficulties of repatriating criminals due to Article 8; dubbed a 'Criminals charter' by the press
- Development of a law of privacy disliked by the press as limiting freedom of speech

- Counter-terrorism measures and HRA
- Indefinite detention powers in the Anti-Terrorism Crime and Security Act 2001
- *A and Ors v Secretary of State for the Home Department (2005)* This led to the passage of the Prevention of Terrorism Act 2005
- Proposal for a 'British Bill of Rights' Conservative manifesto 2014
- Repeal of the Act would see a reversion to the cumbersome appeals to Strasbourg
- Repeal could damage devolution arrangements in Scotland and Wales which are predicated on ECHR. Also Good Friday agreement in NI based on incorporation of ECHR
- Link made to human rights law theory relevant to the focus of the question.

Credit any other relevant point(s).

| | AO1 | Mark | AO3 1a | Mark |
|----------------|---|-------------|---|--------------|
| Level 4 | <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. | 7–8 | <ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal rules and principles. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p> | 10–12 |
| Level 3 | <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. | 5–6 | <ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal rules and principles. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p> | 7–9 |
| Level 2 | <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. | 3–4 | <ul style="list-style-type: none"> • Basic analysis and evaluation of legal rules and principles. • The response is partially focused on the question. • Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p> | 4–6 |
| Level 1 | <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. | 1–2 | <ul style="list-style-type: none"> • Limited analysis of legal rules and principles. • The response has limited focus on the question. • Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p> | 1–3 |
| Level 0 | No response or no response worthy of credit. | 0 | No response or no response worthy of credit. | 0 |

- 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.

| | |
|------------------------------|---|
| Assessment Objectives | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks. |
| Additional guidance | The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content. |

AO1 Indicative content

Answers **may** include:

- Article 5 The right to liberty and security of person
- Complex right subject to many provisos:
 - *Detention after due process/failure to comply with a court order/reasonable suspicion of having committed a crime/prevention of commission of a crime/prevent flight/detention of a minor/public health grounds/extradition/deportation*
- Relevant case law includes: *Guzzardi v Italy* (1981), *Cheshire West and Chester Council v P* (2014) UKSC, *Austin v UK* (2015), *JE v DE aka Re DE* (2006)
- Article 11 Right to freedom of peaceful assembly and association
- Subject to qualifications under Art 11(2):
 - Prescribed by law/necessary in a democratic society/interests of national security or public safety/prevention of disorder or crime/protection of health or morals/protection of rights and freedoms of others
- Relevant cases include:
 - *Mengesha v Commissioner of Police of the Metropolis* (2013): Containment to prevent a breach of the peace was lawful but not retention of photographs and details
 - Breach of the peace. Definition in *R v Howell* (1981)
 - *R (on the application of Laporte) v Chief Constable of Gloucestershire Constabulary* (2006) – public protest and breach of the peace.
- Credit reference to false imprisonment.

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- Max and Jacob may have a case for judicial review under either Article 11 or Article 5
- Criteria for deprivation of liberty has been met:

- “..under continuous supervision and control and not free to leave...” *per* Lady Hale in *Cheshire West* (2014)
- Was the police action in containing the protestors taken in good faith and was it proportionate to the threat of possible violence? *Austin & Another v Commissioner of Police of the Metropolis* (2009) .The police action here appears to have been based on a fear of violence spreading
- Was the threat imminent? If the protestors had continued their march they would have soon joined with the violent mob
- Had the police exhausted all other steps?
- Was the detention proportionate?
- Whether 5 hours detention is proportionate is debatable, but highly likely. In *Austin v UK* – question was one of ‘degree and intensity’. Individuals were not deprived of liberty under Article 5(1)
- Courts cannot use hindsight to assess the reasonableness of the decision. It is the perspective of the Police at the time which is relevant
- Also in *R (on the application of Moos) v Commissioner of Police for the Metropolis* (2012) ‘kettling’ was legitimate under extreme circumstance
- Police may however justify their actions as preventing an anticipated breach of the peace. *Mengesha v Commissioner of the Police* (2013). Photographs should be destroyed
- Their actions were needed to protect the public and or prevent crime.

Credit any other relevant point(s).

| | AO1 | Mark | AO2 1a/1b | Mark |
|----------------|---|------------|--|--------------|
| Level 4 | <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. | 7–8 | <ul style="list-style-type: none"> • Excellent application of legal rules to a given scenario. • Excellent presentation of a legal argument which is accurate, fully developed and detailed. • Fully appropriate legal terminology is used. | 10–12 |
| Level 3 | <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. | 5–6 | <ul style="list-style-type: none"> • Good application of legal rules to a given scenario. • Good presentation of a legal argument which is detailed but not fully developed in places. • Appropriate legal terminology is used. | 7–9 |
| Level 2 | <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. | 3–4 | <ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. • Some appropriate legal terminology is used. | 4–6 |
| Level 1 | <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. | 1–2 | <ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. • Minimal legal terminology is used. | 1–3 |
| Level 0 | No response or no response worthy of credit. | 0 | No response or no response worthy of credit. | 0 |

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

| | |
|------------------------------|--|
| Assessment Objectives | <p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p> |
| Additional guidance | <p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p> |

AO1 Indicative content

Answers **may** include:

- Historical right: *Habeas corpus*.
- Article 5 Right to liberty and security.
- Subject to qualifications:
 - Detention after due process, failure to comply with a court order, reasonable suspicion of having committed/prevention of commission/prevent flight, detention of a minor, public health grounds, extradition/deportation.
 - Criteria as set out in *Guzzardi v Italy* (1981), *Cheshire West and Chester Council* (2011), *Shimovolos v Russia*, *Austin v UK* (2012).
- Procedure on arrest. Fact of arrest and reasons for arrest must be given – s.28 PACE 1984. *Christie v Leachinsky* (1947) – failure to do so may amount to false imprisonment.
- Use of caution. Access to a solicitor s.58 PACE 1984, right to inform someone of the fact of arrest s.56 PACE 1984 – *R v Samuel* (1988).
- Right to consult Codes of Practice.
- Right to review by Custody Officer.

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- Max has clearly been deprived of his liberty using the test in *Cheshire West* (2014). Article 5 provides for situations where this is lawfully done. In this case police appear to be using the power to arrest for a breach of the peace. *Mengesha v Commissioner of the Police* (2013).
- What evidence existed that Max was responsible for the breach of the peace? Was the police action against Max based on genuine information or was it merely a fishing expedition? *Shimovolos v Russia*. This would also render it unlawful.
- Was detention necessary and proportionate?

- Were correct procedures followed?
- Max is not given an explanation of why he is being detained. *Christie v Leachinsky* (1947). This could render his detention unlawful and any subsequent actions by the police as False Imprisonment. It may also render the use of force against Max as a battery.
- Give credit to a discussion that around the fact it is not clear that he has been arrested at all.
- If he has been arrested correct procedures have not been followed: No caution has been given s.34 CJPOA 1994.
- No access to a solicitor or contact has been allowed. There are no reasonable grounds within PACE 1984 to disallow Max these rights.

Credit any other relevant point(s).

| | AO1 | Mark | AO2 1a/1b | Mark |
|----------------|---|-------------|--|--------------|
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| Level 0 | No response or no response worthy of credit. | 0 | No response or no response worthy of credit. | 0 |

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

| | |
|------------------------------|--|
| Assessment Objectives | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks. |
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Answers **may** include:

- Rationale for the Act: 'Bringing Rights Home'. Making ECHR directly available in UK courts.
- Key Provisions of the Act
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- Credit cases illustrating contentious application of the Act, e.g. *Bellinger v Bellinger* (2003)
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Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

- Increased tension between judiciary and Parliament. Does HRA give judges potential to usurp sovereignty of Parliament?
- s2 'Take into account prior decision of ECtHR'. Conflicting approaches: *R (Alconbury) v Secretary of State for the Environment* (2001), *Kay v Lambeth* (2006) – does not change the normal rules of precedent
- s3(1) Compliance. Puts strain on judges to interpret legislation to avoid declarations of incompatibility.

Contentious areas:

- Absolute nature of rights
- Proposal to give the right to vote to prisoners. Heavily criticised
- Difficulties of repatriating criminals due to Article 8; dubbed a 'Criminals charter' by the Press
- Development of a law of privacy disliked by the Press as limiting freedom of speech

- Counter-terrorism measures and HRA
- Indefinite detention powers in the Anti-Terrorism Crime and Security Act 2001
- *A and Ors v Secretary of State* for the Home Department (2005) This led to the passage of the Prevention of Terrorism Act 2005
- Proposal for a 'British Bill of Rights' conservative manifesto 2014
- Repeal of the act would see a reversion to the cumbersome appeals to Strasbourg
- Repeal could damage devolution arrangements in Scotland and Wales which are predicated on ECHR. Also Good Friday agreement in NI based on incorporation of ECHR
- Link made to human rights law theory relevant to the focus of the question.

Credit any other relevant point(s).

| | AO1 | Mark | AO3 1a | Mark |
|----------------|---|-------------|---|--------------|
| Level 4 | <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. | 7–8 | <ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal rules and principles. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p> | 10–12 |
| Level 3 | <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. | 5–6 | <ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal rules and principles. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p> | 7–9 |
| Level 2 | <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. | 3–4 | <ul style="list-style-type: none"> • Basic analysis and evaluation of legal rules and principles. • The response is partially focused on the question. • Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p> | 4–6 |
| Level 1 | <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. | 1–2 | <ul style="list-style-type: none"> • Limited analysis of legal rules and principles. • The response has limited focus on the question. • Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p> | 1–3 |
| Level 0 | No response or no response worthy of credit. | 0 | No response or no response worthy of credit. | 0 |

Assessment Objectives Grid

| Questions | AO1 | AO2 1a/1b** | AO3 1a | AO3 1b | Total |
|--------------|-----------|-------------|-----------|-----------|-----------|
| 1* or 2* | 8 | 0 | 0 | 12 | 20 |
| 3 or 6 | 8 | 12 | 0 | 0 | 20 |
| 4 or 7 | 8 | 12 | 0 | 0 | 20 |
| 5* or 8* | 8 | 0 | 12 | 0 | 20 |
| Total | 32 | 24 | 12 | 12 | 80 |

**AO2 elements 1a and 1b will be awarded jointly

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