

GCE

Law

H418/03: The nature of law and human rights

A Level

Mark Scheme for June 2024

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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PREPARATION FOR MARKING
RM Assessor

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: RM Assessor Online Training; OCR Essential Guide to Marking.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are posted on the RM Cambridge Assessment Support Portal <http://www.rm.com/support/ca>
3. Log-in to RM Assessor and mark the **required number** of practice responses (“scripts”) and the **number of required** standardisation responses.

YOU MUST MARK 10 PRACTICE AND 10 STANDARDISATION RESPONSES BEFORE YOU CAN BE APPROVED TO MARK LIVE SCRIPTS.

MARKING

1. Mark strictly to the mark scheme.
2. Marks awarded must relate directly to the marking criteria.
3. The schedule of dates is very important. It is essential that you meet the RM50% and 100% (traditional 40% Batch 1 and 100% Batch 2) deadlines. If you experience problems, you must contact your Team Leader (Supervisor) without delay.
4. If you are in any doubt about applying the mark scheme, consult your Team Leader by telephone or the RM messaging system, or by email.
5. **Crossed Out Responses**

Where a candidate has crossed out a response and provided a clear alternative then the crossed out response is not marked. Where no alternative response has been provided, examiners may give candidates the benefit of the doubt and mark the crossed out response where legible.

Rubric Error Responses – Optional Questions

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM assessor, which will select the highest mark from those awarded. (The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.)

Multiple Choice Question Responses

When a multiple choice question has only a single, correct response and a candidate provides two responses (even if one of these responses is correct), then no mark should be awarded (as it is not possible to determine which was the first response selected by the candidate).

When a question requires candidates to select more than one option/multiple options, then local marking arrangements need to ensure consistency of approach.

Contradictory Responses

When a candidate provides contradictory responses, then no mark should be awarded, even if one of the answers is correct.

Short Answer Questions (requiring only a list by way of a response, usually worth only **one mark per response**)

Where candidates are required to provide a set number of short answer responses then only the set number of responses should be marked. The response space should be marked from left to right on each line and then line by line until the required number of responses have been considered. The remaining responses should not then be marked. Examiners will have to apply judgement as to whether a 'second response' on a line is a development of the 'first response', rather than a separate, discrete response. (The underlying assumption is that the candidate is attempting to hedge their bets and therefore getting undue benefit rather than engaging with the question and giving the most relevant/correct responses.)

Short Answer Questions (requiring a more developed response, worth **two or more marks**)

If the candidates are required to provide a description of, say, three items or factors and four items or factors are provided, then mark on a similar basis – that is downwards (as it is unlikely in this situation that a candidate will provide more than one response in each section of the response space.)

Longer Answer Questions (requiring a developed response)

Where candidates have provided two (or more) responses to a medium or high tariff question which only required a single (developed) response and not crossed out the first response, then only the first response should be marked. Examiners will need to apply professional judgement as to whether the second (or a subsequent) response is a 'new start' or simply a poorly expressed continuation of the first response.

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there then add a tick to confirm that the work has been seen.
7. Award No Response (NR) if:
 - there is nothing written in the answer space

Award Zero '0' if:

- anything is written in the answer space and is not worthy of credit (this includes text and symbols).

Team Leaders must confirm the correct use of the NR button with their markers before live marking commences and should check this when reviewing scripts.















8. The RM Assessor **comments box** is used by your team leader to explain the marking of the practice responses. Please refer to these comments when checking your practice responses. **Do not use the comments box for any other reason.**

If you have any questions or comments for your team leader, use the phone, the RM Assessor messaging system, or e-mail.

9. Assistant Examiners will send a brief report on the performance of candidates to their Team Leader (Supervisor) via email by the end of the marking period. The report should contain notes on particular strengths displayed as well as common errors or weaknesses. Constructive criticism of the question paper/mark scheme is also appreciated.
10. For answers marked by levels of response: Not applicable in F501
 - a. **To determine the level** – start at the highest level and work down until you reach the level that matches the answer
 - b. **To determine the mark within the level**, consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

11. Annotations

Annotation	Meaning
	Very well developed point (WDP)
	Unclear
	Applied point
	Developed point (DP)
	Well developed point (WDP)
	Not answered question
	Not Relevant
	Point
	Repetition
	Sort of
	Point has been noted, but no credit has been given / blank page has been checked for response
	Correct
	Applied
	Spare 1

12. Subject Specific Marking Instructions**Section A**

1 *'Justice is a theoretical goal which is difficult to achieve in practice'. Discuss the extent to which the above statement is reflected in the English legal system.*

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.
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:

- Definitions of justice (e.g. Chaim Perelman) and different types of justice: formal justice, substantive justice, distributive justice and corrective justice
- Theories of law and justice e.g. Natural Law theories (Aristotle, Aquinas, Fuller) and Positivist theories (Bentham, Hart and Austin), John Rawls, Marxism, Nozick, Rule of Law, credit any other relevant theories
- Examples of formal justice – legal institutions such as the police, courts, judiciary, juries, and appeals
- 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 and fairness in contract law
- Examples of distributive justice - the fair allocation of resources e.g. wealth, power, rights, resources such as anti-discrimination laws, minimum wage and reallocation of wealth through taxation and the welfare state
- Examples of corrective justice – sentencing in criminal law e.g. retribution and remedies in tort and contract

Credit any other relevant point(s)

AO3 Indicative content

Answers may include:

- Discuss the struggle to create a common definition of justice that is shared by all members of society
- Discuss the varied theories of law and justice and the struggle to create justice in a society
- Credit any other relevant evaluation of the theories of justice
- Discuss the different types of justice with examples from the whole course of study
- Formal justice –evaluate systemic issues within the criminal justice system, such as miscarriages of justice. The findings of the Runciman Commission and 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 jury system of ‘trial by peers’ and the concept of jury equity
- Substantive justice – discussion of any legal rule and whether it achieves justice
- Distributive justice – how the law struggles to create justice for everyone regardless of class, wealth, gender, race or disability
- Discuss how this can lead to inequality e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, institutional racism in the police force following the murder of Stephen Lawrence, institutional misogyny following the Sara Everard case
- Corrective justice – in criminal law discuss factors considered in, for example, sentencing, and in civil law discuss, for example, proportionality in loss distribution
- Discuss the theme in the question – based on the evidence above, what evidence is there that the theoretical aims are achieved in practice?

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	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, where appropriate to the question.	7–8	Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion where required by the question. There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.	10–12
Level 3	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, where appropriate to the question.	5–6	Good analysis and evaluation of a range of legal concepts and issues. The response has a consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion where required by the question. There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.	7–9
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response is partially developed. There will be some reference to statutes and case law, where appropriate to the question.	3–4	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 where required by the question. The information has some relevance and is presented with limited structure. The information is supported by limited evidence.	4–6
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes and case law is limited.	1–2	Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. The information is basic and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

2. 'One function of law in society is to provide a mechanism of social control'. Discuss the extent to which law is an effective mechanism of social control.

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.
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:

- Define society and the idea of shared beliefs, culture and language
- Describe the role pluralism plays in our society
- Contextualise the role of law in society through, for example, the elements required in a society to underpin the concept of the rule of law
- Roles of the law according to Lord Bingham – protect people from harm, ensure the common good, settle disputes, act as a persuasive factor in individual decision-making
- Law may shape social norms
- Society can influence law making via protests, strikes and civil disobedience
- Describe the theories underpinning social control through law such as Rosco Pound's social-ethical principles
- Explain the relationship between social control and rules with examples. What are the implications of issues such as controversy, public acceptance, inconsistency and misinterpretation? What leads to the failure of social controls or even a breakdown of social order, and what are the consequences?
- Give examples from criminal law (e.g. self-defence/consent) and/or contract law (e.g. consumer rights) and/ or tort law (e.g. balancing the rights of individuals against the wider social context)
- Explain the relationship between law and society through informal social controls such as family, schools, religious organisations and peer groups (e.g. bystander intervention and citizen patrol groups); and formal social control mechanisms such as prisons, the judiciary and the police
- Explain theories such as consensus and conflict, labelling and left and right realism

Credit any other relevant point(s)

AO3 Indicative content

Answers may include:

- Discuss how effectively the law uses its power to influence and change social norms to reduce the instances of social unrest
- Discuss how effectively the law reacts to civil disobedience e.g. recent increased police powers to deal with protestors and the harsh treatment of rioters
- Discuss examples of when society has managed to influence social change through protest such as gay rights and the abolition of the poll tax
- Discuss the influence of the media in pushing the political agenda of political parties and/or the government
- Discuss the issues surrounding changing moral values in a pluralist society
- Discuss how informal social control is achieved through socialisation to create social norms shared by groups and society as a whole, and how effective this is
- Link to the relevant factors of theories such as consensus and conflict, labelling theory and left/right realism
- Considering the evidence above, discuss how effective the law is as a mechanism of social control

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	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, where appropriate to the question.	7-8	Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion where required by the question. There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.	10-12
Level 3	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, where appropriate to the question.	5-6	Good analysis and evaluation of a range of legal concepts and issues. The response has a consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion where required by the question. There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.	7-9
Level 2	Basic knowledge and understanding of the English legal system, rules and principles. The response is partially developed. There will be some reference to statutes and case law, where appropriate to the question.	3-4	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 where required by the question. The information has some relevance and is presented with limited structure. The information is supported by limited evidence.	4-6
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of relevant statutes and case law is limited.	1-2	Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. The information is basic and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.	1-3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

3. Advise Kobe whether his right to a fair trial under Article 6 has been breached.

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:

Rights under Article 6 European Convention on Human Rights (ECHR) – the right to a fair trial:

- Fair and public hearing within a reasonable time by an independent and impartial tribunal
- Judgment pronounced publicly although the press and public may be excluded from part or all of the trial in the interest of morals, public order, or national security
- Justice must be done and also seen to be done – effect of secret or partially secret trials – *R v Incedal*
- Judicial bias - *R v Bow St Magistrates, ex parte Pinochet Ugarte*
- Limitations are possible
- 6(2) Presumption of innocence and the right to silence – see also *Woolmington v DPP*
- 6(3) Minimum rights include:
 - Promptly informed (in a language he understands) of the nature and cause of the accusation against him/her
 - Adequate time and facilities for the preparation of a defence
 - Defend himself/herself in person or through legal assistance (given freely when the interests of justice demand)
- Representation at every stage from interview to trial
- Examine witnesses against him/her, *R v Davies* – use of anonymous witnesses rendered a trial unfair – *Criminal Evidence (Witness Anonymity) Act 2008*
- Free assistance of an interpreter if he/she cannot understand or speak the language used in court, *V and T v UK*
- Other principles of fairness including equality of arms, access to legal aid, *Steel v Morris, Gudaviciene v Director of Legal Aid casework*

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Kobe's treatment by police

The refusal to provide an interpreter may be in breach of Kobe's rights to participate fully in the process and to understand the nature of the allegation made against him

The failure to inform Kobe about his basic rights, including his right to a solicitor, could have a serious impact on the fairness of any evidence gathered during interviews. It would also have a serious impact on Kobe's understanding of the legal process

It is likely that this should have resulted in evidence being excluded from the trial

The police refusal to disclose the CCTV images

This could be seen to give rise to unfairness as an example of inequality of arms

It also would prevent the defence team from being able to conduct proper enquiries and prepare an effective defence

Failure to disclose evidence has been a major cause of miscarriages of justice in many cases and could be a relevant factor in Kobe's trial

Lack of legal aid and delay

Kobe's case is likely to have been affected by his lack of access to anything more than a couple of hours of initial legal advice and assistance

In a complex case where the defendant faces potential loss of liberty and witnesses are giving evidence anonymously, Kobe would be entitled to legal advice about the prosecution's case and the associated procedures involved

The delay is also a key aspect of unfairness under Article 6 and Kobe's education and life may well be on hold until the case is heard

The use of an anonymous witness

Under s4 Criminal Evidence (Witness Anonymity) Act 2008, a witness will only be able to give evidence anonymously where there is a risk to the safety of the witness

Was there a reason for the witness to give evidence anonymously? There is no evidence of any threat from Kobe to anyone. The order is questionable in this case and could lead to unfairness and an inability to effectively cross examine the witness

On balance, it would be hard to argue that Kobe received a fair trial

Reach any sensible conclusions

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 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 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 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 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 both Henry and Felix whether their searches by PC Smith were lawful under the Police and Criminal Evidence Act 1984, and also whether the recordings from the body camera could be used as evidence in any trial.

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:

Police powers of stop and search under the Police and Criminal Evidence Act 1984 (PACE):

- s.1 PACE gives the police the power to stop and search people and vehicles for prohibited articles in public places
- s.1 (7)-(9) defines prohibited articles as 'weapons, drugs and articles used in connection with theft/burglary'
- Code A PACE Para 2 offers guidance on what constitutes reasonable grounds of suspicion (that it must have an objective basis) and that it cannot be based on personal factors alone (i.e. it must be based on intelligence or behaviour of the suspect not e.g. appearance and criminal record)
- s.2(3) PACE states that before a stop and search, police must state their name, station, purpose of search and grounds of suspicion – *Osman v DPP*
- s.1(1) PACE states that public places are any place to which the public has access whether by payment or otherwise
- s.2(9) restricts the search to outer coat, jacket and gloves
- s.3(1) PACE provides that a written record of the search must be made

Exclusion of evidence

- s.78 PACE allows for the exclusion of evidence which has been obtained in unfair circumstances and which would have an adverse effect on the fairness of the proceedings
- This is a discretionary power to be exercised by the judge
- The court must consider all the circumstances including how the evidence was obtained

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Henry's search

PC Smith does not appear to have reasonable grounds of suspicion as Henry doesn't match the description in terms of his clothing (no football scarf) and his age (25 not in his forties)

PC Smith also seems to be basing their decision on personal factors alone, namely Henry's reputation and criminal record

PC Smith has not stated their name and station and has not given either the purpose of the search or the grounds of suspicion – most obviously, they have not stated what prohibited articles they are searching for

PC Smith does not, on the facts given, appear to have made a written record of the stop and search

Although the search does appear to have taken place in a public place, based on the evidence above this would be an unlawful stop and search

Felix's search

PC Smith might argue that they are acting on intelligence (the information from Henry) but is this reliable and 'reasonable grounds of suspicion'?

Felix is at home in his front garden and it is submitted that this is not 'a place to which the public has access' and therefore is not a public place

PC Smith has not stated their name and station and has not given either the purpose of the search or the grounds of suspicion – most obviously, they have not stated what prohibited articles they are searching for

PC Smith does not, on the facts given, appear to have made a written record of the stop and search (notwithstanding the recording)

PC Smith's search does not appear to be lawful

Status of body camera evidence

The covert use of the body camera to record the questioning of Felix and PC Smith's failure to caution Felix before deploying it would be likely to lead to any evidence so obtained being inadmissible in any court proceedings which may follow under s.78 PACE

Reach any sensible conclusions

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 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 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 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 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* *The judicial interpretation of the rights within Article 8 has become so broad that it lacks any useful certainty. Discuss the extent to which you agree with this view of Article 8.*

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:

Article 8 ECHR – the right to respect for family and private life - a qualified right which can be limited in certain situations

- Covers private life, family, home and correspondence
- Article 8(2) states that any limitation must be in accordance with law, meet a legitimate aim and be necessary in a democratic society
- Broad, inclusive scope of Article 8 ECHR includes: physical and social identity, gender identity, name and sexual orientation – *Pretty v UK*
- Autonomy and dignity are also key features of this right - *Peck v UK*
- Private life includes sexual orientation and freedom - *Dudgeon v UK*, *Schalk and Kopf v Austria*
- Any laws which treat homosexuals less favourably cannot be justified - *BB v UK*, *ADT v UK*
- Barriers imposed on a transgender person violate their Article 8 ECHR rights - *Goodwin v UK*
- Human fertility is also covered by Article 8 ECHR - *Evans v UK*
- Correspondence includes a broad range of forms of communication and is also covered by Article 8 ECHR
- Any interference must be justified under Article 8(2) ECHR - *Halford v UK*, *Golder v UK*
- Interference cannot be arbitrary but must be part of an open policy which all employees have already been made aware of - *Copland v UK*
- In *Barbulescu v Romania* the employer was found to be in violation as their IT policy did not set out the extent to which their internet usage and online communications would be monitored
- Broad concept of 'family' – *Kroon v Netherlands*

Credit any other relevant point(s)

AO3 Indicative content

Answers **may** include:

- The claims under Article 8 are often very personal and sometimes emotive in nature
- Consider the scope of private life as necessarily very wide, but increasing in scope. Article 8 is often capable of providing a right where other rights are not engaged
- In *Pretty v UK* the extensive definition of areas covered by Article 8 was said not to be exhaustive
- In *R (Razgar) v Secretary of State for the Home Department* it was said that the rights derived from such a wide definition could be said to be vague and indeterminate
- Discuss whether the areas of expansion are always desirable and pragmatic
- Discuss any of the areas outlined within *Pretty* and make a case for them being desirable or alternatively introducing uncertainty into the law
- Many claims include Article 8 as incidental to other specific claims such as claims for asylum, deportation, and environmental laws
- Explore how recent areas of expansion such as in the field of sexuality and sexual orientation have moved towards equalising rights of heterosexual and homosexual couples
- Discuss how new areas of challenge and rapid change, such as trans rights and environmental rights bring their own complexity
- Article 8 is seen as an engine for change whether this is positive or negative
- The definition of family is also very broad and looks beyond legal formality towards areas of social and biological reality. This could be seen as pragmatic
- Consider the question – to what extent do you agree that the rights in Article 8 lack certainty?

Reach any sensible conclusion

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 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>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</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 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>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</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 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>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</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 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>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.</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 Jamal, Riley and Mei whether there have been any breaches of their rights under Article 11 of the ECHR in each of the cases above.

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 11 is a qualified right protecting the right to freedom of peaceful assembly and association
- Article 11(1) covers the right to peaceful assembly, association with others and to form and join trade unions
- Article 11(2) permissible restrictions will be:
 - Prescribed by law – see, for example, various public order offences
 - Necessary in a democratic society
 - In the interests of national security or public safety
 - For the prevention of crime or disorder
 - For the protection of health or morals
 - For the protection of the rights and freedoms of others
- Scope of the right: an assembly can include a meeting, demonstrations, protests and marches.
- The assembly of people can be political, religious, social etc
- Possible cases include - *Appleby v UK*, *Cisse v France*, *Platform Artze fur das Leben*, *Redmond Bate v DPP*, *Ollinger v Austria*
- Cases on association - *Redfearn v UK* - right to join a political association; *National Union of Belgian Police v Belgium*, *Young, James and Webster v UK* – right to join a union
- Consider the new powers under the *Police Crime Sentencing and Courts Act 2022*

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Jamal blocking the entrance

Jamal is exercising his Article 11 right to peaceful assembly

It might be argued by the police that restricting his right is prescribed by law as he is contributing to obstructing the highway

On the given facts, there is insufficient evidence to suggest any obstruction

Jamal's rights under Article 11 have therefore likely been breached

(Credit candidates who convincingly argue the alternative - that there is no breach due to Jamal acting unlawfully)

Riley letting the air out of the tyres

It would be difficult to suggest that Riley is exercising an Article 11 right

Regardless of his motivations, his actions would constitute criminal damage to the vehicles

If Riley argued it was part of his Article 11 rights, there would be justified restriction prescribed by the law of criminal damage

The restriction would have the legitimate aim of the prevention of crime

Therefore, it is unlikely there is any breach of Riley's Article 11 rights

Mei's arrest

Mei is exercising her Article 11 right to peaceful assembly

She has been arrested for being 'too disruptive' and the police may argue this restriction is prescribed by law under an appropriate public order offence such as breach of the peace

There may be a legitimate aim if she was committing a crime which threatened national security, public safety or threatened the rights of others

However, it does not appear that what Mei is doing would constitute a crime and her Article 11 rights would appear to be breached

Also, credit mention of the new Police, Crime Sentencing and Courts Act and the possibility of being arrested for causing a serious disturbance – also inapplicable here

Jamal being sacked by Sasha for belonging to the organisation

This involves Jamal's 'freedom of association with others'

Jamal is a teacher and works in the public sector. He is therefore able to make use of his rights under the Human Rights Act

He is discriminated against for belonging to a pressure group

Sasha's attempt to justify this on the grounds of the dangerousness of the group is not really justified by the group's actions

This would appear to be a breach of Jamal's freedom to associate with whom he chooses under Article 11

Reach any sensible conclusions

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 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 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 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 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. 	1-3

			• Minimal legal terminology is used.	
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit	0

7 Advise Amos, Jane, and Sara which public order offences they are most likely to be charged with.

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:

Relevant public order offences include:

- s.68(1) Criminal Justice and Public Order Act 1994 (CJPOA) – aggravated trespass: intimidating, obstructing or disrupting the activity - *DPP v Chivers*
- s.2 Public Order Act 1986 (POA) – violent disorder – 3 or more persons who 'use or threaten' unlawful violence
- s.3 POA - affray
- s.4 POA - fear or provocation of violence
- s.4A POA - intentional harassment, alarm or distress
- s.5 POA - harassment, alarm or distress
- s.70 CJPOA - amending POA 14A & 14B re: trespassory assemblies

Credit any other relevant point(s)

AO2 Indicative content

Answers **may** include:

Amos's behaviour in the hotel

Amos may be charged with 'violent disorder' under s.2 POA

There are 3 or more people involved in both threatening and using unlawful violence

When they shout at the guests and smash the table this would clearly 'cause a person of reasonable firmness to fear for their personal safety'

Amos spraying graffiti on the wall with the offensive slogan

Amos may be charged with the offence of 'causing fear or provocation of violence' under s.4 POA

Amos clearly has the intention to cause harassment alarm or distress when he sprays the comment on the wall

Under s.4(b) POA he has displayed writing which is 'threatening, abusive and insulting'

In the context of the other behaviour it is highly likely that Amos intends to cause the asylum seekers to believe that violence will be used against them

Another possible charge for this behaviour would be the offence of 'causing intentional harassment, alarm or distress' under s.4A(b) POA because the graffiti would qualify as writing which is threatening and would cause alarm or distress

Jane occupying the lift

Jane may be charged with 'aggravated trespass' under s.68 CJPOA

The illegal occupation of the lift would constitute this offence because she would be trespassing in relation to a lawful activity and she intends to have the effect of intimidating, obstructing or disrupting that activity

It fits closely with the facts of *DPP v Chivers* and would most likely be decided in the same way

Sara shouting abuse and throwing stones at the taxi arriving with new migrants

Sara may be charged with 'affray' under s.3 POA

Sara was using threats of unlawful violence towards another sufficient to cause people of reasonable firmness to fear for their personal safety

Sara may also be charged with 'causing fear or provocation of violence' under s.4 POA

Sara was throwing the stones which could quite clearly cause fear of violence

Sara may also be charged with 'causing intentional harassment, alarm or distress' under s.4A POA

Sara's behaviour of shouting and throwing stones at the new migrants in the taxi would fulfil the requirements of this offence

Reach any sensible conclusions

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 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 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 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 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

8* As per Question 5*

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1-2	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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