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A-level

LAW

7162/3B

Paper 3B Human Rights

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Mark scheme

June 2020

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Version: 1.0 Final Mark Scheme

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

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

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

## Level of response marking instructions

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

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

### Step 1 Determine a level

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

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

### Step 2 Determine a mark

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

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

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

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

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

[1 mark]

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

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

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

[1 mark]

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

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

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

[1 mark]

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

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

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

[1 mark]

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

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

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

[1 mark]

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

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

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

**[5 marks]**

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

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

**Indicative content**

**AO1**

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

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

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

**Note:** the answer requires:

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

Credit any other relevant point(s).

<b>07</b>	Suggest why the failure of the police to respond quickly to Beth’s call probably amounts to a breach by the United Kingdom of Article 2 of the ECHR (the right to life).	<b>[5 marks]</b>
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**Marks for this question: AO1 = 2 and AO2 = 3**

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

**Indicative content**

**AO1**

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

**AO2**

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

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

Credit any other relevant point(s).

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

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

**[10 marks]**

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

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

**Indicative content**

**AO1**

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

**AO2**

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

**AO3**

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

Credit any other relevant point(s).



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

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

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

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

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

**AO3**

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

Credit any other relevant point(s).

**ICGs**

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

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

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

**Indicative content****AO1**

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

**AO2**

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

### AO3

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

Credit any other relevant point(s).

### ICGs

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

<b>11</b>	<p>Taking a human rights perspective, consider the rights, duties, liability and remedies of Lucas and Nathan, and of the police officers where relevant.</p> <p>In relation to any trial of Nathan for the offence of assaulting a police constable, assess what options are open to Nathan to pay for any legal representation that he may need for the court case.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

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

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

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

Substantive	Non-substantive	Total marks
23	7	30

**Indicative content**

**AO1**

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

## AO2

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

## AO3

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

Credit any other relevant point(s).

## ICGs

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



**Assessment Objectives Grid**

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

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

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