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A-level

LAW

7162/3B

Paper 3B Human Rights

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Mark scheme

June 2021

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Version: 1.0 Final Mark Scheme



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

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

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## Level of response marking instructions

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

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

### Step 1 Determine a level

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

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

### Step 2 Determine a mark

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

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

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

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

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

**[1 mark]**

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

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

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

**[1 mark]**

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

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

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

**[1 mark]**

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

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

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

**[1 mark]**

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

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

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

**[1 mark]**

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

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

<b>06</b>	Explain <b>three</b> aspects of the rule of law.	<b>[5 marks]</b>
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**Marks for this question: AO1 = 5**

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

**Indicative content**

**AO1**

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

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

Credit any other relevant point(s).

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

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

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

**Indicative content**

**AO1**

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

**AO2**

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

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

Credit any other relevant point(s).

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

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

**Indicative content**

**AO1**

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

**AO2**

- Application to argue that ‘expression’ extends to all forms of expression and that it applies to all forms of content, “not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive but also to those that offend, shock, or disturb the state or any sector of the population.”
- Application to argue that expression which is political in content and relates strongly to ideas of pursuit of truth and support for democracy is likely to be viewed as inherently more worthy of protection.
- Application to argue that, prima facie, Elena should be entitled to express her views to contribute to a public debate without fear of any kind of penalty.
- Application to argue that Article 10.2 recognises limitations on the right which gives individuals the right to protect their reputations, and for which the English law of defamation makes appropriate provision, including defences designed to recognise the right to freedom of expression.
- Application to argue that some forms of expression may threaten personal safety, physical or mental and so amount to crimes such as harassment, for which Article 10.2 recognises a permissible limitation on the right to freedom of expression.
- Application to conclude that Elena is probably more likely to be able to rely on Article 10 rights to protect her from civil than from criminal liability but that it will depend on the precise circumstances in terms of proportionality (‘necessary in a democratic society’).

**AO3**

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

Credit any other relevant point(s).



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

**[15 marks]**

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

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

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

Substantive	Non-substantive	Total marks
5	10	15

**Indicative content****AO1**

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

**AO3**

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

Credit any other relevant point(s).

**ICGs**

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

<b>10</b>	Taking a human rights perspective, consider the application of English law and the European Convention on Human Rights to the incidents arising out of the events described.	<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.

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

Substantive	Non-substantive	Total marks
30	0	30

**Indicative content****AO1**

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

**AO2**

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

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

### AO3

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

Credit any other relevant point(s).

### ICGs

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

<b>11</b>	<p>Taking a human rights perspective, consider what rights and remedies Jack may have against Lucy and The Clarion, and against the police, arising out of the incidents described.</p> <p>Assess the contribution of different sources of law to the rules which you have explained and applied in considering Jack’s rights and remedies.</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**

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

### AO2

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

### AO3

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

Credit any other relevant point(s).

### ICGs

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



**Assessment Objectives Grid**

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

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

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