



A-level

LAW

7162/3B

Paper 3B Human Rights

Mark scheme

June 2022

Version: 1.0 Final Mark Scheme



J U N 2 2 7 1 6 2 / 3 B / M S

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 the European Convention on Human Rights. **[1 mark]**

Marks for this question: AO1 = 1

B The European Court of Human Rights has generally interpreted Convention obligations very restrictively.

02 Select the **true** statement about the effect on English law and the English legal system of the European Convention on Human Rights. **[1 mark]**

Marks for this question: AO1 = 1

C An excessively large award of damages by a court may violate the right to freedom of expression under Article 10 of the Convention.

03 Select the **false** statement about the rule of law. **[1 mark]**

Marks for this question: AO1 = 1

C Public officials should be given maximum freedom to make decisions affecting the legal rights of citizens.

04 Select the **true** statement about the independence of the judiciary. **[1 mark]**

Marks for this question: AO1 = 1

C Judges in superior courts cannot easily be removed from office.

05 Select the **false** statement about delegated legislation. **[1 mark]**

Marks for this question: AO1 = 1

B It is generally well-publicised.

06	Explain two characteristics of the common law as a source of law and provide an example to illustrate one of those characteristics.	[5 marks]
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Marks for this question: AO1 = 5

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

Indicative content

AO1

Explanation of any **two** characteristics and use of **one** supporting example:

- common law has been made by judges, when making and following decisions in cases (may contrast with statutes)
- common law is subservient to statute law by which it can be abolished or amended
- as the foundation of common law, precedent operates on the basis of stare decisis in relation to key elements in a judgment and employs a hierarchy of courts
- common law represents rules based on decisions that have been developed over a period of time and have traditionally been the basis of important areas of law
- common law deals with actual, concrete instances and so is practical in its application and reach
- common law is limited in scope by the (relatively) narrow issues raised in individual cases and so is not particularly suitable in achieving large scale change or reform in the law
- common law applies retrospectively to incidents which have already occurred or issues which have already arisen
- common law, since it is based on precedent, promotes predictability and, perhaps, confidence in interpretation and application to future cases
- suitable examples to illustrate any of the above – for example, significant areas of criminal law (such as unlawful homicide) continue to be based on common law; significant areas of tort, such as negligence, are based on common law; the requirements for a valid contract rely on common law; in some areas, rules of common law have been completely replaced by statute (for example, defences to murder, occupier's liability in tort, consumer protection in contract).

Credit any other relevant point(s).

Answers which do not explain two aspects cannot achieve marks higher than band 2, even if an eg is provided for one characteristic.

Answers which do not provide an example cannot achieve maximum marks.

07	Suggest why, despite the threat of violence and disorder, the action by the police was probably a violation of the rights of Ava, Brett and Cian under Article 11 of the ECHR (the right to freedom of assembly and association).	[5 marks]
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Marks for this question: AO1 = 2 and AO2 = 3

Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)	
Mark range	Description
4–5 Band 3	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.
2–3 Band 2	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.
1 Band 1	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
0	Nothing worthy of credit.

Indicative content

AO1

- Explanation that Article 11.1 requires a state to ensure that there is freedom of peaceful assembly, and that it particularly supports the right to freedom of expression in making protests and the like.
- Explanation that Article 11.2 provides a justification for interference with the right under Article 11.1, inter alia, for the prevention of disorder or crime but that ECtHR interpretation insists that this must not be used to permit counter-protesters to threaten disorder and crime so as to stifle protest.
- Possible reference to/use of a case such as **Plattform ‘Arzte fur das Leben’ v Austria, Ollinger v Austria, Faber v Hungary**.

AO2

- Application to argue that Ava, Brett and Cian were exercising the right to freedom of assembly (with possible reference to its relationship with the right to freedom of expression).
- Application to argue that, in view of their apparently entirely peaceful conduct, Ava, Brett and Cian should not have been denied their right to protest about the proposed plans for the ‘fast food’ shop.
- Application to suggest that the intervention against their protest by the police, though prima facie justified by Article 11.2, would probably amount to a violation of Article 11.1 since the police misdirected their actions and should have controlled the counter-protest.

Credit any other relevant point(s).

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

08	With regard to Article 2 of the ECHR (the right to life), advise Dora of her rights and remedies against the police under the Human Rights Act 1998 ss 6–8.	[10 marks]
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Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3

Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)	
Mark range	Description
7–10 Band 3	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.
3–6 Band 2	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.
1–2 Band 1	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.
0	Nothing worthy of credit.

Indicative content

AO1

- Outline explanation of the scope of the right to life under Article 2.
- Outline explanation of the interpretation of Article 2 by the ECtHR, imposing not only a negative obligation on states not to take life but a positive obligation on states to protect and preserve life.
- Explanation of the provisions of the Human Rights Act 1998 ss6–8.
- Reference to, and use of, relevant cases: **Osman v UK, Oneryildiz v Turkey, Opus v Turkey, Commissioner of Police of the Metropolis v DSD and another.**

AO2

- Application to argue that, under Article 2, the police, as agents of the state, owed Dora a positive obligation to protect her life which could not necessarily be satisfied simply by asserting the existence of rules establishing homicide offences and a structure for investigating, prosecuting and imposing sanctions for their breach.
- Application to suggest that it is arguable that the police were under a duty to take steps to protect Dora's life since they knew or ought to have known that there was a real and immediate risk to Dora's life from the criminal acts of the youths, given her age and health, and that there were steps that could have been taken which might reasonably have been expected to avoid the risk (credit the alternative argument that one or more of these requirements was not satisfied, or an approach which balances the arguments).
- Application to suggest that, if the police have breached the requirements, then, under the Human Rights Act 1998 s6 they will have acted incompatibly with Article 2 rights. This will entitle Dora, as a 'victim', to bring an action under s7 seeking an award which, under s8, is within the court's powers and which it deems 'just and appropriate', including compensation.

AO3

- Analysis and evaluation of the positive obligations on the State in respect of the right to life under Article 2 of the ECHR.
- Analysis and evaluation of the particular requirements in relation to knowledge of the State (the police) as to risk to life to an individual posed by the criminal activities of a third party, with further analysis of cases such as **Osman v UK** and **Commissioner of Police of the Metropolis v DSD and another**.

Credit any other relevant point(s).

09	Examine the suggestion that the law has an important role to play in balancing conflicting interests. Discuss the extent to which this role is evident in the context of human rights.	[15 marks]
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Marks for this question: AO1 = 5 and AO3 = 10

Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)	
Mark range	Description
13–15 Band 5	<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>
10–12 Band 4	<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>
7–9 Band 3	<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>
4–6 Band 2	<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>
1–3 Band 1	<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>
0	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 the concept of law as operating to balance conflicting interests.
- Simple illustration drawn from any area(s) of law.
- Identification of the interests involved in human rights – both private/individual and the State/society, perhaps with some reference to the significance of different kinds of groupings in society, majority or minority.
- Possible reference to the views of theorists, for example Jhering, Pound.
- Identification of appropriate areas of the law and supporting legal authority to illustrate specifically an assessment of the extent to which rules of human rights law may play a role in balancing conflicting interests.

AO3

- Analysis of the meaning and kinds of interests that may be in conflict in issues that arise in law, as identified above under AO1.
- Analysis of the mechanisms by which law may seek to balance interests, including substantive and procedural rules of law, and access to justice.
- Possible evaluation of the extent to which law may have succeeded in achieving an appropriate balance between interests in selected areas which may not be specific to human rights but will be relevant to the process of balancing conflicting interests as a whole.
- Analysis of the rules in any area(s) of human rights, to attempt to demonstrate how and where a balance may have been struck between different interests.
- Evaluation of the extent to which attempts to balance conflicting interests are evident in interpretation and application of human rights law.
- Credible conclusions based upon the analysis and evaluation presented above.

Credit any other relevant point(s).

Indicative Content Groups (ICG)

ICG1 concept

ICG2 substantive law

10	Taking a human rights perspective, consider the application of English law and the European Convention on Human Rights to the incidents described.	[30 marks]
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Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)	
Mark range	Description
25–30 Band 5	<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>
19–24 Band 4	<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>
13–18 Band 3	<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>
7–12 Band 2	<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>
1–6 Band 1	<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>
0	Nothing worthy of credit.

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total marks
30	0	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.
- Outline explanation of the provisions of the Protection from Harassment Act 1997.
- 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 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.
- Credit possible outline explanation of PACE 1984 requirements for lawful arrest and of article 5 right to liberty.
- Reference to relevant supporting case interpretation (for example, **ZXC v Bloomberg**, **Richard v BBC**, **Von Hannover v Germany**, **Campbell v MGN**, **PJS v NGN Ltd**).

AO2

- Application to argue that the disclosure by Julian and The Tempest that Hakeem had been arrested for (though not yet charged with) fraud offences, prima facie, amounted to the tort of misuse of private information.
- Application to argue that the publication of photographs taken in those circumstances, also prima facie, amounted to the tort of misuse of private information.
- Application to argue that the conduct of journalists and members of the public could amount to offences of harassment under the 1997 Act (providing that sufficient instances could be proved against any individual).
- 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 Julian and The Tempest's publication of the story and the photographs, and no compelling reason for favouring their Article 10 rights over Hakeem'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 Julian is likely to be of much less significance as a defendant, given The Tempest's likely financial resources).
- Application to argue that the actions of the police in revealing the details of the proposed arrest and search, as well as in failing to intervene to control the conduct of journalists and members of the public, may amount to a breach of Hakeem's Article 8 rights in that they are a violation of his right to private life and which are, therefore, redressable by an action under the Human Rights Act 1998 ss6–7, which could result in an award of damages.

- Credit possible application of the provisions of PACE and of art 5 to the lawfulness of Hakeem's arrest.

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, including here both written and photographic; 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.
- Credit possible analysis and evaluation of the lawfulness of Hakeem's arrest.
- 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**.

Credit any other relevant point(s).

Indicative Content Groups (ICG)

ICG1: relevant English law, including s6-8 HRA; discussion of any Convention articles other than 8 and 10; remedies.

ICG2: articles 8 and art 10.

11	<p>Taking a human rights perspective, consider the application of English law and the European Convention on Human Rights to the incidents described.</p> <p>Assess the extent to which justice may have been achieved by application of the law to the incidents considered above.</p> <p style="text-align: right;">[30 marks]</p>
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Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)	
Mark range	Description
<p>25–30</p> <p>Band 5</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>19–24</p> <p>Band 4</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>13–18</p> <p>Band 3</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>

7–12 Band 2	<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.</p> <p>There is limited analysis of legal rules and principles leading 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>There is limited analysis and evaluation of legal concepts and issues.</p> <p>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>
1–6 Band 1	<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.</p> <p>There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario.</p> <p>A fragmented legal argument is attempted.</p> <p>There is minimal analysis and evaluation of legal concepts and issues.</p> <p>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>
0	Nothing worthy of credit.

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 outline explanation of the provisions concerning arrest by police constables in the PACE Act 1984 s24.
- Identification and outline explanation of the requirements of Article 5 of the ECHR (the right to liberty and security of person).
- Possible identification and outline explanation of the requirements of Article 8 of the ECHR (right to respect for private life).
- Identification and explanation of rights and remedies under the Human Rights Act 1998 ss6–8.
- Outline explanation of the concept of justice.
- Reference to, and use of, relevant cases, such as **Castorina v Chief Constable of Surrey**, **Hayes v Chief Constable of Merseyside Police**, **Austin v Commissioner of Police for the Metropolis**.

AO2

- Application to the issues of stop and search in general to argue that action by police officers could be lawful within the provisions of PACE Act 1984 since stolen and/or, perhaps, prohibited items (offensive weapons, for example) might be found. The lawfulness would depend upon the police officers having reasonable grounds to suspect such items would be found (and so upon some sensible comparison between the description of the alleged suspects and those being targeted for search) and observing other requirements such as provision of information and keeping a record.
- Application to the case of Luca, in particular, to suggest that, in view of his age and the presence of his family for the celebration, stop and search would be unlikely to meet the statutory requirements and so could be unlawful. Possible further suggestion that it would probably be a breach of Luca's Article 8 rights, so giving rise to an action, and remedies, under the Human Rights Act 1998 ss6–8.
- Application to the case of the arrest of Kelsey by the police officer to argue that, prima facie, there appear to be grounds under PACE Act 1984 s24 in that Kelsey was committing the offence and there were reasonable grounds to believe that she might cause physical injury.
- Application of the requirements of Article 5 of the ECHR to the containment of visitors by police officers: the ECtHR accepts that not all restraint amounts to deprivation of liberty, and this may mean that Article 5 is not engaged (as in cases of 'kettling').
- Application of the requirements of Article 5 to the specific case of Kelsey in respect of the arrest and detention in the police vehicle. Article 5 is engaged and the police would have to justify the deprivation of liberty under Article 5.1b or 5.1c. In the event that actions against visitors in general, or Kelsey in particular, were held to be a violation of Article 5, there would be an action, and remedies, under the Human Rights Act 1998 ss6–8 (including, in Kelsey's case, raising a defence to any prosecution for the offence of obstructing a police constable).

AO3

- Analysis and evaluation of the provisions on stop and search by police constables in the 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 Article 5 (and possibly of Article 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 concept of justice, suggesting the significance of the relationship between individual interests in liberty and integrity of the person and the interests of society at large in the preservation of order and prevention of crime, assessing the extent to which justice may be achieved in reconciling the two by the combination of rules of English law and ECHR-derived obligations.
- 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).

Indicative Content Groups (ICG)

ICG1: stop and search of Luca

ICG2: arrest and detention of Kelsey; containment of visitors

ICG3: justice

Assessment Objectives Grid

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

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
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
Total	75	25	100
Total %	75	25	100