



A-level

LAW

7162/3B

Paper 3B Human Rights

Mark scheme

June 2023

Version: 1.0 Final



2 3 6 A 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 **true** statement about various Articles of the European Convention on Human Rights (ECHR).

[1 mark]

Marks for this question: AO1 = 1

B The right to freedom of expression under Article 10 of the ECHR is strongly protected in the case of journalists dealing with issues of public concern.

02 Select the **false** statement about the European Court of Human Rights (ECtHR), the European Convention on Human Rights (ECHR), and the Human Rights Act 1998.

[1 mark]

Marks for this question: AO1 = 1

A Claims can be brought in the ECtHR by individuals but not by States.

03 Select the **true** statement about proof of liability.

[1 mark]

Marks for this question: AO1 = 1

A The burden of proof in a civil case is on the claimant.

04 Select the **false** statement about the role of a judge (or judges) in a criminal case.

[1 mark]

Marks for this question: AO1 = 1

A A District Judge in the Magistrates' Court does not decide questions of fact.

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

[1 mark]

Marks for this question: AO1 = 1

A The Scrutiny Committee (the Parliamentary Joint Select Committee on Statutory Instruments) can alter a statutory instrument.

06	Explain two ways in which the law tries to achieve judicial independence.	[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** of the following:

- security of tenure for superior judges (inferior judges may be mentioned but this is not necessary) – Senior Courts Act 1981, Constitutional Reform Act 2005 (power to remove in the hands of the monarch on petition by both Houses of Parliament) – independent office to investigate complaints
- appointment of judges contributing to securing independence
- financial security related to arrangements for determining and paying judicial salaries (including prohibition on reducing salaries and on any performance-related element)
- immunity from suit – immunity from criminal and civil actions in relation to acts carried out in performance of judicial function, including immunity from actions in defamation; **Sirros v Moore**
- freedom from interference by the executive and separation from legislative law-making (separation of powers) – Constitutional Reform Act 2005 s3
- prohibition on participation in cases where a judge may have a personal or other special interest – In **Re Pinochet**.

Credit any other relevant point(s).

Note: max. 3 for good explanation of one way only.

07	Suggest why Axebury City Council’s failure to undertake and publish the results of research into the effects of the changes is unlikely to be a violation of Bekka’s right to freedom of expression under Article 10 of the European Convention on Human Rights.	[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

- Statement that ECHR Article 10 includes within freedom of ‘expression’ the ‘freedom to receive ... information’, so that it is not confined to ‘imparting’.
- Statement that ECHR Article 10 may therefore entitle a person to receive/acquire information which is available but not impose an obligation on another to collect/generate such information.

AO2

- Application to argue that Bekka would be seeking to compel Axebury City Council to generate/create information.
- Application to argue that the ECtHR has refused to extend the positive obligation under Article 10 to require the generation/creation of information in such an instance.
- Application to suggest, therefore, that Bekka would not succeed in a claim that Axebury City Council’s failure violated her right to freedom of expression.

Credit any other relevant point(s), including use of any case to assist explanation/application: for example, **Guerra v Italy**.

08	Advise Cal of his rights against Eden, with reference to the tort of misuse of private information, and taking into account 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]
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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 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 as a possible alternative, 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); and prevention of the disclosure of information received in confidence (Article 10).
- Identification of, and reference to, supporting case authority: for example, **Campbell v MGN**, **Axel Springer v Germany**.

AO2

- Application to suggest that Cal would have an expectation of privacy derived from his relationship with Della and the nature of the subject matter and that this expectation would be preserved through the specific request by Della to her friend to delete the message.
- Application to suggest that, if there is a reasonable expectation of privacy, it will be opposed by Eden'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, Cal's Article 8 rights prevail over Eden'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 Cal's status as a public figure with a high public profile; his deliberate efforts to deceive the public about his true beliefs; 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 circumstances in which Eden acquired the information.

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).
- Further use of case authority, including cases referred to above, and, for example, **Von Hannover v Germany, McKennitt v Ash, ZXC v Bloomberg LP**.

Credit any other relevant point(s).

09	Examine the extent to which legal rules and moral rules are related. Discuss the extent to which rules in Human Rights law reflect rules of morality.	[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 definitions of legal rules (in simple terms, such as rules created by authority within a given jurisdiction, or by reference to theorists such as Austin) and of moral rules (for example as a set of expectations concerning behaviour which is right or wrong, as customary practices, as social manners, as rules based on religion, as beliefs, values, principles and standards of behaviour).
- Outline explanation of the relationship between legal rules and moral rules for instance by identifying similarities and differences.
- Identification of appropriate examples drawn from civil and/or criminal law to illustrate the relationship between legal rules and moral rules.
- Identification of appropriate examples and supporting case authority to illustrate the extent to which rules in human rights law may be founded on moral rules.

AO3

- Analysis of similarities and overlap between legal and moral rules, developed through illustration; for instance what is illegal is often also immoral, rules of law can influence the morality of society and vice versa and the notion that to break the law is of itself immoral.
- Analysis of differences between legal and moral rules, developed through illustration; for instance the sources of legal and moral rules, the consequences on infringing legal and moral rules and the idea that legal rules are subject to rules of recognition, change and adjudication.
- Analysis of appropriate examples to illustrate the differences and the possible relationship between moral rules and legal rules.
- Analysis of relevant legal rules in human rights law: for example, the right to life, the right to freedom from arrest and detention, the right to private life, the right to freedom of expression, supported by relevant legal authority.
- Evaluation of the relevant legal rules; for example, human rights may be said to be rights which derive from a fundamental moral vision of the potential in human life, implying equality, universality, and inalienability. As aspects of the realisation of this moral vision, the right to life, the right to liberty and security of person, and to private life may be seen as based on a moral rule respecting and protecting the integrity of the individual in the broadest possible sense; the right to freedom of expression may be seen as respecting a moral injunction to permit development and self-realisation of the individual; the question of whether the various exceptions to rights contained within the ECHR can be seen as morally (as well as legally) justified.
- Conclusion perhaps to suggest that many of the rules in human rights law can be associated with specific moral rules or implement a moral vision.

Credit any other relevant point(s).

ICG1: law and morality

ICG2: human rights law

10	<p>Taking a human rights perspective, consider the rights, duties, liability and remedies arising out of the incidents involving Faisal and the various members of the group.</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 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>
<p>19–24</p> <p>Band 4</p>	<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>
<p>13–18</p> <p>Band 3</p>	<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>
<p>7–12</p> <p>Band 2</p>	<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>
<p>1–6</p> <p>Band 1</p>	<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**

- 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 the Public Order Act 1986 ss11–12 and s14 giving police power to control various aspects of marches ('processions') and static meetings ('assemblies').
- 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 ss6–8 for challenging acts of public authorities which are incompatible with ECHR rights (possible reference also to judicial review).
- Identification of, and reference to, supporting case authority: for example, **Chivers v DPP**, **Kudrevicius v Lithuania**, **Laporte v Chief Constable of Gloucestershire Constabulary**.

AO2

- Application of the rules on aggravated trespass to argue that, prima facie, the three members of the group committed the offence in entering as trespassers the grounds in which the fund-raising event was being held. In relation to that event, their intent was clearly to deter participation and to obstruct and disrupt within the Criminal Justice and Public Order Act 1994 s68(1)(a)–(c) by chaining themselves to the fencing.
- Application of the provisions of the Public Order Act 1986 s11, to argue that Faisal will have committed an offence in failing to observe the notification requirements for the planned march to the public park.
- Application of the provisions of the Public Order Act 1986 s12 and s14 to argue that the police had powers to control the conduct of the march (procession) and the meeting (assembly), including the route of the march, and the numbers present at, and the duration of, the meeting and that refusal to comply would be an offence.
- Application of the rules on breach of the peace to suggest that the arrest of the three at the fund-raising event appears to have been in anticipation of breach of the peace, though it could have been for aggravated trespass, a charge which might subsequently follow. It might be doubtful whether any further breach of the peace could have taken place.
- Application of the provisions of Articles 10 and 11 of the ECHR to argue that both Articles 10 and 11 will be engaged, and that the outcome in relation to police action and resulting prosecutions (if any) arising out of the incidents will depend on whether the State can sufficiently justify the actions taken and any prosecution/conviction for offences identified, 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 ss6–8, to argue that those charged with criminal offences could defend themselves by reference to Articles 10 and 11, whilst the decision to impose severe limits on the meeting in the public park could be challenged (say, via an action for judicial review) on the same basis.

AO3

- Analysis and evaluation of the provisions of the Criminal Justice and Public Order Act 1994 s68.
- Analysis and evaluation of the powers of the police under the Public Order Act 1986 ss11–12 to control marches, and under s14 to control meetings.
- 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, and the need to preserve order, restrict crime, and protect rights and freedoms of others, reaching a valid conclusion).
- Further use of case authority, including cases referred to above, and, for example, **Ollinger v Austria**, **Ezelin v France**, **DPP v Ziegler**.

Credit any other relevant point(s).

ICG1: Aggravated trespass / breach of the peace / arrest

ICG2: Public Order Act 1986

ICG3: Articles 10 and 11 / Human Rights Act 1998 ss6-8 / judicial review

11	<p>Taking a human rights perspective, consider the rights and remedies of Hugh and of Ivan’s family, and the duties of the Police in relation to this incident.</p> <p>Assess the extent to which the rules you have applied in relation to Ivan’s death achieve an appropriate balancing of the interests involved.</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>

<p>7–12 Band 2</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>1–6 Band 1</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>0</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 provisions of the Police and Criminal Evidence (PACE) Act 1984 s24 relating to the legal basis in English law for arrest and detention.
- Outline explanation of the meaning of the right to liberty and security of person under Article 5 of the European Convention on Human Rights (ECHR).
- Outline explanation of the justification for deprivation of liberty under Article 5.1c and 5.2, and requirements of 5.5.
- Identification and description of the basic obligation on States and their agents not to take life (Article 2.1), and of the positive obligation to protect life in the case of known and imminent threats.
- Identification and outline explanation of the qualifications to the basic obligation, including exceptions (a) in defence of any person from unlawful violence, (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, and of the requirement that force used for such purposes must be ‘no more than absolutely necessary’ (Article 2.2).
- Identification and outline explanation of actions under the Human Rights Act 1988 ss6–8, and possibly also of common law negligence (not required).
- Reference to appropriate case interpretation of the obligations and remedies (for example, **Castorina v Chief Constable of Surrey**, **Hayes v Chief Constable of Merseyside**, **McShane v UK**, **McCann v UK**, **Bubbins v UK**, **Osman v UK**, **Robinson v Chief Constable of West Yorkshire Police**, **MPC v DSD**).

- Identification and outline explanation of the interests raised by the death of Ivan which require balancing.

AO2

- Application to suggest that Hugh's arrest may have been lawful under PACE Act s24 because Hugh was wearing clothing similar to the description of the suspects given to the police and was running from the location of the shop just after a gunshot sound had been heard. Possible application of the three-part test from *Castorina*, or the two-part test from *Hayes*. Credit alternative application suggesting arrest was not lawful under PACE Act s24 as not based on reasonable grounds given that Hugh was wearing a blue, not a black hoodie, and if the Police Officers had listened to him he could have explained why he kept running.
- Application to suggest that, prima facie, there was an interference with Hugh's right to liberty under ECHR Article 5.1 when he was arrested and detained for 2 hours (a deprivation of his liberty).
- Depending on the approach taken to the arrest, application to suggest either that the requirements for justified deprivation of liberty under Article 5.1c and 5.2 were met, or were not met, and in the latter case the arrest constituted a violation of Hugh's rights under Article 5.1.
- Application to suggest that, as a police officer/agent of a public authority, if the arrest was unlawful and so a violation of Hugh's rights under Article 5, the Police would have been in breach of their obligations under the Human Rights Act 1998 s6, entitling Hugh to sue for damages under s7, compliant with ECHR Article 5.5.
- Application to suggest that, since state agents were involved (the police), Article 2 was directly engaged with both an obligation not to take life, but also to take steps to investigate threats to life and, where appropriate, protect from imminent danger.
- Application to suggest that in failing to follow up the tip-off about planned armed robberies, the police failed to anticipate and minimise threat to life and so may be in breach of their obligations under Article 2.
- Alternative application to suggest that the Police had an honest and reasonable belief that the use of deadly force was 'absolutely necessary' to protect the lives of the customers in the shop since a perceived gunshot sound had been heard, there had been a report of a suspect carrying a gun, and Ivan did not put his arms up when instructed to do so, but instead reached towards his pocket as if to draw a gun. The fact that the actual gun found was not capable of firing bullets would not negate this as the police who attended on the day had no way of knowing the gun was only capable of firing blanks; they could rely on the test from **McCann v UK**: an honest belief in the necessity of lethal force, which is perceived for good reasons to be valid at the time, even though it subsequently turned out to be mistaken.
- Application to suggest that, in view of Ivan's death, there were issues concerning the planning of the operation – ie the failure to follow up on the tip-off, so that an independent investigation which could be effective in determining the reasons for the death must be undertaken.
- Credit application to suggest that Ivan's death may have resulted from common law negligence – the failure to follow up the tip-off from a reliable source.
- Conclusion that there was a possible breach of Article 2 which would give rise to an action for compensation under the Human Rights Act 1998 ss6–8 by John's family, and possibly an action in the tort of Negligence for compensation.

AO3

- Analysis and evaluation of the requirements to justify arrest under PACE Act 1984 s24 and of the obligations imposed on the State by the Article 5 right to liberty and security of person.
- Analysis and evaluation of the extended obligations imposed by ECHR interpretation of Article 2: investigation of crime and protection from imminent threats to life; training, planning and control by state agents of operations posing a risk to life.
- Analysis and evaluation of the extended obligations imposed by ECHR interpretation of Article 2: an effective and independent investigation of death attributable to state agents.

- Credit analysis and evaluation of common law actions in negligence in relation to injury/damage to victims resulting from police actions in the execution of duty.
- Further use of supporting case authority (for example further development of cases cited above, and others such as **Murphy v Oxford, Matzarakis v Greece, Armani Da Silva v UK**).
- Analysis of the concept of balancing interests, and of what would represent an appropriate balance between the interests to be protected (here, related to the interests of individuals, in particular their safety and right to life, against the interests of the State in preventing crime and protecting the public at large).
- Evaluation of the balance struck by reference to the provisions analysed above, possibly concluding that the right to life, being one of the most fundamental human rights, requires very compelling reasons for an interference to be lawful – as reflected in the wording of Article 2(2), but if the right to life of one individual has to be weighed against the right to life of members of the public, then the latter would take precedence.

Credit any other relevant point(s).

ICG 1: Arrest under PACE / Article 5

ICG 2: Article 2 / HRA ss6-8 / judicial review (credit Ng)

ICG 3: Balancing

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