



A-level

LAW

7162/3B

Paper 3B Human Rights

Mark scheme

June 2024

Version: 1.0 Final



2 4 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.

No student should be disadvantaged on the basis of their gender identity and/or how they refer to the gender identity of others in their exam responses.

A consistent use of 'they/them' as a singular and pronouns beyond 'she/her' or 'he/him' will be credited in exam responses in line with existing mark scheme criteria.

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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 various Articles of the European Convention on Human Rights.

[1 mark]

Marks for this question: AO1 = 1

A In Article 10, 'expression' means only the written or spoken word.

02 Select the **true** statement about various aspects of the Human Rights Act 1998 ('the Act').

[1 mark]

Marks for this question: AO1 = 1

D The Act makes special provision for the protection of the Convention right to freedom of expression.

03 In the context of delegated legislation, which of the following is most closely involved in the creation of statutory instruments?

[1 mark]

Marks for this question: AO1 = 1

A Government ministers.

04 A member state of the European Union is not properly implementing EU law. Which institution is responsible for beginning legal action against that state?

[1 mark]

Marks for this question: AO1 = 1

C The European Commission.

05 Which of the following is **not** normally considered to be an aspect of the rule of law?

[1 mark]

Marks for this question: AO1 = 1

C The House of Lords may propose amendments to a Bill.

| | | |
|-----------|---|------------------|
| 06 | Explain how by-laws are made and give two examples of matters which might be dealt with using a by-law. | [5 marks] |
|-----------|---|------------------|

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

- Parliament can delegate its authority to other institutions to make laws on its behalf.
- Parliament delegates such authority by enacting an Act of Parliament (an enabling act or a parent act) setting out the powers to be delegated.
- In the case of a by-law, the power is delegated to a local council or certain public bodies (such as the railways).
- Examples might include local parking regulations, alcohol-free zones, behaviour in parks and on beaches, penalties for railway fare evasion.

Credit any other relevant point(s).

Note: Max 3 marks if no example is given. Max 4 marks if one example is given.

- 07** Suggest why Anji's arrest for offences of causing criminal damage to cars was probably lawful under the Police and Criminal Evidence Act 1984, even though she had not in fact committed any criminal offence.

[5 marks]

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

- Basic statement of PACE Act 1984 s24(3): if an offence has been committed, a constable may arrest without a warrant anyone whom the constable has reasonable grounds for suspecting to be guilty of it (or, in the alternative, PACE Act 1984 s24(2): if a constable has reasonable grounds for suspecting that an offence has been committed, the constable may arrest without a warrant anyone whom she/he has reasonable grounds to suspect of being guilty of it).
- Basic statement of PACE Act 1984 s24(5)(c)(iii): the constable must have reasonable grounds to believe that arrest is necessary (inter alia) to stop the person causing loss of or damage to property.

AO2

- Offences of criminal damage to cars have clearly been committed and the circumstances in which Anji was seen running with the hammer afford reasonable grounds for suspecting Anji to be guilty of doing so.
- In that case, police would have reasonable grounds for believing that more offences involving damage to property would be committed, and that Anji must be arrested to stop her doing so.
- Consequently, both conditions for a lawful arrest are probably satisfied.

Note that it is not necessary to mention information to be given on arrest (PACE Act 1984 s28(3)) but if this is offered rather than the second qualifying requirement (PACE Act 1984 s24(5)(c)(iii)), the **max mark is 4**.

Credit any other relevant point(s), including use of any case to assist explanation/application (for example **Castorina v Chief Constable of Surrey**, **Hayes v Chief Constable of Merseyside Police**).

| | | |
|-----------|---|-------------------|
| 08 | <p>Having regard to the right to life under Article 2 of the European Convention on Human Rights, advise the police as to whether they are liable for any breach of the Human Rights Act 1998 s6 in connection with the death of Brice.</p> | [10 marks] |
|-----------|---|-------------------|

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 |
| <p>7–10 Band 3</p> | <p>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.</p> |
| <p>3–6 Band 2</p> | <p>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.</p> |
| <p>1–2 Band 1</p> | <p>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.</p> |
| 0 | Nothing worthy of credit. |

Indicative content

AO1

- Explanation of the basic right to life under Article 2 of the ECHR and of the corresponding duty on the State not to take life, and of the positive obligation on the State to protect life, as developed by the ECtHR in interpreting the ECHR as a ‘living instrument’.
- Explanation of the restrictions on the right to life permitted by Article 2.2, focusing on the use of force which is no more than absolutely necessary in defence of any person from unlawful violence, and with reference to any requirements for advance planning, training etc in connection with any operation/response.
- Explanation of the provisions of the Human Rights Act 1998 s6.
- Reference to and use of relevant cases as authority/illustration: for example **Oneyerildiz v Turkey**, **Osman v UK**, **McCann v UK**.

AO2

- Application to argue that the police (as representatives of the State) have an obligation to protect, so far as possible, the lives of all those involved in the 'domestic' incident.
- Application to argue that, despite some possible failure in communication of full and accurate information about the incident, there is no evidence to suggest that there were any significant failures in the manner in which police dealt with the incident prior to the fatal shooting (credit any counter arguments raised).
- Application to argue that, given the circumstances, and the sudden escalation in the apparent possibility of extreme violence in Brice's agitated threats to Duke by his shouting and pointing of the gun, Ellis could be said to have had an honest and genuine belief that his action in shooting and killing Brice amounted to the use of force which was no more than absolutely necessary in defence of Duke (making the assumption that Ellis could not have known, or taken the risk, that the gun was merely a replica).
- Application to conclude that there has been no breach of the Human Rights Act 1998 s6 because the general planning and conduct of the operation and the specific actions of Ellis did not amount to anything which was incompatible with an ECHR (that is, Article 2) right (credit alternative conclusion).

AO3

- Analysis and evaluation of the basic right to life under Article 2 of the ECHR and the corresponding duty on the state not to take life, and of the positive obligation on the state to protect life, as developed by the ECtHR in interpreting the ECHR as a 'living instrument'.
- Analysis and evaluation of the restrictions on the right to life permitted by Article 2.2, focusing on the use of force which is no more than absolutely necessary in defence of any person from unlawful violence, and with reference to any requirements for advance planning, training etc in connection with any operation/response.
- Use of relevant cases in support (including further analysis and evaluation of cases identified above, where relevant): for example **Finogenov v Russia**, **Armani da Silva v UK**.

Credit any other relevant point(s).

09 Examine what is meant by ‘justice’. Discuss the extent to which the remedies available for a breach of human rights may achieve justice.

[15 marks]

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**

- Identification and brief description of the different possible meanings of justice, for example justice in terms of basic fairness or equality of treatment.
- Identification of different theories of justice, for example natural justice, distributive justice, utilitarianism and social justice.
- Identification and basic explanation of various philosophical approaches to justice.
- Identification and brief explanation of remedies available for breach of human rights, for example damages, or an injunction.

AO3

- Analysis 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, criminal or procedural.
- Analysis of the role of philosophical theories of justice, for example the theories of Aristotle, Marx, Bentham, Rawls, and how they can be related to the legal system.
- Analysis of procedural justice (for example how legal institutions, such as the courts and the judiciary work to achieve justice) and/or substantive justice (for example how the rules of law are used to achieve justice) and/or corrective justice (for example how the appeal system or the Criminal Cases Review Commission can achieve justice).
- Analysis of remedies available in human rights cases, for example s8(1) HRA allows a domestic court to grant such relief or remedy or make such order within its powers as it considers just and appropriate; the ECtHR can award damages and costs for the action before the ECtHR; possible reference to the options open to the Administrative Court in a judicial review case.
- Evaluation of these remedies, for example the discretionary nature of damages in most HRA cases, or for example under Article 5(5) the right to compensation for victims of unlawful arrest or detention; possible reference to the fact that a court cannot create a new remedy and can only grant remedies within its powers; for example the idea that the ECtHR may find in favour of the applicant, but not grant any remedy.

Credit any other relevant point(s).

ICG 1: Justice

ICG 2: Remedies for breach of human rights

| | |
|-----------|--|
| 10 | <p>Taking a human rights perspective, consider whether Gerson, Halima and the other demonstrators have any rights and remedies that they may be able to pursue in consequence of these incidents.</p> <p>In your answer, include consideration of whether they may challenge their subsequent convictions for public order offences.</p> <p style="text-align: right;">[30 marks]</p> |
|-----------|--|

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.</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 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**

- Identification and outline explanation of the provisions of the Public Order Act 1986 ss11–14 as to the control of marches ('public processions') and demonstrations ('public assemblies').
- Identification and outline explanation of the rules concerning the common law notion of breach of the peace, and of the associated 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 by those who have the status of 'victims', including remedies.
- Use of/reference to relevant cases as authority and illustration: for example **Kudrevicius v Lithuania**, **Laporte v Chief Constable of Gloucestershire Constabulary**.

AO2

- Application of the provisions of the Public Order Act 1986 s11, to argue that Gerson will have committed an offence in failing to notify police of the planned march to the FullRange Foods factory.
- Application of the provisions of the Public Order Act 1986 s12 to argue that the police had powers to control the conduct of the march (procession) (arguing that the senior police officer present could, perhaps, reasonably believe that it may result in serious public disorder), including the route, so that, prima facie, Halima's refusal to observe police instructions would be an offence.
- Application of the provisions of the Public Order Act 1986 s14 to argue that the police had powers to control the conduct of the demonstration (assembly) (arguing that the senior police officer present could, perhaps, reasonably believe that it may result in serious public disorder), including its duration, so that the instruction to terminate the demonstration after 45 minutes might be regarded as within police powers.
- Application of the rules on breach of the peace to suggest that the arrest of Gerson and the others appears to have been for, and in anticipation of, further breaches of the peace, though the issue arises as to whether this was truly attributable to Gerson and the demonstrators or to the actions of the FullRange Foods employees.
- Application of the provisions of Articles 10 and 11 of the ECHR to argue that both Articles 10 and 11 are engaged, and that the validity of the outcomes in relation to police action and the resulting prosecutions should depend on whether the State could sufficiently justify the actions taken and any convictions 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 convicted of criminal offences could seek to overturn the convictions by reference to the demands of Articles 10 and 11 and that, more generally, the police response to the march and demonstration could be challenged by reference to those Articles.

AO3

- Analysis and evaluation of the powers of the police under the Public Order Act 1986 ss11–12 to control marches ('public processions'), and under s14 to control 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).
- Further use of case authority, including cases referred to above, and, for example, **Ollinger v Austria**, **Ezelin v France**, **Platform 'Arzte fur das Leben' v Austria**, **Beatty v Gillbanks**, **DPP v Ziegler**.

Credit any other relevant point(s).

ICG1: English law (Public Order Act; breach of peace; credit any other relevant domestic law)

ICG2: Articles 11 and 10; Human Rights Act ss 6-8; credit Article 5

| | | |
|-----------|--|-------------------|
| 11 | <p>Taking a human rights perspective, consider the rights, duties, liability and remedies of Jane and Karin in connection with the removal and reading of the letter, and with Jane being taken to the police station and detained there for two hours.</p> <p>Assess the role of the judge in the trial of the two suspected burglars.</p> | [30 marks] |
|-----------|--|-------------------|

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.</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> |
| <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.</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> |
| <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

- 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 PACE Act 1984 s24.
- Identification and outline explanation of the requirements of Article 8 of the ECHR (right to respect for private life) and of Article 5 of the ECHR (the right to liberty and security of person).
- Identification and explanation of rights and remedies under the Human Rights Act 1998 ss6–8.
- Brief explanation of appropriate supporting case authority, for example **Hayes v Chief Constable of Merseyside Police, Niemietz v Germany**.
- Identification and outline explanation of the role of a judge in a criminal trial.

AO2

- Application of the stop and search requirements from PACE to Karin and Jane to argue that it is doubtful if there were reasonable grounds for Karin to suspect that she would find stolen/prohibited articles on Jane. There was no intelligence linking Jane to these burglaries and the only link between Jane and the burglaries is Jane’s presence at a nearby bus stop and the fact that two years earlier Jane had been convicted of theft of painkillers from a supermarket – arguably the latter not being sufficiently similar on the facts, nor close enough in time, to ground reasonable suspicion of Jane being involved in the current burglaries from pharmacies.

- Application to argue in addition to above that Karin did not comply with statutory requirements as to identification and subsequent recording. Consequently, the search would not be in accordance with law and, since Karin is an agent of a public authority, would probably be a breach of Article 8 in relation to intrusion into Jane’s physical integrity, giving rise to an action, and remedies, under the Human Rights Act 1998 ss6–8.
- Application to argue that reading the letter was also an interference with Jane’s right to respect for her private life and correspondence under Article 8.
- Application to argue that health data is included in private life and its confidentiality is strongly protected.
- Application to argue that to be lawful such interference has to comply with 8(2) i.e. be in accordance with law and necessary in a democratic society for one of the permitted purposes – here most likely the prevention of disorder or crime.
- Application to argue that reading the letter was not in accordance with law, was not proportionate to a legitimate aim and did not correspond to a pressing social need as it had no relevance to the burglaries and so was a violation of Jane’s Article 8 rights.
- Application to argue that in relation to the taking of Jane to the police station, there is no such thing as lawful detention short of arrest. So if Jane did not go willingly to the police station then Jane was arrested by Karin. (Credit alternative view that if Jane did consent to going, even if reluctantly, there was no arrest.)
- Application to argue that for an arrest to be lawful it must comply with PACE Act 1984 s24 and that the legality of an arrest under s24 is doubtful because there is no evidence to ground a reasonable suspicion of Jane’s connection to the burglaries.
- Application to suggest that, therefore, the requirements for a justified deprivation of liberty under Article 5(1)(b) or (c) were not met, so that the arrest constituted a violation of Jane’s rights under Article 5.1.
- Application to suggest that as an agent of a public authority, Karin was in breach of obligations under the Human Rights Act 1998 s6, entitling Jane to sue for damages under s7, compliant with ECHR Article 5.5.

AO3

- Analysis and evaluation of the provisions on stop and search by police constables in the Police and Criminal Evidence (PACE) Act 1984 ss1–3, especially in relation to ‘reasonable grounds for suspecting’.
- Analysis and evaluation of the PACE Act 1984 powers of arrest under s24.
- Analysis and evaluation of the requirements of Articles 5 and 8 of the ECHR, including the circumstances in which prima facie infringements may be justified by virtue of, respectively, Article 5.1b–c and Article 8.2, and including the remedies provided by the Human Rights Act 1998 ss6–8.
- Further reference to and analysis of case authority, developing the discussion of the cases cited above and/or further relevant cases – 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**, **Campbell v Mirror Group Newspapers**.
- Analysis and evaluation of the role of a judge in a criminal trial, for example: supervising swearing in of jury; keeping order in court; ruling on all points of law; deciding on the admissibility of evidence; ensuring the fair conduct of the trial; summing up for the jury; in the event of a guilty verdict, passing sentence.

Credit any other relevant point(s).

ICG1: The search of Jane and the reading of her letter (PACE and Art 8)

ICG2: Jane being taken to the police station and detained (PACE and Art 5)

ICG3: Role of a judge

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 |