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A-level

LAW

7162/3B

Paper 3B Human Rights

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Mark scheme

June 2019

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Version: 1.0 Final



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

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

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

## Level of response marking instructions

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

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

### Step 1 Determine a level

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

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

### Step 2 Determine a mark

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

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

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

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

**01** Select the **true** statement about the fact that the European Court of Human Rights ('the Court') treats the European Convention on Human Rights ('the Convention') as a 'living instrument'.

[1 mark]

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

**C** The Court considers that it should attempt to interpret the Convention in a way which recognises changes in society across member states.

**02** Select the **true** statement about the impact of the European Convention on Human Rights ('the Convention') on English law.

[1 mark]

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

**B** A court must interpret rules of common law in such a way as to take into account relevant provisions of the Convention.

**03** Select the **false** statement about the institutions of the European Union.

[1 mark]

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

**C** The European Court of Justice is the final court of appeal on all law for all member states.

**04** Select the **false** statement about the rule of law.

[1 mark]

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

**D** It supports attempts by governments to limit access to the civil justice system by reducing state funding for bringing claims.

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

[1 mark]

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

**A** A court may declare delegated legislation invalid if it is not within powers granted to a minister by the enabling Act.

<b>06</b>	Explain <b>two</b> ways in which the law tries to ensure the independence of the judges. <b>[5 marks]</b>
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**Marks for this question: AO1 = 5**

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

### Indicative content

#### AO1

Explanation of any **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
- immunity from suit – 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 – 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 reason only.

<b>07</b>	Suggest why it would probably be a violation of Alicia’s right to respect for private life under Article 8 of the European Convention on Human Rights if the newspaper did publish the photographs.	<b>[5 marks]</b>
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**Marks for this question: AO1 = 2 and AO2 = 3**

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

**Indicative content**

**AO1**

- Explanation that Article 8 protects personal identity, particularly images (photos) and their use.
- Explanation that Article 8 rights often have to be balanced with Article 10 rights (freedom of expression).

**AO2**

- Application to argue that Article 8 is engaged by the unauthorised taking and use of the photos (or because of the private setting).
- Application to suggest that the balance favours Article 8 because publication makes no contribution to a general debate in a democratic society (not in the public interest).
- Application to suggest that the balance favours Article 8 because Alicia’s public persona is not at issue **or** because of the non-consensual acquisition of the images **or** because of Alicia’s determination to keep her non-public life private.
- Use of a relevant case to assist explanation/application – (eg **Von Hannover v Germany (No’s 1 and 2)**, **MGN v United Kingdom**).

Credit any other relevant point(s).

<b>08</b>	Advise Burak as to whether the actions of the police were in breach of Article 5 of the European Convention on Human Rights (right to liberty and security of person).	<b>[10 marks]</b>
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**Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3**

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

### **Indicative content**

#### **AO1**

- Outline explanation of the right to liberty and security of person under Article 5.1.
- Outline explanation of the circumstances in which deprivation of liberty may be justified under Article 5.1b.
- Outline explanation of the circumstances in which deprivation of liberty may be justified under Article 5.1c.

**AO2**

- Application to suggest that the key element is whether or not the confinement within the limited area for that length of time actually amounts to a deprivation of liberty – it appears that it does but the ECHR has previously adopted an interpretation generous to the State in such circumstances (**Austin v UK**).
- Application to suggest that, if there were a deprivation of liberty, this would have to be justified by Article 5.1b since the conditions for arrest under Article 5.1c were not met. Deprivation of liberty under 5.1b would depend upon the view of whether the police were entitled to order the restriction of movement in such circumstances and, if so, how proportionate the measure was in the circumstances (**Ostendorf v Germany**).
- Application to conclude that it is perhaps most likely that no deprivation of liberty had occurred but that, if it had, the conditions for application of 5.1b might not be met, resulting in a violation.

**AO3**

- Analysis and evaluation of the meaning of deprivation of liberty as interpreted by the ECHR, eg **Austin v UK**, **Guzzardi v Italy**, **Ostendorf v Germany**.
- Analysis and evaluation of the circumstances specified in Article 5.1b, justifying deprivation to secure the fulfilment of any obligation prescribed by law (**Hicks v MPC**).
- Analysis and evaluation of the circumstances specified in Article 5.1c, justifying deprivation with an aim of bringing a person reasonably suspected of committing an offence before a court.

Credit any other relevant point(s).

**Note:** Reference to English law provisions is creditworthy where related to the legal basis for justification for deprivation of liberty.



<b>09</b>	<p>From a human rights perspective, it is important that both the right to freedom of expression and the right to respect for a person’s reputation should be preserved.</p> <p>Examine the role of law in balancing conflicting interests. Discuss the extent to which the English law of defamation can achieve a satisfactory balance between freedom of expression and protection of reputation.</p> <p style="text-align: right;"><b>[15 marks]</b></p>
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**Marks for this question: AO1 = 5 and AO3 = 10**

<b>Levels of response mark scheme 15marks – AO1 (5) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>13–15</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal rules and principles; concepts and issues.</p> <p>Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>10–12</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal rules and principles; concepts and issues.</p> <p>Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>7–9</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal rules and principles; concepts and issues.</p> <p>Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>4–6</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>Limited analysis and evaluation of legal rules and principles; concepts and issues.</p> <p>Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.</p>
<b>1–3</b>  <b>Band 1</b>	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of Law and legal rules and principles. Minimal selection and use of relevant legal authority.</p>

	Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

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

<b>Substantive</b>	<b>Non-substantive</b>	<b>Total marks</b>
5	10	15

**Indicative content**

**AO1**

- Basic explanation of the role of law in society as operating to balance conflicting interests.
- Simple illustration drawn from any area(s) of law.
- Identification of the interests involved where reputation and freedom of expression are in issue – both private/individual (including commercial interests of newspapers) but with a strong public/social component.
- Basic explanation of the action in defamation, focused on the provisions of the Defamation Act 2013 and recognising the significance of Articles 8 and 10 of the ECHR.

**AO3**

- Analysis of the meaning and kinds of interests that may be in conflict in issues that arise in law (eg public and private or individual, public and social).
- Analysis of the mechanisms by which law may seek to balance interests, including substantive and procedural rules of law, and access to justice.
- Analysis of areas in which the law has attempted to promote an appropriate balance between interests in selected areas.
- Analysis of the rules in s(1)–(4) of the 2013 Act, demonstrating how the rules seek to protect from damage to reputation causing serious harm but subject to significant defences (truth, honest opinion, publication on a matter of public interest).
- Evaluation of the extent to which the provision of defences enables an appropriate balance to be achieved.
- Conclusion perhaps to suggest that there are powerful defences which protect legitimate freedom of expression in the public interest whilst not depriving a person of a legitimate right to maintain reputation where no such interest is involved.

Credit any other relevant point(s).

**Indicative Content Groups (ICGs)**

1. Concept of balancing interests.
2. Defamation.

<b>10</b>	<p>Taking a human rights perspective, consider the rights, duties and any possible remedies that might arise if the proposed activities were carried out. Include in your answer consideration of:</p> <ul style="list-style-type: none"> <li>• powers that the police may have to control the march and demonstration</li> <li>• criminal offences that may be committed in carrying out the second and third activities</li> <li>• how the relevant provisions of the European Convention on Human Rights (as given effect in English law by the Human Rights Act 1998) may affect the rights, duties and possible remedies of all involved.</li> </ul> <p style="text-align: right;"><b>[30 marks]</b></p>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

<b>Levels of response mark scheme 30 marks - AO1 (10), AO2 (10) and AO3 (10)</b>	
<b>Mark range</b>	<b>Description</b>
<b>25–30</b>  <b>Band 5</b>	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
<b>19–24</b>  <b>Band 4</b>	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
<b>13–18</b>  <b>Band 3</b>	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario.</p> <p>A satisfactory legal argument is presented using some appropriate terminology.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
<b>7–12</b>  <b>Band 2</b>	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario.</p> <p>A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>

<b>1–6</b> <b>Band 1</b>	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. 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. A fragmented legal argument is attempted. No chain of reasoning is attempted.
<b>0</b>	Nothing worthy of credit.

**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 Public Order Act 1986 ss11–14 as to control of ‘processions’ and static ‘assemblies’.
- Outline explanation of the provisions of the Protection from Harassment Act ss1–3 in respect of harassment of two or more persons.
- Outline explanation of the provisions of the Criminal Justice and Public Order Act 1994 ss68–69 in respect of aggravated trespass.
- Outline explanation of relevant provisions as to police powers in connection with obstruction and breach of the peace.
- Outline explanation of the provisions of Article 10 ECHR as to the right to freedom of expression.
- Outline explanation of the provisions of Article 11 ECHR as to the right to freedom of assembly and association. Possible outline explanation of the provisions of Article 8 ECHR as to the right to respect for private life.
- Outline explanation of the effect of the Human Rights Act 1998 ss6–8.
- Reference to relevant supporting case interpretation (for example, **Ollinger v Austria**, **Beatty v Gillbanks**, **Laporte v Chief Constable of Gloucestershire Constabulary**).

**AO2**

- Application to suggest that the police have power under the Public Order Act 1986 ss11–14 to require prior notice of the march (procession) and to give instructions in advance, or on the day in response to developing circumstances, as to route, timing, numbers and end destination; as organiser, Chris would be obliged to give notice of the march, and to adhere to any instructions or be guilty of committing offences.
- Application to suggest that the obstruction and abuse of workers would constitute offences under the Protection from Harassment Act 1998 and would additionally entitle the workers to apply for injunctions to prohibit the activity.
- Application to suggest that the disruption of events would amount to an offence of aggravated trespass under the Criminal Justice and Public Order Act 1994 ss68–69.
- Application to suggest that, in all of the above, police may seek to use powers in connection with breach of the peace, which could be used to order dispersal.
- Application to argue that Chris and his followers have rights under Article 10 (freedom of expression) and Article 11 (assembly and association), so that the police must not exercise any of their powers in a way which is not justified by legitimate restrictions or amounts to disproportionate action in pursuit of legitimate restrictions. Possible application of Article 8 to the harassment of workers.

- Application to suggest that, if any police reaction does not satisfy the requirements of Articles 10 and 11 (and, possibly, Article 8), there will be violations which, combined with the provisions of the Human Rights Act ss6–8, may entitle Chris and his followers to resist any criminal charge and/or bring an action for damages against the police.

### **AO3**

- Analysis and evaluation of rules in the Public Order Act 1986 ss11–14 concerning advance notice of processions, and of police powers to impose conditions on the conduct of processions and static assemblies, where there is a reasonable belief that serious public disorder, serious damage to property or serious disruption to the life of the community may ensue.
- Analysis and evaluation of the provisions of the Protection from Harassment Act ss1–3 in respect of harassment of two or more persons.
- Analysis and evaluation of the provisions of the Criminal Justice and Public Order Act 1994 ss68–69 in respect of aggravated trespass.
- Analysis and evaluation of police powers in connection with obstruction and breach of the peace, including where the peace is threatened by counter-demonstrators.
- Analysis and evaluation of Article 10 and 11 rights, as interpreted by the European Court of Human Rights, including the recognition that neither right is unqualified, and including exposition of the legitimate aims which may be pursued by restrictions – in particular, ‘in the interests of public safety, for the prevention of disorder or crime ... [and] for protection of the rights and freedoms of others.’
- Further use of supporting case authority (for example, further development of cases cited above, and of additional cases, such as **UMO Ilinden v Bulgaria**, **Austin v UK**, **Mengesha v Commissioner of Police for the Metropolis**). Possible analysis and evaluation of Article 8 rights.

Credit any other relevant point(s).

### **Indicative Content Groups (ICGs)**

1. Control of the march/demonstration and the offences in the other two events.
2. The Article 10/11 (and, possibly, Article 8) issues and the Human Rights Act 1998 remedies.

<p><b>11</b></p> <p>Consider the application of human rights law to the incidents described, including the duties of the police and other authorities, <b>and</b> the rights, and any possible remedies, of Dev, Ferdy and Gaz.</p> <p>Assess the meaning and significance of classifying the right to life as a fundamental human right.</p> <p style="text-align: right;"><b>[30 marks]</b></p>
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**Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10**

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

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

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

Substantive	Non-substantive	Total Marks
23	7	30

**Indicative content**

**AO1**

- Identification and 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 in negligence at common law and under the Human Rights Act 1998 ss6–8 (breach of ECHR obligations).
- Reference to appropriate case interpretation of the obligations and remedies (for example, **McShane v UK**, **McCann v UK**, **Bubbins v UK**, **Osman v UK**, **Robinson v Chief Constable of West Yorkshire Police**, **MPC v DSD**).

**AO2**

- 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 the police may have failed in their duty to Dev, both in terms of investigation and affording protection.

- Application to suggest that the police had an obligation to plan the operation to disrupt the gang attack very carefully: police trained in appropriate techniques should have been used; if possible, any interception should have taken place in an unpopulated, or sparsely populated, area.
- Application to suggest that deadly force should have been used only if ‘absolutely necessary’, and this clearly bore not only on the nature of the threats which emerged as the interception took place but also on the planning of the operation itself to anticipate and minimise threats.
- Application to suggest that, in view of the deaths, there were significant issues concerning the planning and execution of the operation, so that an independent investigation which could be effective in determining the reasons for the death must be undertaken.
- Application to suggest that the injury to Gaz may have resulted from common law negligence, albeit whilst the police were engaged in carrying out operational duties.
- Conclusion that there were probably significant breaches of *Article 2* which would give rise to actions for compensation under the *Human Rights Act 1998* ss6–8 (Dev, the gang members), as well as an action in negligence for compensation by Gaz.

### AO3

- 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 operation by state agents 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.
- 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.
- Analysis of the role of law in society via the concept of levels of rights related to human rights, emphasising issues such as universality and inalienability and the doubts around this.
- Evaluation of significance of the status as a human right in terms, perhaps, of overriding importance, capacity to induce continuing interpretation and development of the obligation, extending well beyond the duty not to take life (for example, capacity to extend into non-criminal activities).

Credit any other relevant point(s).

### Indicative Content Groups (ICGs)

1. Issues in relation to Dev and Gaz, and remedies in relation to all (including Ferdy).
2. Issues in relation to Ferdy.
3. The meaning and significance of the right to life.



**Assessment Objectives Grid**

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

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

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