

A LEVEL

Practice materials

LAW

H418

For first teaching in 2020

H418/03 Practice Paper and Mark Scheme



Oxford Cambridge and RSA

Practice Paper

A Level Law

H418/03 The nature of law and Human rights

Time allowed: 2 hours

You must have:

- the OCR 12-page Answer Booklet

INSTRUCTIONS

- Use black ink.
- Write your answer to each question in the Answer Booklet. The question numbers must be clearly shown.
- Fill in the boxes on the front of the Answer Booklet.
- Answer **four** questions in total:
Answer **one** question using examples from your full course of study in Section A.
Choose **one** Part in Section B. Answer the **three** questions for that part.

INFORMATION

- The total mark for this paper is **80**.
- The marks for each question are shown in brackets [].
- Quality of extended response will be assessed in questions marked with an asterisk (*).
- This document has **4** pages

ADVICE

- Read each question carefully before you start your answer.

2**SECTION A****The nature of law**

Answer **one** question using examples from your full course of study.

1* 'The primary aim of any legal system is to achieve justice.'

Discuss the extent to which the law achieves justice.

[20]

2* 'Law has the power to influence and change society.'

Discuss the extent to which law does influence and change society.

[20]

SECTION B**Human rights law**

Choose **Part 1** or **Part 2**.

Part 1

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios **are** related.

Bethan and Ivor run a farm near the town of Frexham. They are also members of 'WindFree' – a pressure group which is campaigning against a proposal to build a large wind farm. The site of the proposed wind farm is on land next to their own farm. They argue that it will damage the natural beauty of the local environment. They plan a protest march through Frexham town centre and inform the police in advance. On the day of the march, they block the main road with their tractors. This causes severe disruption to traffic. The rest of the march continues into the town, but Bethan and Ivor are taken away by the police, forcing them to abandon the march.

Harry and Ewan are the leaders of another pressure group, 'Jobs4Frexham'. They are in favour of the development of the wind farm. They believe it will create new jobs as well as contributing to a cleaner environment. Harry and Ewan decide to disrupt the 'WindFree' march. They organise a group of twenty-five supporters and give them eggs to throw at the 'WindFree' supporters. Ewan also shouts abuse at Bethan and makes threatening gestures against Ivor. Harry and Ewan try to grab the protest signs being carried by the 'Windfree' protestors causing a physical disturbance. Harry and Ewan are arrested and taken into custody.

- 3 Advise Bethan and Ivor whether their rights under Article 11 have been breached. **[20]**
- 4 Advise Harry and Ewan what charges are likely to be brought against them under the Public Order Act 1986. **[20]**

Essay question on human rights law

- 5* The right to freedom of expression has been described as a 'fundamental aspect of democracy'.

Discuss whether Article 10 and the courts have achieved a healthy balance between defending this right whilst allowing for the regulation necessary in a modern democracy. **[20]**

Part 2

Answer the **three** questions below.

The first two questions are based on the scenario below.

In April 2010 Xavier was convicted of belonging to a terrorist group and planning significant acts of terror. He was imprisoned for 12 years. Yasmin, an investigative journalist, uncovered evidence that completely contradicted the case against Xavier and in 2015 his case went to the Court of Appeal. His conviction was quashed on the grounds of being unsafe. Xavier was released immediately. However, in 2016 Yasmin discovered that the security services were continuing to monitor Xavier's emails and correspondence and had secretly searched Xavier's home on more than one occasion. She also found out that they were monitoring the emails of Xavier's wife, Monica, and his eldest son Raul, aged 14. When Xavier and his family search the property they find listening devices hidden in the furniture.

- 6 Advise Xavier whether the continued surveillance of both his own and his family's private correspondence, and the searches of his home have breached his rights under Article 8. [20]
- 7 Advise Xavier and his family which laws, **other than Article 8**, exist to protect them and what possible procedures they may take to enforce their rights. [20]

Essay question on human rights law

- 8* The right to freedom of expression has been described as a 'fundamental aspect of democracy'.

Discuss whether Article 10 and the courts have achieved a healthy balance between defending this right whilst allowing for the regulation necessary in a modern democracy. [20]

END OF QUESTION PAPER



Oxford Cambridge and RSA

Practice Paper 2022

A Level Law

H418/03 The nature of law and Human rights

SAMPLE MARK SCHEME

Duration: 2 hours

MAXIMUM MARK 80

This document consists of 26 pages

SUBJECT–SPECIFIC MARKING INSTRUCTIONS

Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles, concepts and issues.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

When there are 2 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Consistently meets the criteria for this level	At top of level

When there are 3 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Meets the criteria but with some slight inconsistency	Middle of level
Consistently meets the criteria for this level	At top of level

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**Questions **1***, **2***

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.
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Section BQuestions **3**, **4**, **6** and **7**

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
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Questions **5*** and **8***

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
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Questions that have an asterisk (*) assess the quality of a candidate's extended response. Levels descriptors are identified in the AO3 column in italics.

Section A

1* 'The primary aim of any legal system is to achieve justice'. Discuss the extent to which the law achieves justice.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may** include:

- Definitions of justice (e.g. Chaim Perelman) and different types of justice: formal justice, substantive justice, distributive justice and corrective justice. Use examples from your full course of study
- Theories of law and justice e.g. Natural Law theories (Aristotle, Aquinas, Fuller) and Positivist theories (Bentham, Hart and Austin), John Rawls, Marxism, Nozick, Rule of Law etc. Credit any other relevant theories
- Use examples of formal justice – legal institutions such as the police, courts, judiciary, juries, and appeals
- Use examples of substantive justice – legal rules e.g. fault and defences in criminal law, fault in tort law, rights and freedoms in the Human Rights Act and fairness in contract law
- Use examples of distributive justice - the fair allocation of resources e.g. wealth, power, rights, resources e.g. anti-discrimination laws, minimum wage and reallocation of wealth through taxation and the welfare state
- Use examples of corrective justice – sentencing in criminal law e.g. retribution and remedies in tort and contract

Credit any other relevant point(s).

AO3 Indicative content

Answers **may**:

Discuss the struggle to create a common definition of justice that is shared by all members of society

Discuss the varied theories of law and justice and the struggle to create justice in a society. Credit any other relevant evaluation of the theories of justice

Discuss the different types of justice with examples from the whole course of study:

- Formal justice –the struggles faced by the criminal justice system in the miscarriages of justice cases. The findings of the Runciman Commission and the Criminal Cases Review Commission. The Stephen Lawrence case and the findings of the McPherson Report. Criticisms could be made of the judiciary. Evaluation of the system of ‘trial by your peers’
- Substantive justice – discussion of any legal rule and whether it achieves justice
- Distributive justice – how the law struggles to create justice for everyone regardless of class, wealth, gender, race or disability. Discuss how this can lead to inequality e.g. anti-discrimination laws for workers, tax evasion of rich corporations, blue collar crime, institutional racism in the police force following the murder of Stephen Lawrence etc.
- Corrective justice – discussion of the high re-offending rates. Inequality of bargaining power in civil cases

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	<ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10–12
Level 3	<ul style="list-style-type: none"> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> Good analysis and evaluation of a range of legal concepts and issues. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p>	7–9
Level 2	<ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

2* 'Law has the power to influence and change society'. Discuss the extent to which law does influence and change society.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may**:

- Explain how laws shape social norms and behaviour yet society has the ability to influence the law through protests, riots, strikes and civil disobedience
- Explain the influence of the media, politics and changing social norms e.g. moral panics
- Explain how changes in the law can change society's views or morals e.g. the legalisation of homosexuality was extremely controversial in the 1960s but has significantly less opposition today
- Explain the relationship between law and society through informal social controls such as family, schools, religious organisations and peer groups (e.g. bystander intervention and citizen patrol groups); and formal social control mechanisms such as prisons, the judiciary and the police
- Explain theories such as conflict, consensus and labelling
- Describe the realist approach to law making
- Compare the right realism approach ('tough on crime', 'just deserts', retribution) to policy with left realism (use of rehabilitation and reducing social inequality)
- Include examples from the full course of study including sentencing policy, crime statistics, influences on parliament

Credit any other relevant point(s).

AO3 Indicative content

Answers **may**:

- Discuss how the law uses its power to influence and change social norms to reduce the instances of social unrest
- Discuss how the law reacts to civil disobedience e.g. increased police powers to deal with protestors, the harsh treatment of rioters
- Discuss examples of when society has managed to influence social change through protest e.g. gay rights, abolition of the poll tax
- Discuss the influence of the media in pushing the political agenda of the parties and/or the government
- Discuss the media as a tool to create a moral panic so that society will support changes in the law
- Discuss the changing moral values of a pluralist society
- Discuss how informal social control is achieved through socialisation to create social norms shared by groups and society as a whole
- Discuss the strengths and weaknesses of the consensus theory
- Discuss the strengths and weaknesses of the conflict theory
- Discuss the impact of labelling theory and its ability to create subcultures
- Discuss the strengths and weaknesses of the realist theories
- Discuss the strengths and weaknesses of right realism and left realism

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1b	Mark
Level 4	<ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal concepts and issues. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10–12
Level 3	<ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal concepts and issues. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p>	7–9
Level 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> • Basic analysis and evaluation of legal concepts and issues. • The response is partially focused on the question. • Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4–6
Level 1	<ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> • Limited analysis of legal concepts and/or issues. • The response has limited focus on the question. • Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

Section B

3 Advise Bethan and Ivor whether their rights under Article 11 have been breached.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p>
Additional guidance	<p>The ‘indicative content’ is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may** include:

- Article 11- the right to freedom of peaceful assembly and to freedom of association with others
- A ‘qualified right’ - can be interfered with by the state if justifiable to do so. Article 11(2) interference must be prescribed by law and necessary (‘proportionate’)
- Peaceful assembly includes a range of reasons e.g. political, religious, social and cultural
- This can include the right to promote ideas and policies which ‘disturb, shock and offend’. Baroness Hale in *R (on the application of Countryside Alliance) v AG*
- It covers a range of activities including – demonstrations, marches and sit-ins
- ‘Positive obligation’ on the state to ensure that individuals are able to exercise the right - e.g. by protecting demonstrators against violence *Plattform ‘Artze fur das Leben’ v Austria*
- Other relevant cases and factors include: *Redmond-Bate v DPP*, factors affecting decision: *Appleby v UK*, extent of state responsibility: *Ollinger v Austria*, impact on third parties: *Kudrevicus v Lithuania*, safety of others: *Christians against Racism and Fascism v UK* and unlawful use of breach of the peace as a precautionary measure: *R (on the application of Laporte) v CC Gloucestershire Constabulary*
- Importance of ‘proportionality’ in decision making
- Consider ‘margin of appreciation’ in ECtHR cases. Political free speech is seen as very important

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- Bethan and Ivor's situation clearly engages Article 11. They are arranging a political march based on an environmental campaign
- They notify the police of the march. s11 Public Order Act 1980
- Simply because disruption is caused does not extinguish the right, although the more it impinges upon the rights of others the less likely is it to be lawful
- Consider the proportionality of the competing rights. Any unlawful acts such as blocking the highway or preventing others from their lawful activities would make it more likely that the police would lawfully be able to stop the march under Article 11(2)
- There was a positive obligation on the police to protect the march against interference or violence by others
- What about the impact on third parties?
- There was an issue of safety as they had been threatened by the rival group

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used. 	10–12
Level 3	<ul style="list-style-type: none"> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used. 	7–9
Level 2	<ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used. 	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used. 	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

4 Advise Harry and Ewan what charges are likely to be brought against them under the Public Order Act 1986.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may** include:

- Public Order Act 1986
- S.1 Riot. 12 or more threatening or using unlawful violence for a common purpose. Cause a person of reasonable firmness to fear for their safety
- S.2 Violent disorder. At least three people use or threaten unlawful violence. Cause a person of reasonable firmness to fear for their safety
- E.g. *Hebron*
- S.3 Affray. A person uses or threatens violence to another and a person of reasonable firmness would fear for their safety
- S4 fear or provocation of violence - threatening, abusive or insulting words or behaviour with the intention of causing another to believe that immediate unlawful violence will be used against him or another by any person
- S. 4A + 5 (Intentional) harassment, alarm or distress. Can be by threatening abusive or insulting words or behaviour or display any writing sign or other visible representation which is threatening, abusive or insulting
- Credit any relevant cases

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- Public Order offences are mainly graded according to the level of involvement and the type of threats or violence used
- Harry and Ewan organise the actions of the group of twenty five. They distribute eggs to be thrown at the protestors
- Ewan shouts abuse at Bethan and makes threatening gestures at Ivor
- Both Harry and Ewan use physical force against the protestors by grabbing their placards and instigating a physical disturbance. This suggests that violence has been used unlawfully i.e. not in self-defence
- It can be argued that a person of reasonable firmness would fear for their safety as a direct result of these actions
- Given the scope of the threats and the numbers involved it is most likely that Harry and Ewan would be charged under s.1 Riot and/or s.3 Affray

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> • Excellent application of legal rules to a given scenario. • Excellent presentation of a legal argument which is accurate, fully developed and detailed. • Fully appropriate legal terminology is used. 	10–12
Level 3	<ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> • Good application of legal rules to a given scenario. • Good presentation of a legal argument which is detailed but not fully developed in places. • Appropriate legal terminology is used. 	7–9
Level 2	<ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. • Some appropriate legal terminology is used. 	4–6
Level 1	<ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. • Minimal legal terminology is used. 	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

5* The right to freedom of expression has been described as a ‘fundamental aspect of democracy’.

Discuss whether Article 10 and the courts have achieved a healthy balance between defending this right whilst allowing for the regulation necessary in a modern democracy.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
Additional guidance	The ‘indicative content’ is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

- Article 10 freedom of expression has been called the cornerstone of a democratic society. It is seen as vital to promoting pluralism in society.
- It includes the right to receive and impart information and ideas without interference by public authority. It covers artistic expression films, painting, radio and television
- Article 10(2) restrictions: national security, public safety, prevention of disorder, protection of health or morals, protection of reputation/rights of others, preventing disclosure of confidential information, maintaining authority and impartiality of the judiciary
- Restriction prescribed by law
- Margin of appreciation developed in *Handyside v UK*
- Case law examples may include *Sunday Times v UK*, *Steel and Morris v UK*, *Otto Preminger-Institut v Austria* – artistic expression
- *Shayler v UK*, *Observer and The Guardian v UK* national security
- Press freedom and its limits. Cases include *Mosley v News Group Newspapers*, *A v B*

Credit any other relevant point(s).

AO3 Indicative content

Answers **may** include:

- s 12(4) HRA 2010 sets out the 'particular regard' courts should have when considering freedom of speech issues, although it has no automatic priority - *Campbell v MGN*. S.12 has more of a symbolic than an actual power
- Examine the extent of possible restrictions under Article 10(2) and whether they are justified
- Explore how conflicting rights such as Article 8 have been dealt with in the courts
- Discuss the importance of a free press but consider recent issues such as the phone hacking scandal and the subsequent Leveson report.
- Consider the importance of free speech in a political context including parliamentary privilege
- Explore the issues behind the ban on political advertising and whether this has an effect on political campaigning - *R (Animal Defenders International) v SoS for Culture Media and Sport*
- Consider the boundaries between free speech and unlawful forms of expression such as defamation or Public Order offences
- Consider limitations which are necessary to protect others such as the prevention of hate speech or holocaust denial

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	<ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10–12
Level 3	<ul style="list-style-type: none"> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <p><i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p>	7–9
Level 2	<ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

- 6 Advise Xavier whether the continued surveillance of both his own and his family's private correspondence, and the searches of his home have breached his rights under Article 8.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p>
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

- Article 8 is a qualified right. It protects 4 main areas; Family life, private life, home, and correspondence
- Interference is possible under Article 8(2) if it is in accordance with the law, meets a legitimate aim and is necessary in a democratic society
- Legitimate aims include – national security, public safety, economic well-being of the country, prevention of crime or disorder, protection of health or morals or the rights and freedoms of others
- Article 8 interpreted to include physical and psychological wellbeing and the development of the personality without outside interference - *Botta v Italy*
- Family life includes children and grandchildren - *Marckx v Belgium*
- Home given a broad meaning although there is no positive obligation on the state to provide a home
- Consider the proportionality of the action taken
- Correspondence includes all forms of communication letters, telephone and emails. Also from those in custody *Golder v UK*
- Other relevant cases may include: *Copland v UK*, *Gillan and Quinton v UK* – personal searches; *Niemmitz v Germany* - search of business premises; *Halford v UK* - monitoring of phone calls at work

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- It is not clear on what grounds the police have continued to monitor Xavier's correspondence. Xavier's conviction has been quashed as unsafe but it appears the police still regard him as a threat to national security. Is this justified?
- It is clear that the Article 8 right is engaged in this question as the surveillance affects Xavier's home, family, private life and correspondence
- Using the margin of appreciation the judges would view a threat to security as a very serious issue and this may make it more likely that there was no breach
- Was the police action proportionate? They would have to show evidence that there was a continuing threat to national security in order to justify their actions
- Was it strictly necessary to involve the other members of Xavier's family in the surveillance operation? This is less likely to be shown as a proportionate measure
- Were the police following a specific piece of intelligence or simply on a fishing expedition? Again this would affect whether the interference under article 8(2) was justifiable

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used. 	10–12
Level 3	<ul style="list-style-type: none"> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used. 	7–9
Level 2	<ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used. 	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used. 	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

7 Advise Xavier and his family what laws, **other than Article 8**, exist to protect them and what possible procedures they may take to enforce their rights.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p>
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may** include:

- Common law protection – *Entick v Carrington* – ‘every invasion of property, be it ever so minute, is a trespass.’ Must be justified by some positive law
- Trespass to property if not for a lawful purpose
- Independent Police Complaints Commission
- Regulation of Investigatory Powers Act RIPA (2000), Investigatory Powers Act (2016)
- Investigatory Powers Tribunal
- Features – not part of the normal courts or tribunals system. Exists to allow challenges to the covert operations of the security services and police
- Usually a paper exercise rather than an oral hearing
- No further appeals possible under domestic law
- Further appeal may be possible to the ECtHR

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

- Xavier will have to decide which route to take in pursuing a claim
- Claim in the civil courts
- Common law protections will be unlikely to produce a result in this area which is heavily regulated. If Xavier did sue for trespass in the civil courts he would most likely be defeated as the police would be protected by the issue of a warrant
- Independent Police Complaints Commission would also not be the appropriate forum for covert surveillance. Any application here would most likely be referred to the Investigatory Powers Tribunal 'IPT'
- Can decide there was no relevant activity or that the activity was lawful (proportionate and necessary) or that it was not proportionate and necessary
- Possible orders: ceasing of activity, destruction of records and/or awarding of compensation
- If this does not satisfy Xavier his only other possible route would be directly to the ECtHR
- Claim here would be that the state had failed to protect his right to privacy properly

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law. 	7–8	<ul style="list-style-type: none"> Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used. 	10–12
Level 3	<ul style="list-style-type: none"> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law. 	5–6	<ul style="list-style-type: none"> Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used. 	7–9
Level 2	<ul style="list-style-type: none"> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used. 	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used. 	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

8* The right to freedom of expression has been described as a 'fundamental aspect of democracy'.

Discuss whether Article 10 and the courts have achieved a healthy balance between defending this right whilst allowing for the regulation necessary in a modern democracy.

As per Question 5

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1*or 2*	8	0	0	12	20
3 or 6	8	12	0	0	20
4 or 7	8	12	0	0	20
5* or 8*	8	0	12	0	20
Total	32	24	12	12	80

**AO2 elements 1a and 1b will be awarded jointly

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