



A-level **Law**

7162/3B Human Rights

Report on the Examination

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Introduction

On the whole, students identified the issues raised by the questions, and most managed their time well, though some seemed to run out of time to address the non-substantive law part of Question 11 (role of the judge in a criminal trial).

It was pleasing to see much more awareness of who is bound by the European Convention on Human Rights (ECHR) – a problem identified in last year’s Examiner’s Report. Students much more frequently made reference to ss6-8 Human Rights Act 1998 (HRA), and accurately explained who could be liable for a breach of the ECHR, who could sue, and the potential remedy. In responding to Questions 8, 10 and 11, for example, students often identified the police as agents of the State and explained that as such they were bound to uphold ECHR rights. In Questions 10 and 11, there were fewer mistaken references to individuals breaching their own ECHR rights than last year.

Often what distinguished better answers was accuracy in explanation of the law and detail in application. For example, weaker answers to Question 11 often referred to police powers to stop and search, but with little or no explanation of the relevant provisions of PACE. Similarly, with regard to Question 10, while most students had some awareness of policing powers relating to protests, fewer demonstrated accurate knowledge of ss 11 – 14 POA. Generally, students’ knowledge of ECHR law seemed stronger than their knowledge of domestic law.

More successful answers mixed law and application (rather than giving lots of law out of context, then trying to apply it). Paying attention to details in the scenarios when applying law was also a feature of stronger answers – eg. the police instructions about the route of the march in Question 10 invited application of s12 POA.

An aspect of law that seemed to challenge some students was the phrase ‘necessary in a democratic society’ from Articles 8, 10 and 11. There were some excellent explanations of this phrase, using case law to explain that it means requiring an interference to correspond to a pressing social need and to be proportionate to a legitimate aim. And some students applied it very confidently, questioning the effectiveness of a particular interference and whether it was the least intrusive method possible to achieve the legitimate aim. But in many answers the phrase was not explained, or, if it was, any application consisted of a mere assertion that a measure was necessary, rather than weighing up whether a less intrusive method of interfering with the right had been available.

This year, more students were able to link the phrases ‘in accordance with law’ and / or ‘prescribed by law’ from Articles 5, 8, 10 and 11, to the relevant area of English law – eg. The Public Order Act 1986 (POA) or The Police and Criminal Evidence Act 1984 (PACE). This often contributed to more coherently structured answers, where the relevant English law was discussed in relation to this requirement.

Question 1

The correct answer was A: In Article 10, ‘expression’ means only the written or spoken word.

This is false because ‘expression’ in Article 10 extends to artistic works and expressive acts such as theatre performances.

A was selected by approximately 60% of students.

Question 2

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

This is true because s12 of the Human Rights Act 1998 requires courts to have ‘particular regard’ to freedom of expression.

D was selected by approximately 30% of students.

Question 3

The correct answer was A: Government ministers.

Statutory instruments are a form of delegated legislation made by government ministers.

A was selected by approximately 60% of students.

Question 4

The correct answer was C: The European Commission.

The European Commission is responsible for ensuring EU member states properly apply EU law.

This answer was selected by approximately 20% of students.

Question 5

The correct answer was C: The House of Lords may propose amendments to a bill.

The proposing of amendments to a bill is not an aspect of the rule of law, but rather part of the legislative process. The other options - provision of legal representation, equality before the law, and judicial independence - are all aspects of the rule of law.

C was selected by 65% of students.

Question 6

This question required students to explain how by-laws are made, and to give two examples of matters that might be dealt with using a by-law. To explain how they are made, it was helpful to start by identifying by-laws as a form of delegated legislation, and to refer in some way to Parliament delegating its law-making power, perhaps with reference to an enabling act. The power to make by-laws is given to local authorities to govern certain matters within their area, and to some companies that exercise public or semi-public functions, such as airport operators, railway companies, or the National Trust, to regulate activities on their property.

Examples of matters that a local authority might regulate through the use of a by-law include a prohibition of skateboarding or the drinking of alcohol in a certain area, or the designation of a particular area as a ‘poop scoop area’. A railway company might use a by-law to regulate the behaviour of passengers on its trains, or to restrict access to certain parts of its premises.

The majority of students recognised by-laws as a form of delegated legislation made by local authorities, and some explained the role of an enabling act in delegating law-making power. Only a minority referred to some public companies having the power to make by-laws. Examples were wide-ranging and most students were able to provide at least one. If no example was given, the maximum marks that could be awarded was 3.

Question 7

Students were asked to suggest why Anji’s arrest was probably lawful under PACE, so it was helpful to start by explaining the law on arrest from s24. Essentially, this requires first that the arresting officer have reasonable grounds to suspect the person arrested of having committed an offence, and second that the officer have reasonable grounds to believe the arrest is necessary for one of the reasons listed in s24(5), which include arrest being necessary to stop damage to property.

Application of the first requirement to Anji would have involved picking out facts that might ground a reasonable suspicion that Anji had committed criminal damage to cars - ie. she was running down one of the streets where cars had been damaged, and she was holding a hammer.

Application of the second requirement would involve pointing out that Anji having a hammer provided reasonable grounds to believe it was necessary to arrest her to prevent her from damaging more cars. (Since Anji did provide her name and address, it could not be argued that arrest was necessary to identify her.)

Most students were aware of the first requirement, and the objective basis needed for the arresting officer’s suspicion that Anj had committed criminal damage. Some answers referred more loosely to ‘good reasons’ for suspecting Anji.

Only a minority of students made reference to the second requirement (reasonable belief that the arrest was necessary). Those who did identify this requirement usually had no difficulty in applying it, arguing that Anji’s arrest would reasonably have been believed to be necessary to prevent further damage to property.

Some students referred to the information that an arresting officer is required to give to the person they are arresting (s28) and then speculated that such information must have been provided here, concluding that the arrest was therefore lawful. If this was offered rather than the second qualifying requirement (PACE s24(5)(c)(iii)) the maximum mark awarded was 4.

Question 8

This question directed students’ attention to Article 2 of the ECHR and asked them to advise the police as to whether they might be liable under s6 HRA due to their shooting dead of Brice. Most students seemed well-prepared for this question and there were many thorough and perceptive answers to it.

S6 HRA states that it is unlawful for a public authority to act incompatibly with a Convention right. The police, as state agents, are a public authority and so bound to uphold the rights in the ECHR, including the right to life under Article 2.

A majority of students recognised the police as being bound to uphold Convention rights under s6 HRA, and were able to explain the scope of Article 2(1) as imposing a negative duty not to take life, and a positive duty to protect life. Many identified that the negative duty not to take life was relevant given that the police had killed Brice; some also pointed out that the positive duty to protect life was relevant given that Callie and Duke were both in danger.

Most students were aware of the circumstances, set out in Article 2(2), in which it may be lawful to take life, and identified the exception relevant to the scenario as deprivation of life in defence of another person from unlawful violence. Callie and Duke had already been violently beaten by Brice and what the police saw when they arrived was Brice pointing a gun at Duke's head, whilst shouting, 'He's dead.' The police did not know the gun was a fake, so they believed there to be a real and immediate risk to Duke's life.

With regard to the police's mistaken belief that the gun was real, many students referred to cases such as *McCann v UK* and *Armani da Silva v UK*, holding that the police could rely on a mistaken belief provided that it was honest or genuine and based on subjectively good reasons, that the force used was necessary. Applying this to the facts in the scenario, it could be argued that the officer who fired the shot that killed Brice did have such a belief. Callie and Duke had been violently beaten and dragged into the garden – their injuries and distress would have been clearly visible to the officer. Brice was pointing what looked to be a real gun at Duke, threatening to kill him, so it would have appeared to the officer that there was a real and immediate risk to life.

When fatal force is used, Article 2.2 states that it must be no more than absolutely necessary. Many students concluded that in the circumstance described above, firing a fatal shot was no more force than absolutely necessary in defence of Duke.

The failure of the call handler to pass on information to the police attending the incident was dealt with in a variety of ways. Some students saw it as a failure in operational planning, often referring to the requirement for effective planning highlighted in *Finogenov v Russia*. Some argued that the call handler's failure could therefore result in the police being in breach of Article 2 (assuming the call handler was a member of the police). A minority of students misread the scenario and thought that the call handler knew the gun was a fake and had not passed this information on, whereas what was known, but not communicated, was that Brice had not fired the gun. Perceptive answers pointed out that the call handler's failure to pass on the information that the gun had not been fired did not detract from the clear and obvious threat to life the police were presented with (a realistic gun pointed at someone's head), meaning their use of lethal force against Brice would probably be justified under Article 2.2.

Question 9

This question had two areas of content: a 10-mark part requiring an examination of the concept of justice, and a 5-mark part discussing the extent to which remedies available for a breach of human rights might achieve justice. Most students attempted both parts, and most divided their time appropriately between the two.

An examination of the meaning of justice could initially involve offering synonyms and / or explanations of what justice might entail – eg. fairness, equal treatment, impartial decision making. To develop the examination of the concept of justice, some philosophical theories of justice could be explored, evaluated, and perhaps linked to aspects of our current legal system. Different types of justice (eg. corrective justice, procedural justice, or substantive justice) might be explained, and again relevant aspects of the English legal system examined to show the presence or lack of a particular type of justice.

Theories of justice often explained in answers included those of Aristotle, Bentham, Marx, Rawls and Nozick. Some stronger answers linked the theory to an aspect of the English legal system or to a case, and sometimes evaluated the theory – for example, pointing out the potential injustice to minorities if a utilitarian approach to justice was taken. Different types of justice, such as procedural, corrective, distributive, and substantive, were often identified. Illustrative examples were wide-ranging, including how cuts to legal aid might be seen to undermine procedural justice, or how a sentence or an award of damages might achieve corrective justice. Some explanations of distributive justice were vague and failed to address the different ways in which a ‘just’ distribution might be achieved – eg. based on merit or need.

A wide variety of approaches were adopted in response to the second part of this question, on the extent to which remedies available for a breach of human rights might achieve justice. Most students identified an award of damages as a remedy for a breach of human rights; some anchored this with reference to s8 of the Human Rights Act 1998 (HRA) and a few pointed out that s8 does not guarantee a remedy. Many discussed the adequacy or inadequacy of financial compensation, sometimes linking this to the facts of a case, or more generally to a breach of Article 2, pointing out that no monetary award can fully compensate for the loss of a life. Many also referred to the right to compensation in Article 5.5. Some also considered how the remedy of an injunction might achieve justice – for example, by prohibiting the publication of private information. A few students referred to a declaration of incompatibility under s4 HRA as promoting justice, in that it creates pressure for a change in law and so resulting legislation could ensure justice in the future.

Question 10

This question concerned incidents that occurred during a march and a demonstration. Students were asked to consider two things. First, the rights and remedies of Gerson (the march organiser), Halima (a marcher), and other demonstrators as a consequence of the incidents. Second, whether any subsequent convictions for public order offences might be challenged. The main areas of law raised by this scenario were policing powers in relation to marches and assemblies under the Public Order Act 1986 (POA) and the ECHR rights to freedom of association (Article 11) and freedom of expression (Article 10).

A useful starting point taken by some students was to distinguish between a procession (the march) and an assembly (the static demonstration that followed). Gerson had organised a procession and so under s11 POA had a duty to give the police six days’ advance notice of this, including its date, time, proposed route, and his name and address. Since he failed to do this, he had committed an offence under s11(7) POA.

Most students were aware of s11 and were able to set out with varying degrees of accuracy the details required in the notice. Only some, however, pointed out that Gerson’s failure to give advance notice meant that he had committed an offence under the POA. (This offence was relevant to the second part of the question, asking whether convictions for public order offences might be challenged.)

Halima was arrested for ignoring police instructions about the route to take. S12 allows a senior police officer to impose conditions on a march / procession. The officer must reasonably believe the march may result in serious public disorder, serious damage to property, or serious disruption to the life of the community. The power is to impose such conditions as appear necessary to prevent the disorder, damage, or disruption, including the power to vary the route.

Answers varied in the accuracy with which s12 was explained and applied. Stronger responses set out both the power to impose conditions under s12 and the grounds for imposing them. This law could then be applied to the scenario, pointing out that the police had imposed a condition as to the route of the march, and considering the ground(s) on which it might have been imposed. In weaker responses, the police power to impose conditions was sometimes merely mentioned and often not linked to any source of law. The grounds permitting the imposing of a condition tended not to be set out. And there was often little or no application of s12, so the instructions given by the police in the scenario, regarding the route of the march, were not identified as an exercise of this power.

It is an offence for a person taking part in a march / procession to fail to follow a condition imposed by the police (s12(5) POA). So, Halima had committed an offence when she ignored the condition regarding the route. Better answers identified this behaviour as an offence, which could then be considered when addressing the second part of the question regarding the challenging of convictions. Weaker answers sometimes asserted that Halima had a right to ignore the police instructions regarding the route.

The domestic law most obviously relevant to the static demonstration at the factory gates was s14 POA, and the common law rules on breach of the peace. Under s14, the grounds for imposing conditions on assemblies are the same as those for processions. In the scenario, a condition was imposed limiting the duration of the assembly to 45 minutes. Given the scuffles between demonstrators and police, and the threat of violence breaking out between the demonstrators and the factory workers, the ground for imposing this condition was likely to be a reasonable belief that it was necessary to prevent serious public disorder.

Again, what distinguished stronger answers from weaker ones was the level of accuracy in explaining s14, and whether or not it was applied to the scenario.

Some students dealt with the ending of the demonstration after 45 minutes as an exercise of the power to ban under s13 POA. Some credit was given for this, but s13 relates to banning a procession, ie. a march, not a static assembly.

Another approach adopted by some students was to identify the demonstration as a trespassory assembly, which could be prohibited under s14A POA. This was certainly creditworthy, depending on the accuracy of the law and application in the answer. The definition of a trespassory assembly in s14A refers to it taking place on land to which the public has no or only limited access. Some students argued that the demonstrators had no right to be at the factory gates or to block them. S14A also requires a reasonable belief that the assembly will result either in serious disruption to the life of the community or significant damage to land or a building of historical, architectural, archaeological, or scientific importance. Students who applied s14A well-tended to argue that the police would have reasonably believed that there would be serious disruption to the life of the community (it was less likely that the factory building, or gates were of architectural or historical importance). Weaker answers sometimes merely mentioned banning an assembly with no reference to a relevant source of law.

Gerson chaining himself to the gates, the scuffles between demonstrators and the police, and the threat of violence to demonstrators from the factory employees could all have been dealt with as actual or threatened breaches of the peace. Many students showed at least some knowledge of this area of law, with better answers defining a breach of the peace (often citing the *R v Howell* definition) and then applying it to the scenario. Given the scuffles between the demonstrators surrounding Gerson and the police, there was an imminent threat of harm being done. Stronger answers referred to common law powers to take reasonable steps, including arrest, to prevent an imminent breach of the peace and then applied this to the cutting free and arrest of Gerson. Some perceptive answers questioned whether the arrest of the demonstrators was a reasonable step given that the threat of violence was coming from the factory employees.

Aggravated trespass, although not required, was another creditworthy approach to Gerson chaining himself to the factory gates. S68 of the Criminal Justice and Public Order Act 1994 defines this offence as requiring trespass and behaviour intended to intimidate, obstruct or disrupt a lawful activity. Students who knew the definition of aggravated trespass usually argued that there might be a trespass by Gerson when he attached himself to the factory gates, and then that this behaviour was disrupting the workers who were lawfully trying to get into the factory. Weaker answers tended just to mention aggravated trespass without defining or applying it.

A minority of students applied the relatively new offence of locking-on (s1 Public Order Act 2023) to Gerson chaining himself to the gates. Again, this was not required but was certainly relevant and creditworthy. The offence is committed when a person attaches themselves to land (as Gerson did) and doing so causes serious disruption to two or more people or to an organisation. Since Gerson was obstructing factory workers from entering it would seem that the main elements of the offence were present.

Some students also referred to the public order offences found in ss 1-5 POA. And again, this was creditworthy but not required. It should be noted that knowledge of these offences is not part of the Human Rights component of the Specification and maximum marks can always be obtained without including them. The public order offences that are referred to in the second part of the question are those within the Specification and engaged by the facts of the scenario – ie. the offences discussed above in relation to failure to give notice of a procession under s11, and failure to comply with a condition imposed under s12 or s14, as well as breach of the peace.

Articles 10 and 11 were engaged in the scenario, since protestors were exercising their right to freedom of expression by criticising the agricultural practices encouraged by Full Range Foods, and their right to freedom of assembly and association when marching and demonstrating. Most students recognised the relevance of Article 11, but not all mentioned Article 10. It was possible to reach the top of the good band if only Article 11 was considered, and to reach the excellent band if Article 10 was dealt with more briefly, with Article 11 considered in more depth and detail. Many students referred to the police being agents of the State and so bound to uphold ECHR rights under s6 HRA.

Most answers elaborated on the scope of Article 11 and pointed out that it protects peaceful protest even if the demonstration annoys or offends those opposed to it. Stronger answers explained some of the relevant law relating to counter protest (eg. *Plattform 'Artze fur das Leben' v Austria*) pointing out that the police have a positive duty to facilitate a peaceful protest and that this may require policing to allow both the protest and a counter protest. Some students pointed to the police accompanying the initial march as an example of them fulfilling this positive duty. And some identified a potential interference with the Article 11 right when the police failed to take measures to deal with the factory employees who were

threatening violence against the demonstrators. This was a perceptive point: the original demonstration was peaceful, at least initially; arguably the threat of violence came, not from the demonstrators the police arrested, but from the factory workers, who the police took no action against.

Students who referred to Article 10 usually started by explaining its scope. Many referred to freedom of expression extending to ideas that offend, shock or disturb (often citing *Handyside v UK*). This could be applied to the views of the demonstrators that might offend or disturb Full Range Foods or its employees but would nevertheless fall within the scope of Article 10.

A majority of answers recognised the qualified nature of the rights protected by Articles 10 and 11, but the degree of accuracy in the explanation and application of 10.2 and 11.2 varied. An area of improvement from last year was recognising that the phrase ‘prescribed by law’ required any interference to have a clear legal basis in domestic law. Stronger responses pointed to specific rules of domestic law such as s12 and s14 POA, and the common law relating to breach of the peace as meeting this requirement.

Most students who addressed 10.2 and 11.2 were able to list legitimate aims for an interference and to identify an aim relevant to the scenario, such as the prevention of disorder and crime.

But, as noted in the Introduction, fewer students could explain and apply the requirement for an interference to be ‘necessary in a democratic society’. When this was handled well, students typically explained that in order for an interference to be lawful it had to correspond to a pressing social need (*Sunday Times v UK*) and to be proportionate to a legitimate aim. Some students pointed out that proportionality required a fair balance to be struck between the aim and the right (*Kudrevicius v Lithuania*). Others explained proportionality as requiring the measure to be the least restrictive option.

The imposing of a condition regarding the route of the march was generally perceived as a proportionate interference, since it allowed the march to continue. Similarly, Halima’s arrest was generally regarded as proportionate, since she was ignoring a condition imposed to facilitate a peaceful, safe protest. And the arrest of one individual might be seen as a proportionate measure to ensure the route was respected, thus facilitating the peaceful protest. It was therefore unlikely she would be able to challenge her conviction under s7 HRA.

There were differing views on Gerson’s arrest for breach of the peace. Some saw it as a proportionate interference with Gerson’s rights under Article 10 and 11, arguing that he was blocking access to the factory and provoking violence from the workers. Others considered Gerson’s arrest to be disproportionate, arguing that one person chained to the gates did not block access, and that the threat of violence was coming, not from Gerson, but from the factory employees. On this view, Gerson could challenge his conviction (perhaps by appeal or by seeking judicial review) and be awarded damages for the breach to his article 10 and 11 rights under s8 HRA.

The arrest of other demonstrators for breach of the peace was generally argued to be a disproportionate interference with their article 10 and 11 rights, since those arrested were being threatened with violence by the employees and were themselves peaceful. Students who reached this conclusion argued the demonstrators could challenge their convictions and seek a remedy under s8 HRA.

Stronger answers:

- Demonstrated accurate knowledge of domestic law, in particular s12 and s14 POA, and breach of the peace

- Applied this law to the facts of the scenario
- Identified the offences committed by Gerson and Halima
- Explained the scope of Articles 11 and 10, and why they were engaged
- Explained the provisions of 11.2 and 10.2
- Recognised that ‘prescribed by law’ required a legal basis in UK law for an interference and linked this to the POA and breach of the peace powers
- Explained the meaning of ‘necessary in a democratic society’ and considered the proportionality of the measures taken by the police
- Reached a conclusion as to whether convictions could be challenged.

Weaker answers:

- Made only vague, inaccurate, or superficial reference to domestic law
- Did not systematically apply law to the facts of the scenario
- Did not identify the offences committed by Gerson and Halima
- Did not explain the provisions of 11.2 and 10.2
- Did not apply 11.2 or 10.2
- Did not reach clear conclusions regarding whether convictions could be challenged.

Question 11

The scenario-based part of this question involved two incidents: the searching of Jane by a police officer, Karin, and the subsequent detention of Jane in the police station for two hours.

The first incident concerned the police power to stop and search under ss1-3 PACE and the right to a private life under Article 8.

Under ss1 PACE a police officer has power to stop and search a person for stolen or prohibited items provided that the officer has reasonable grounds to believe that person has stolen or prohibited items on them. S2 sets out information that the officer must provide to the person about to be searched (the officer’s name and the police station to which they are attached; the object of the search; the officer’s grounds for conducting it). S3 requires a record to be made of the search (recording the object of the search, the grounds for making it, the date, time and place) and a copy of this record to be given to the person searched.

Stronger answers identified the relevant source of law, set out the above provisions accurately, then applied them to the scenario. They discussed the objective nature of ‘reasonable grounds’, often explaining this as requiring a belief based on intelligence or on behaviour and doubting the sufficiency of Jane’s previous convictions or of her proximity to a pharmacy as reasonable grounds to search her for stolen items. (Credit was given for the alternative view that there were reasonable grounds to believe Jane had stolen items on her.) While knowledge of Code of Practice A is not required, a number of answers did refer to this when elaborating on the meaning of reasonable grounds to stop and search.

There was confusion in some answers between the grounds for stop and search in ss1-3 PACE, and those for arrest under s24 PACE - eg. stating that the police officer had power to stop and search if they had reasonable grounds to believe the person had committed a crime. Under ss1-3 PACE a police officer can stop and search a suspect without reasonable suspicion that they have committed or are about to commit a crime. What is required is reasonable grounds to believe that stolen or prohibited items will be found. So, a police officer who has reasonable grounds to suspect that a person is in innocent possession

of a stolen or prohibited article may stop and search the person even though there would be no power of arrest.

Weaker responses were vague about the law governing stop and search, or sometimes made no reference at all to PACE. Some students mentioned the so-called suspicion-less power to stop and search under s60 of the Criminal Justice and Public Order Act 1994, but often with little idea of the difference between this power and the one under ss1-3PACE. As s60 was not raised by the facts of the scenario, students were certainly not required to deal with it, but credit was given when it was dealt with accurately.

Since Article 8 protects both physical integrity (*Wainwright v UK*) and private information, such as medical records (*M.S. v Sweden*) it was clearly engaged by Karin's search of Jane. Many students recognised that Karin, as a police officer, was an agent of the State and so bound by the ECHR. Most students who recognised the relevance of Article 8 were able to explain its scope and to identify medical information and correspondence as private.

Article 8(2) allows for lawful interference with private life provided that such interference is in accordance with law and necessary in a democratic society for one of the listed aims.

Students varied in their ability to explain and apply Article 8 (2): some did not mention it at all; others set it out, but only applied part of it, often identifying the prevention of crime as a legitimate aim but going no further than that. Stronger answers, however, explained that the phrase 'in accordance with law' referred to the need for a legal basis for any interference with private life, and then linked this to the stop and search provisions in PACE. (If the stop and search had not been based on reasonable grounds then logically it was not in accordance with law.)

To illustrate law that might interfere with private life, some students referred to the State's power to intercept communications under the Investigatory Powers Act 2016 and to the protection given to private information under the Data Protection Act 2018. Whilst detailed knowledge of such legislation is certainly not required by the Specification, awareness of it was creditworthy as illustrative of what might constitute a legal interference with private life.

The requirement for an interference to be 'necessary in a democratic society' presented more of a challenge, as explained in the Introduction above. Stronger answers recognised that this required the interference to be proportionate to the aim of preventing crime and explained that this meant using the least intrusive means possible. Since the letter Karin read was from Jane's doctor and had no relevance at all to any crime, most students who addressed this issue argued that reading it was clearly unnecessary and disproportionate. Karin therefore appeared to have breached Jane's Article 8 rights, giving rise to a right of action under ss 6 and 7, and to a remedy under s8 HRA.

Some answers dealt only with stop and search powers under UK law, and others only with Article 8. When just one of these was dealt with, an answer could be placed in the 'good' band depending on the standard of the explanation and application.

The second incident concerned Jane's detention at the police station. This raised both Article 5 and English law on arrest (s24 PACE). Almost all students recognised that Article 5 was engaged here, but answers varied as to how accurately the provisions of this article were set out.

A useful approach was to start by explaining that for Article 5 to be engaged a deprivation of liberty was required, and to distinguish a deprivation of liberty from a mere restriction of movement. Cases such as *Guzzardi v Italy* were often used to explore the meaning of a deprivation of liberty, with reference to the degree or intensity of the restraint, and to factors such as the type, duration, effects and manner of implementation of the measure. Applying this to Jane, we were told that she was ‘reluctant’ to go to the police station and was ‘taken’ there by Karin. So, she seemed to have been taken against her will, and did not seem to have been free to leave for two hours, leading many students to conclude that she had been deprived of her liberty.

Alternatively, some students drew an interesting analogy with *Austin v UK*, in which the kettling of the demonstrators for seven hours had not been deemed to be a deprivation of liberty, and so argued that detaining Jane for two hours was probably not sufficient to constitute such a deprivation. Credit was given for both approaches, but, as some students perceptively pointed out, the decision in *Austin* relied on the purpose of the kettle having been to isolate and contain a large crowd, in volatile and dangerous conditions. The police were regarded as having had no alternative but to impose an absolute cordon in order to avert a risk of serious injury or damage. Therefore, the imposition of the cordon in *Austin* was deemed the least intrusive and most effective means to maintain order and protect the public. The facts of the scenario were very different however: the purpose of taking Jane to the police station was merely to try to identify suspects on CCTV. A number of students pointed out that this could have been done at a different time, or by showing the footage to other people – ie. there were other, less intrusive ways to achieve this. Many students were aware that there is no legal obligation to answer a police officer’s questions, nor to help in their inquiries. So, if Jane had been forced to go to the police station, this pointed to a deprivation of liberty.

If Jane had been deprived of her liberty, then the question arose as to whether one of the permitted limitations set out in Article 5.1 (a) to (c) applied. The most obviously relevant limitation was 5.1 (c): lawful arrest in order to bring the person before the competent legal authority on reasonable suspicion of them having committed an offence, or when reasonably considered necessary to prevent them fleeing having done so.

The English law on arrest is set out in PACE. S24 requires reasonable grounds to suspect the person arrested has committed or is about to commit an offence, and reasonable grounds to believe the arrest is necessary for one of the listed purposes in s24(5). Most students who addressed this had no difficulty in arguing that Karin did not have reasonable grounds to suspect Jane of involvement in the burglaries, given that her search of Jane had yielded no evidence. They then concluded that the arrest was unlawful, and that Jane would be entitled to compensation under Article 5.5.

Some students argued that since Jane had only been detained for two hours her detention was lawful, since under PACE the police can detain a suspect for 24 hours before charge. But this 24- hour period relates to the time between arrest and charge. If Jane had been lawfully arrested, then she could be held for 24 hours before being charged. But, as argued above, it was unlikely that her arrest was lawful (because there were no reasonable grounds to suspect her of committing a crime) and, if it was not, then the police were in breach of Article 5 in detaining her.

The third part of Q11 is on non-substantive law and carries 7 marks. This year it required students to assess the role of the judge in the trial of the two suspected burglars. This relates to the part of the Specification referring to ‘The judiciary: types of judges. Role of judges ... in criminal courts (human rights)’. So what students were expected to discuss was the general nature of the judge’s role in conducting a criminal trial: dealing with admissibility of evidence, instructing the jury on the law,

summing up for the jury at the end of the trial before they retire, passing sentence if the defendant is found guilty, keeping order in court, and ensuring the trial is fair and that both sides have a fair opportunity to present their case.

It should be noted that this part of the question did not require any discussion of the offence of burglary, which is not in the Specification.

Performance on this aspect of Q11 varied. Some students handled it very well, concisely setting out some or all of the aspects of a judge's role listed above. Some were able to elaborate on particular aspects of the role – eg. consideration of aggravating and mitigating factors in determining sentence. Others, though, struggled to identify any role beyond sentencing, and some confused the role of a judge in a civil trial with that of one in a criminal trial.

Some students also considered the role of the judge if the case were to be heard in a Magistrates' Court and were given credit for this.

Stronger answers:

- Dealt with Article 8 as well as PACE in relation to the letter and the body search
- Explained and applied the PACE provisions permitting stop and search
- Distinguished between a deprivation of liberty and a restriction of movement in relation to Article 5
- Used the factors from *Guzzardi v Italy* to reach a conclusion as to whether Jane had suffered a deprivation of liberty
- Explained and applied the requirement for reasonable grounds for arrest
- Reached a reasoned conclusion regarding breach of A8 and A5
- Included remedies
- Were able to use law from cases cited
- Explained key aspects of the role of a judge in a criminal trial.

Weaker answers:

- Did not reference relevant provisions from PACE at all, or did so only in a vague or inaccurate way
- Did not demonstrate understanding of the objective nature of the requirement for reasonable grounds in relation to the PACE provisions on stop and search and on arrest
- Did not explain deprivation of liberty and / or did not consider whether there had been a deprivation of liberty engaging Article 5
- Failed to apply the law or did so only in a superficial manner
- Did not include the role of the judge, or demonstrated a lack of understanding about the role, sometimes confusing it with a judge's role in a civil case
- Struggled to identify any other role of the judge beyond sentencing.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the [Results Statistics](#) page of the AQA Website.