



Practice Papers for A Level OCR Law

Paper 3: The nature of law and Human rights

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Teacher's Introduction

These practice papers for A Level OCR Law follow the **2020** specification requirements for exams from **2022** and are based on the structure and style of the OCR sample assessment materials.

There are three practice papers, with indicative content for each question. As a whole, the papers cover the specification topics under **H418/03:**

The nature of law and Human rights (Paper 3):

- **Section A:** The nature of law
- **Section B:** Human rights law

Remember!

Always check the exam board website for new information, including changes to the specification and sample assessment material.

Students should take care in noting the number of marks for each question and the specific requirements.

In brief:

- Paper 3 is worth **80 marks**
- Students answer **four** questions in total:
 - **Section A: The nature of law** – answer **one** from questions **1** and **2**
 - **Section B: Human rights law** – choose Part **1** or Part **2** and answer the **three** questions in that part

For mock exams, a full paper should be offered so that students can become familiar with the structure of their final exam.

The resource will enable students to gain greater experience of answering questions in preparation for the **H418/03: The nature of law and Human rights (Paper 3) exam**.

At the end of this resource, there is a lined answer sheet for students to write on. You can photocopy as many as required for mock exams.

February 2021

ZigZag Practice Exam

Supporting A Level

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Law

Paper 3: The nature of law and human rights

Practice Paper

Name

Time allowed: 2 hours

The **maximum mark** for this paper is **80**.

INSTRUCTIONS

Answer **four** questions in total:

- Section A: answer **one** from questions **1** and **2**.
- Section B: choose Part **1** **or** Part **2** and answer the **three** questions for that part.

INFORMATION

- The marks for each question are shown in brackets [].
- Quality of extended response will be assessed in those questions marked with an asterisk (*).

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SECTION A

The nature of law

Answer **one** question below, referring to examples from your entire course.

- 1*** 'There is justice in the legal system and law of England and Wales.'

Discuss the meaning and definition of justice and discuss to what extent

- 2*** 'There is a close relationship between society and the law in that society'

Discuss the extent to which the law should reflect society's values, and the continuing impact of that debate.

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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 based on the following facts:

Alan is an investigator, employed by the security services of the UK government. He has been assigned to investigate Brian, a senior politician, who has been a Cabinet Minister for many years. Alan is a close work colleague of Brian and also has access to Brian's mobile phone and work and personal emails. Alan has discovered Brian has two children outside his marriage, which he believes is unknown to Brian. Alan is also evidence that Brian is promoting ecological and ethical theories throughout his work and has substantial investments in various large, international energy companies which do not support the views promoted by Brian in his political capacity and Brian has not disclosed those investments. Alan has obtained the investigation and applies to the court for an injunction to stop the investigation from being obtained not to be made public.

Carl owns and runs a bookshop in the high street. He has only just set up his business and has a small staff. Dhakir has recently moved to the UK and obtains the post. Carl places an advertisement for promoting new books in store but also criticising the local MP for having extra money for his behaviour. The MP claims the allegations are untrue and sues Carl for defamation. The MP's public funding is unavailable, while the MP is wealthy and has employed two senior lawyers to bring two defamation cases. The MP is awarded £100,000 in damages, which Carl cannot pay. Carl is continually threatening Dhakir and, despite complaints by Dhakir and Carl, no action is taken. Carl subsequently attacks Dhakir and causes severe injuries and the police claim immunity from prosecution.

- 3 Advise Brian whether he is likely to succeed in his application to the court for an injunction to stop the investigation from being obtained not to be made public. [ECHR].
- 4 Using Article 6 of the ECHR, advise Carl whether there is any breach of his rights in the case with the MP and the award of damages. Using Article 6, advise Dhakir whether he is successful in claiming a blanket immunity from liability under negligence.

Essay question on human rights law

- 5* Evaluate to what extent the current law and rules on human rights in the UK are sufficient to protect the rights of the individual.

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Part 2

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are:

Andrew is a famous artist. He decides to create an exhibition, focusing on the human condition and sizes, but emphasising the vulnerability of human life. He then links these images to the frustration shown in current UK political debates. A national newspaper, *The News*, publishes the exhibition [calling Andrew a right-wing fascist] and the obscenity of the human images should be closed down immediately. Additionally, they disclose Andrew's personal history of a gallery some years ago, but which did not lead to a criminal prosecution.

Edward is 30 and has severe learning disabilities and suffers from extreme agoraphobia (and/or in open spaces). He has been living in local council accommodation, which he has lived in for the last 10 years. Edward has no inclination to venture outside the accommodation to a museum or gallery, which he responds well. He is visited by his elderly parents who have agreed with his parents that it would be wrong for him to return home to live. However, his parents are concerned that Edward's life and restrictions on his ability to socialise independently.

- 6 Advise Andrew under Article 10 of the European Convention on Human Rights whether the exhibition to continue. Also, advise *The News* whether it has the right to publish the exhibition using such a tone and such allegations, and whether Andrew's previous criminal history.
- 7 Using Article 5, and relevant case law, advise Fay whether any application on his behalf based on his rights to liberty and security is likely to be successful.

Essay question on human rights law

- 8* Evaluate to what extent the current law and rules on human rights in the UK are sufficient to protect the rights of individuals.

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Preview of Questions Ends Here

This is a limited inspection copy. Sample of questions ends here to avoid students previewing questions before they are set. See contents page for details of the rest of the resource.

Assessment Objectives

The following AOs have been prescribed by OCR for the A Level Law H415/03: The rights exam. Please see the OCR website for the full mark schemes.

Section A:

Questions 1*–2*	
AO1	'Demonstrate knowledge and understanding of the English law and legal rules and principles.'
AO3	'Analyse and evaluate legal concepts and issues.'

Section B:

Questions 3, 4, 6, 7	
AO1	'Demonstrate knowledge and understanding of the English law and legal rules and principles.'
AO2	'Apply legal rules and principles to given scenarios in order to legal argument using appropriate legal terminology.'

Questions 5*, 8*	
AO1	'Demonstrate knowledge and understanding of the English law and legal rules and principles.'
AO3	'Analyse and evaluate legal rules and principles.'

Questions followed by an asterisk (*) require the candidate to provide an extended

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Practice Paper C

Q	Practice Paper C: Answer
1	<p>A society is 'a group of people with common territory, interaction and culture'. The UK shares aspects of culture, e.g. language, values, beliefs, behaviour. [AO1]</p> <p>The UK is a pluralist society due to, e.g. the Romans, the Norman Conquest, immigrants from the British Empire and Commonwealth [particularly in the 1950s].</p> <p>Religious tolerance in the UK has supported a pluralist society, but some beliefs require immigrants give up their traditions to fit in – known as 'assimilation'. Therefore, the UK is 'multicultural'. [AO1] However, prejudice and discrimination keep many groups of people in a process or prevent free expression of beliefs [e.g. a Muslim woman wearing a hijab].</p> <p>To protect individuals against the unfair use of power by the state, by other individuals or other organisation, a legal system requires clear laws and guidelines, strong enforcement structures and an independent judiciary. [AO1]</p> <p>Society can shape the law by protests and strikes. Threats from small sectors of society are exaggerated by the media to increase sales and profit through sensationalism.</p> <p>For example, since 2011, 'Sarah's Law', [or the Child Sex Offender Disclosure Scheme] allows parents, etc. to ask the police whether a person has a record for child sex offences at fault for the crime. The law resulted from campaigns for child protection – started by an attack by vigilantes who confused 'paediatrician' with 'paedophile'. [AO3]</p> <p>Law can shape social norms and behaviour, e.g. the drink-driving laws affected that behaviour – but this is rare. [AO3]</p> <p>Formal social control occurs through the legal system, e.g. the police, judiciary, etc. [AO1] Rosco Pound [1942] said the content of law is the elements of human nature and social control to support individual expectations, e.g. a party at fault should be convicted. A conviction results in a custodial sentence. [AO3]</p> <p>If the law is weak or inconsistent, it loses its influence and, eventually, the Law collapses. [AO3]</p> <p>The law on homosexuality was enforced inconsistently and did not necessarily follow society on sexual conduct between consenting males. In 1967, influenced by the Wolfenden Report [1957], consensual sex between consenting adult males was made legal. [AO3]</p> <p>Another example of society's views affecting the legal system is in the principle of 'one's peers'. The jury system was to represent the 'reasonable' man, as women were not considered reasonable, so only men were allowed on a jury. Due to the pressure and change in the society's values, this was only changed by the Sex Disqualification (Removal) Act [1919] as society's views had changed and so the legal system had to follow. [AO3]</p> <p>Suicide is no longer a crime, but aiding suicide is, with a maximum sentence of 14 years. This shows confusion in the law. [AO1] The CPS policy on aiding suicide is to prosecute if, for example, the victim made a voluntary and informed decision to end their life. In <i>Conway</i> [1988], a woman diagnosed with MS in 1995 and claimed it was against her human rights not to be prosecuted if he helped her go to a country where assisted suicide was legal. [AO1] In 2009, the House of Lords [HofL] said a defence of necessity was needed as to whether a person should be prosecuted for an assisted suicide. The CPS guidelines were drawn up in 2010. [AO1]</p> <p>Finally, the defence of necessity creates difficulties for the law enforcing control. In <i>Adomako</i> [1999], a woman charged with negligence in consensual torture. Lord Templeman spoke of the issues of necessity and public interest, while in <i>Wilson</i> [1996] [a married couple engaged in consensual sadomasochism of tattooing] Lord Mustill supported the rights of the individual to do as they wished – leading to Brown being guilty [at fault] and Wilson not guilty. [AO1]</p> <p>This emphasises inconsistent social control by the courts – meaning the application of the law is a subjective decision based on the views of the particular judge[s] in each case at that time. [AO3]</p> <p>Law and society are linked. Society's views slowly change and affect the law. [AO1]</p> <p>A wider selection of magistrates is an attempt by the legal system to represent society. However, overall, the relationship between law and society is generally effective in protecting vulnerable individuals and also in dealing with the complexities caused by a pluralist society.</p>

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Q	Practice Paper C: Answer
2	<p>Morals exist as an individual's belief in what is right and wrong. [AO1] To follow a person's individual choice, e.g. whether to have premarital sex. [AO1] On a deeper level, morals exist as a complicated collection of religion, beliefs and culture and indicate how people should behave, not how they must behave. [AO1] Morals are subjective [personal] and therefore it was impossible for the same moral values to apply to everyone in society. [AO1]</p> <p>Law is different from a moral code and states unconditionally how all society must behave. Legal positivists believe a law made by the state must be obeyed. Whether it is a primary rule [e.g. a rule on a crime] or a secondary rule [e.g. the rules on sentencing], morality is not a factor. However, natural lawyers say law comes from a 'higher authority' [e.g. a religion] and a man-made law should not be obeyed if it conflicts with a 'divine' law, i.e. moral law. [AO1]</p> <p>There are specific differences between morals and law. Law originates from either the courts [e.g. BRB v Herrington - giving trespassers limited rights] or Parliament [e.g. Criminal Liability Act 1984 re assault]. [AO1] However, the origin of a moral code is subjective and is based on religion, culture and society. [AO3]</p> <p>Furthermore, the commencement of a law is specific – either the day the senior court gives a precedent or the date the Act is stated to come into effect. [AO1] There is no specific date for the creation of a moral code – it develops over time. [AO3]</p> <p>Changing morals affect Parliament in its lawmaking; for example, society's moral views on sex relationships has changed over the decades. [AO3] The Sexual Offences Act 1967 decriminalised homosexual acts between consenting adults over 21. [AO3] Furthermore, a same-sex marriage received legal validity in the Civil Partnership Act 2004, culminating in the Marriage and Civil Partnerships (Scotland) Act 2013. [AO3]</p> <p>Judges are also influenced by society's moral beliefs. [AO1] For example, moral views changed so the existence of a defence to marital rape was offensive, and was rejected in the precedent case of <i>R v R</i> 1991. [AO3]</p> <p>Occasionally a law may influence society's moral views. [AO1] For example, the Sunday Trading Act 1994, allowing limited trading on a Sunday, has affected society's views on what is permissible on a Sunday – traditionally a religious day of prayer and relaxation. [AO3]</p> <p>It is clear, therefore, that, although they are different in substance, there is an interrelationship between law and morals. [AO3]</p> <p>There is, however, a debate as to whether morals should affect law and be enforced. In the 1850s, J S Mill promoted the concept of individual freedom in his work <i>On Liberty</i>.</p> <ul style="list-style-type: none"> • Individuals may choose their own conduct unless <ul style="list-style-type: none"> • harm is caused to others but <ul style="list-style-type: none"> • the conduct is allowed if it is more important than the harm caused. [AO1] <p>An opposing view was supported by Sir James Stephen, a senior judge, who said: <i>'the immorality of an act is good reason for it to be a crime'</i>. [AO1]</p> <p>The Wolfenden Report 1957 took a similar view to Mill. The report recommended the legalisation of homosexual acts between consenting adults and that prostitution be legalised. It stated: <i>'it is not the duty of the Law to concern itself with immorality'</i>. [AO3]</p> <p>The two different theories continue to be debated. In the 1950s, Professor Hart argued that morality should have nothing to do with the law. [AO3] Lord Devlin [a senior judge] supported Stephen's views that the morality of <i>'right-minded people'</i> should be enforced by law. This view is reflected in the decision in <i>Brown</i> when homosexual sadomasochists were convicted as the court said <i>'pleasure derived from the infliction of pain is an evil thing'</i>. [AO3]</p> <p>In conclusion, there is a close connection between law and morals. A moral code may conflict with law – creating a dilemma of which overrides the other. [AO3] The argument is that of Mill and Hart that acts of private morality should not be criminalised by courts; however, there is also strength in the views of Stephen and Devlin that courts should uphold the moral values of the majority of society. [AO3]</p>

Q	Practice Paper C: Answer
3	<p>Judicial review [JR] is a claim to the Administrative Court in London [part of the Division of the High Court]. The court reviews the lawfulness of a decision or an act, by a public body [body] which is carrying out a public function. A body includes departments, local authorities, health authorities, etc. [AO1]</p> <p>If another route is available to the claimant then JR is not available. For example, if a public authority unfairly dismisses an employee, the claimant cannot use JR as a claim to the Employment Tribunal. [AO1]</p> <p>JR covers the law being applied correctly, using the correct procedures. [AO1] The court is binding on the parties, but the remedies available are discretionary, meaning that if the claimant succeeds in the law, the court may not award any remedy. [AO1] The court may make a decision, grant an injunction [ordering the body to do / not to do something], quash the law and/or award compensation. [AO1]</p> <p>The claimant must prove either:</p> <ul style="list-style-type: none"> the body is under a legal obligation to make a decision in a certain way and is failing to do so <p>or</p> <ul style="list-style-type: none"> the body's decision or conduct is beyond the powers it is given by the law. <p>The claimant must have 'standing', i.e. must have an interest in the decision or conduct being challenged and must issue the claim within three months of the decision/conduct. [AO1]</p> <p>The claimant may base the JR on illegality and/or fairness and/or irrationality.</p> <p>The law governing a body is usually set out in legislation, which would state the powers. If a body does not follow the law correctly, this may be unlawful, and is known as 'ultra vires'. [AO1] There may also be guidance for the body, which does not have to be followed for good reason. In <i>Agricultural Training Board v Aylesbury Mushrooms</i> 1973 a government body failed to follow a procedure by not consulting with the Mushroom Grower's Association when introducing new regulations, making the regulations unlawful. [AO1] In <i>R v Secretary of State for Health</i> 2002 the Minister of Health made regulations which allowed women to take the 'morning after' pill without a prescription. Despite the argument that this regulation was outside the 'abortion' Act 1967, the court said the regulations were lawful because they reflected what happened in modern life, so were lawful. [AO1]</p> <p>The 'fairness' argument means the body has abused its power, e.g. by not following proper procedures in a particular circumstance. The body must be impartial and not biased in its acts and must consult those who have a reasonable expectation they will be consulted. In <i>Ex Parte Terry Adams Ltd</i> 1994 the council did not follow its proper procedures when awarding a contract to supply services to the council, so the council's decision was stated to be unlawful. [AO1]</p> <p>The 'irrationality' argument is when the court finds the body's decision was so unreasonable that it must be perverse. This is known as the <i>Wednesbury</i> 1948 test and is difficult to prove, but a lower test is 'proportionality', as shown in <i>Rogers v Swindon NHS</i> 2006 where the NHS trust to fund a particular drug for some patients [and that cost was irreducibly high] was interpreted so as to focus on the patient's clinical needs and fund patients with severe conditions who were properly prescribed the drug by their GP. [AO1]</p> <p>Roger's claim is against the local council, which falls within the definition of 'public body'. Roger has no other form of claim, e.g. there is no contract between the parties.</p> <p>Roger's claim would be that the council had a legal obligation to make a decision to award the contract and has unlawfully failed to do so by awarding the contract to another company. The council is a public body and all local council decisions are subject to JR. [AO2] Additionally, it is expected this decision would be made by the council, not just by the chief executive, as it is so important to the public. [AO2]</p> <p>Roger has 'standing' as his company is directly affected by the council's decision.</p> <p>Roger would probably base his claim for JR on the 'unfairness' point for the reason that the council is using the case of <i>R v Avon CC</i> in support. [AO2] The decision is also, arguably, 'unfair' because of the unnecessary extra cost to the public made by the decision. [AO2]</p> <p>Roger appears to have a strong claim under JR and the court may, therefore, quash the council's decision to award the contract to the other company and then order the council to re-advertise the contract, to allow the process to be followed legally. [AO2] Roger may be awarded the contract, but this is unlikely if the contract is re-advertised as he has another opportunity to win the contract. [AO2]</p>

Q	Answer
4	<p>Article 11 of the European Convention on Human Rights [ECHR] supports the</p> <ul style="list-style-type: none"> • freedom of peaceful assembly • freedom of association with others • form and join trade unions [TUs] for the protection of his/her interests <p>This right also imposes a duty on the state to intervene to ensure third parties with this right. [AO1]</p> <p>The following are criteria to aid in deciding whether the right exists:</p> <ul style="list-style-type: none"> • Could the right be limited in a different way? • Is the right cancelled out completely? • Is the limitation a fair balance between having or losing the right? [AO1] <p>Peaceful assembly covers meetings, marches, demonstrations, etc. which are political or economic purpose. It is unlikely Article 11 covers a social gathering for sport purposes. [AO1] The assembly must be peaceful with no threat of violence.</p> <p>Article 11[2] limits the rights if they are prescribed by UK law, the limits are democracy and the restrictions are for a legitimate aim, e.g. national security, disorder or crime or protecting rights and freedoms of others. [AO1]</p> <p>'Prescribed by UK law' means there must be a clear, precise and predictable legal limitation. [AO1] Common law has breach of the peace and trespass to land. Breach of the peace has a wide meaning and is committed when harm is likely to occur, which has occurred to a person or property or when a person is in fear of violence. [AO1] It is a civil claim [allowing a claim for compensation for damage caused] unless statutory law, e.g. Criminal Justice and Public Order Act 1994 [CJPO]. [AO1] It is to evict travellers from land owned by another in <i>Drury v Sec of State for Environment</i>. [AO1] Trespass is even the slightest crossing over the other's boundary, and is caused. [AO1] s.61 of the CJPO allows the police to tell trespassers to vacate land if they have damaged the land or used threatening or insulting behaviour. Rebreach is an offence allowing the police to seize vehicles. [AO1] s.68 of the Act [aggravated trespass] covers a trespass and the intimidation of those lawfully on the land stopping them from engaging in their lawful activity or obstructing that activity or disrupting that activity.</p> <p>The limitation must also be 'necessary in a democratic society', which means a pressing social need for restricting Article 11 and the restriction must be proportionate. The court must consider the situation as a whole, as in <i>Laporte v Chief Constable of Gloucestershire 2006</i> when the police escorted three coaches back to London, protesters on the buses were to attend an RAF base to protest against the war. Some items on the coaches indicating a violent intent, the court held this was not necessary in a democratic society as the police actions were disproportionate. [AO1]</p> <p>'For a legitimate aim' means, for example, the restriction must be in the interests of national security and/or the prevention of disorder or crime. The <i>Laporte</i> case [above] shows the court has to balance the rights of Article 11 and its restrictions. [AO1]</p> <p>On the face of it those on the coaches have had their rights interfered with. Their freedom of assembly and this has been breached by the police ordering them to leave. The police would contend there was a potential breach of a prescribed law – breach of the peace and/or a trespass. [AO2] They would argue their actions were necessary in a democratic society [their conduct was proportionate in the circumstance, the future violence?] and their actions were in the prevention of disorder or crime. The precedent case of <i>Laporte</i> goes against the police's conduct and it would seem the coaches have a valid claim under Article 11 as none of the limitations apply. [AO2]</p> <p>Paul and his friends are in a different situation, however. They have unlawfully entered another's land, which, although not a crime, is a breach of prescribed law – trespass. Not only that, there is a breach of s.68 as there is aggravated trespass by Paul and his friends and the others have committed the trespass and have the intent to interfere with the lawful activities of others on the land lawfully. They have also damaged the centre's property, etc. to build barriers. [AO2] The police will be able to argue the restriction is necessary in a democratic society as their interference is proportionate in the circumstance for the legitimate aim of preventing disorder and crime and for the protection of the freedoms of others. [AO2] The Article 11 rights of Paul and his friends in the case have been breached. [AO2]</p>

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Q	Answer
5	<p>Article 10 gives everyone the right to freedom of expression. [AO1] This includes the right to hold opinions, and to give and receive information and views without state restriction. The right to expression covers words, images and conduct. [AO1]</p> <p>The right to impart information and ideas includes the right to 'offend, shock or disturb'. [AO1] Political expression is supported and the right to speak at Speakers' Corner on a topic of an individual's choice is a protected right. [AO1]</p> <p>Freedom of the press allows ideas and news to be imparted. [AO1] In <i>Financial Times v. UK</i> [2009], the ECtHR said an order that media organisations disclose original leads might lead to the revealing of a political source and was a breach of Article 10.</p> <p>This links with Article 8 and the right to respect for family and private life. [AO1]</p> <p>In 1990, Gordon Kaye, a well-known actor, was involved in a car crash and, while he was recovering from brain surgery, a journalist from the <i>Sunday Mirror</i> entered his hospital room, took photographs and interviewed him in his disoriented state. The House of Lords ruled that there was no remedy in English law for a breach of privacy. [AO1]</p> <p>Now, the situation is different. Recently, a newspaper forced Gareth Thomas, a professional rugby player, to go public with his HIV diagnosis. [AO1] Further, the English Bench criticised a national newspaper for publishing details of a family tragedy that occurred 31 years ago. [AO1] These two situations show the conflict between Article 8 and Article 10. [AO3]</p> <p><i>Axel Springer AG v Germany</i> 2012 set out the criteria to be used in these situations:</p> <ul style="list-style-type: none"> • Did the information contribute to a debate of public interest? • Were the party concerned and the subject matter of public interest? • Prior conduct of the party concerned • Method of obtaining the information, and its truth • The content, form and consequences of publication • Severity of any court order made [AO1] <p>These criteria cover relevant and reasonable factors to allow the court to reach a decision where Articles 8 and 10 conflict. [AO1]</p> <p>Freedom of expression is an essential element of democracy, but there are restrictions. For example, in artistic areas, artistic expression is vital for the development of ideas and personal fulfilment. In <i>Handy v. UK</i> 1990 an artist created an exhibition about the 'disposable society', legal human foetuses and displayed them on a mannequin as an example of extreme capitalism. The artist was found guilty of outraging public decency, and applied to the ECtHR under Article 10, claiming a breach of his right to freedom of expression. [AO1] The court said that the artist had a 'legitimate aim' [the protection of morality] and it was 'necessary in a democratic society' although the court accepted the wide margin views where the protection of morality was concerned. [AO1] Perhaps if Article 10 were applied to this scenario now a different decision would be reached. [AO3]</p> <p>There are limitations set out in Article 10[2] if all three points below are satisfied:</p> <ul style="list-style-type: none"> • the interference with Article 10 is prescribed by law and • the interference with Article 10 is aimed at protecting, for example, national security, public safety, prevention of crime, protection of health or morals, prevention of disclosure of information received in confidence and • the interference with Article 10 is necessary in a democratic society [i.e. it is proportionate]. [AO1] <p>The burden of proof is on the state, as shown in <i>Observer & Guardian v UK</i> 1990. An injunction was granted to prohibit publication of excerpts of a book by a former UK security service, Peter Wright. The ECtHR confirmed the injunction had been granted because the excerpts contained confidential information [by the time of the ECtHR hearing the book had been published in the USA, and had been imported to the UK, so the injunction was justified]. [AO1]</p> <p>The limitations seem fair as, for example, if the UK specifically outlaws certain types of speech, parliamentary democracy should outweigh Article 10. [AO3] Furthermore, as in the case of <i>Handy v. UK</i>, if national security is at risk this should prevail over the Art as that security is more important than an individual's right. [AO3]</p>

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Q	Answer
5	<p>Finally, the law of defamation in the UK is based on libel [defamation in a permanent published document] and slander [e.g. spoken or gestures]. The claimant must show that a third party would think worse of the claimant as a result of the defamation. Actual damage or its likelihood, must be proved. [AO1] There are various defences under the Defamation Act 2013; for example, the statement is true, it is an honest opinion or publication in the public interest. [AO1]</p> <p>The law of defamation, including the Act, mirrors the provisions of Article 10 of the ECHR – the general right to say what you believe even if it harms another, with limitations. Article 10 sets out similar rights and limitations so, arguably, UK law in this respect respects the rights of Article 10. [AO3]</p>
6	<p>Article 6 of the European Convention on Human Rights [ECHR] supports the right to a 'fair and public trial in criminal and civil cases, within a reasonable time by an independent and impartial tribunal established by law'. [AO1]</p> <p>The judgment is to be pronounced publicly, in front of the press [with a few limitations]. [AO1] Article 6(1) provides that if it is a criminal offence, the D is presumed innocent until proven guilty beyond reasonable doubt. [AO1] A strict liability offence does not breach Article 6(1) as the defence will still be available, as in <i>Salabiaku v France 1988</i>. [AO1]</p> <p>Article 6(3) sets out minimum rights for everyone charged with a criminal offence:</p> <ul style="list-style-type: none"> • The D must be told, in a language they understand, of their charge in detail. • To have adequate time and facilities to prepare a defence [using a lawyer, and interviewing witnesses]. [AO1] To have state-funded legal advice if they cannot afford a lawyer. This is particularly relevant when the D is interviewed at the police station. If there is no representation at the interview stage then any evidence obtained may be classed as inadmissible. If freedom of the D is at risk [e.g. a bail hearing] whether the D is allowed into the community, perhaps with conditions attached, or if access to legal aid is a breach of Article 6. Legal aid constitutes one avenue to justice. Others, such as the availability of representation under a conditional fee agreement, or a 'no-win no-fee' system means lawyers take on cases only where there is a chance of winning – restricting access to justice for others who should be represented. A 'no-win no-fee' system is not available for a criminal case. [AO1] • The right to cross-examine all relevant witnesses, in public, with details of the evidence made available. However, s.5 Criminal Evidence Act 1994 allows witnesses to give evidence anonymously. The D's rights must be balanced against the damage to society if prosecutions could not proceed due to intimidation. <i>Power 2009</i> confirmed that anonymous witnesses were not restricted to gangland-killing cases. [AO1] <p>First, Xavier was interviewed by the police without being offered the assistance of a lawyer. This means any incriminating evidence obtained in the interview may be excluded from court. [AO2] This could easily change the court's decision on guilt or innocence. He is not admitted to facts which were untrue, and which were detrimental to his defence.</p> <p>Further, the charge of s.18 grievous bodily harm is very serious as it has a maximum life sentence. This charge should have been explained to him in straightforward English. [AO2] If there was any doubt as to his understanding of the charge, a translator should have been called to explain the charge. [AO2] Article 6 have been breached making the charge unfair. [AO2]</p> <p>He is also not represented at the bail hearing. With a lawyer representing him, he would have been granted bail, even if with conditions, e.g. not to approach the victim or work, to report to the police every morning. He would have obtained and retained his liberty. [AO2]</p> <p>At court he is unrepresented. The charge of s.18 is very serious and a lawyer would be needed for his defence. [AO2] No doubt the admissions made in interview would have formed part of the Crown Prosecution Service's case, and a lawyer for Xavier would have put these admissions into the context of Xavier's state of mind at the time.</p> <p>It is likely Xavier's trial is a breach of Article 6 and his conviction is likely to be overturned. [AO2]</p>

Q	Answer
7	<p>Article 5 of the European Convention on Human Rights [ECHR] gives the right to liberty and security. [AO1] No one shall be deprived of their liberty but there are some exceptions provided procedures required by law are followed. For example:</p> <ul style="list-style-type: none"> • Detention of a minor by law for educational support or to bring him/her before a competent legal authority • The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics, drug addicts or vagrants. [AO1] <p>Article 5[2] states everyone who is arrested must be informed promptly, in a language they understand, of the reason[s] for the arrest and of any charge against them. [AO1] The Police and Criminal Evidence Act 1984 [PACE] covers this Art and clarifies the reasons that may be given at the police station by the custody officer, which is acceptable. In <i>Samuel 1988</i> the defendant [D] had been arrested on suspicion of armed robbery by a solicitor but was refused. The D's appeal was allowed as the right of a suspect to instruct a lawyer 'is one of the most important and fundamental rights of a citizen'. In <i>Taylor v Chief Constable of the Thames Valley Police 2004</i> the D was a 10-year-old arrested at a protest and was told he was arrested for a 'violent disorder' protest. As his mother was present and sufficient reasons were given for the arrest, there was no breach of Article 5[2]. [AO1]</p> <p>Articles 4 and [5] state that everyone who is deprived of their liberty by arrest shall be entitled to issue proceedings for a court to make a speedy decision as to whether the detention is lawful and, if not lawful, to order their release. [AO1] If Article 5 has been breached, there is a right to claim compensation. [AO1]</p> <p>The decision on lawfulness may be made by a court or, for example, a Mental Health Tribunal. [AO1] A judicial review [JR] of detention requires natural justice to be observed. The person is entitled to know the reason[s] for the detention and is entitled to argue the point. The hearing must be 'speedy' as shown in <i>R v Sec of State for the Home Office [re Noor]</i> where a Parole Board hearing three months after the expiry of a tariff on a life sentence was a breach of 5[4], even though it was standard practice. [AO1] However, a JR of a decision may be challenged by either the D or the state, or by victims (and alleged victims), as in <i>DSD & NBV v Parole Board of England & Wales [Worboys] 2018</i>. [AO1]</p> <p>Finally, compensation must be awarded to everyone who has been the victim of unlawful detention, covering disappointment, frustration and any actual financial loss suffered.</p> <p>Confinement will breach Article 5 if:</p> <ul style="list-style-type: none"> • it is objectively thought the person is detained • there is no consent to the detention • the reason for the confinement is created by the state [AO1] <p>Confinement was clarified in <i>Austin v Commissioner of Police of Metropolis 2009</i> where a locked door or physical barrier, and having social and other contact with the world outside, constituted confinement. [AO1]</p> <p>Jean-Paul [JP] has had his rights under Article 5 breached as his liberty and security have been affected by the conduct of the police. [AO2]</p> <p>First, he was not informed when arrested by the police of the criminal charges against him. [AO2] This appears to be a breach but PACE accepts the charge may be, lawfully given by the custody officer at the police station. [AO2] However, it is unlikely JP would be able to understand the charge as he has only come to England very recently to learn English. [AO2]</p> <p>Second, he was interviewed without a lawyer present – a clear breach of his right to a fair trial. [AO2] He is a vulnerable young person, in a new country, and needs special protection. [AO2] It is likely any information, evidence or admissions given during this interview will be classed as inadmissible in court. [AO2]</p> <p>Third, there was clearly a confinement in the police cell [<i>Austin</i>]. [AO2]</p> <p>The police may claim JP's detention is lawful as he is a minor and needed education and/or the police were to bring him before a competent legal authority as soon as possible. [AO2] Unfortunately, even if it were accepted by the court that JP needed supervision, bringing him before a court or tribunal is a breach. [AO2]</p> <p>In consequence, JP is entitled to compensation for all the breaches of his rights. He would have been upset and disappointed with his treatment. [AO2]</p>

Q	Answer
8	<p>Article 10 gives everyone the right to freedom of expression. [AO1] This includes the right to hold opinions, and to give and receive information and views without state restriction. The right to expression covers words, images and conduct. [AO1]</p> <p>The right to impart information and ideas includes the right to 'offend, shock or disturb'. [AO1] Political expression is supported and the right to speak at 'Speakers Corner' on a topic of an individual's choice is a protected right. [AO1]</p> <p>Freedom of the press allows ideas and news to be imparted. [AO1] In <i>Financial Times v. British Sky Broadcasting Ltd</i> [2009], the ECtHR said an order that media organisations disclose original leaked information might lead to the revealing of a political source and was a breach of Art10. [AO1]</p> <p>This links with Article 8 and the right to respect for family and private life. [AO1]</p> <p>In 1990, Gordon Kaye, a well-known actor, was involved in a car crash and, while he was recovering from brain surgery, a journalist from the <i>Sunday Mirror</i> entered his hospital room, took photographs and interviewed him in his disoriented state. The House of Lords in <i>Kaye v. Robertson</i> [1991] ruled that there was no remedy in English law for a breach of privacy. [AO1]</p> <p>Now, the situation is different. Recently, a newspaper forced Gareth Thomas, a professional rugby player, to go public with his HIV diagnosis. [AO1] Furthermore, the <i>Evening Standard</i> criticised a national newspaper for publishing details of a family tragedy that occurred 31 years ago. [AO1] These two situations show the conflict between Articles 8 and 10. [AO3]</p> <p><i>Axel Springer AG v Germany</i> [2012] set out the criteria to be used in these situations:</p> <ul style="list-style-type: none"> • Did the information contribute to a debate of public interest? • Were the party concerned and the subject matter of public interest? • Prior conduct of the party concerned • Method of obtaining the information, and its truth • The content, form and consequences of publication • Severity of any court order made [AO1] <p>These criteria cover relevant and reasonable factors to allow the court to reach a decision where Articles 8 and 10 conflict. [AO1]</p> <p>Freedom of expression is an essential element of democracy, but there are restrictions. For example, in artistic areas, artistic expression is vital for the development of ideas and personal fulfilment. In <i>Handy v. UK</i> [1990] an artist created an exhibition about the 'disposable society', legal human foetuses and displayed them on a mannequin as an example of extreme capitalism. The artist was found guilty of outraging public decency, and applied to the ECtHR under Article 10, claiming a breach of his right to freedom of expression. [AO1] The court said that the artist had a 'legitimate aim' [the protection of morality] and it was 'necessary in a democratic society' although the court accepted the wide margin views where the protection of morality was concerned. [AO1] Perhaps if Article 10 were applied to this scenario now a different decision would be reached. [AO3]</p> <p>There are limitations set out in Article 10[2] if all three points below are satisfied:</p> <ul style="list-style-type: none"> • the interference with Article 10 is prescribed by law and • the interference with Article 10 is aimed at protecting, for example, national security, prevention of crime, protection of health or morals, prevention of disclosure of information received in confidence and • the interference with Article 10 is necessary in a democratic society [i.e. it is proportionate]. [AO1] <p>The burden of proof is on the state, as shown in <i>Observer & Guardian v UK</i> [1995]. An injunction was granted to prohibit publication of excerpts of a book by a former security service, Peter Wright. The ECtHR confirmed the injunction had been justified as the excerpts contained confidential information [by the time of the ECtHR hearing the book had been published in the USA, and had been imported to the UK, so the injunction was proportionate]. [AO1]</p> <p>The limitations seem fair as, for example, if the UK specifically outlaws certain types of speech, Parliamentary democracy should outweigh Article 10. [AO3] Furthermore, in cases where national security is at risk this should prevail over the Art as that security is more important than an individual's right. [AO3]</p>

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