



Topic Tests

for A Level OCR Law

Paper 3B: Human Rights

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Teacher's Introduction

Human rights belong to every individual, regardless of sex, race, nationality, socio-economic group, political opinion, sexual orientation or any other status.

Human rights are owed by the state to the people, meaning that public bodies must respect individual human rights. The concept of human rights includes ideas such as natural justice, universality, the rule of law and due process. Rights are protected by many sources, such as the Human Rights Act 1988, decisions made by judges, documents such as Magna Carta (1215) and the Bill of Rights (1688). Other sources also include conventions and authoritative writings.

Human rights are part of civil liberties, and include freedom of speech, the right to liberty and privacy, the right to a fair trial, and the right to freedom of expression and assembly. Such rights do not have to be earned – they are automatically given to people. It is often said that many aspects of human rights permeate through other areas of the law, and other topics studied – and its reach is, therefore, far beyond the study of the topic itself.

These topic tests cover all aspects of OCR's Paper 3, Section B: Human Rights and can be used as part of student learning. They provide a diverse set of questions, ranging from short-answer questions (knowledge and understanding) through to the more in-depth problem-solving and evaluative questions. Each topic test is broken down into three sections linked to the following assessment objectives:

Section A – knowledge and understanding (assessment objective 1 – AO1)

Section B – application to a problem-based scenario (assessment objective 2 – AO2)

Section C – essay/evaluation (assessment objective 3 – AO3)

The resource can assist in identifying any gaps in knowledge and enable teachers and students alike to gauge progress throughout the topic. Each topic test can be used as a part of a class activity, or for a student's self-study and revision. The resource can also be used for a more formal examination of learning (e.g. Standard Subject Assessments – SSAs).

Remember!

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

The OCR specification contains an additional evaluation section. For the purposes of this resource, evaluative questions have been included throughout the materials, some as extension questions. For example, evaluative questions relating to specific articles are contained within Topic Test 2. The extension questions have been included to ensure full coverage of the specification. It is recommended that all students complete these questions, although they could do so as a peer-check exercise, revision or a homework task.

Restrictions permitted by the European Convention on Human Rights are also included where relevant. The topic tests help students to understand and develop their legal knowledge through the various subtopics contained within the human rights section of the OCR paper.

This resource is designed to complement other teaching resources such as textbooks and other materials developed and used by teachers and teaching centres. It is important to note that the answer guidance is just that – guidance. Credit marks could be given for other relevant points mentioned. It is worth noting that many of the Section B and Section C questions have more points (often in full sentences to replicate an essay or problem-solving answer) than marks available. The student does not, therefore, need to identify all of the sentences in order to gain the maximum number of marks.

I hope that the resource helps you and your students to better understand human rights law, and that it assists the students to achieve their full potential in their law studies.

1. Rules and theory / Protection of

Topic Test 1.1: An outline and overview of and theory of human rights law

SECTION A

1. Explain the concept of universality with regard to human rights.

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2. Describe pluralism.

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3. Explain the meaning of proportionality.

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4. Describe the concept of the separation of powers.

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5. Identify **four** of the key principles of the rule of law.

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6. Describe interdependence and indivisible rights.

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7. What does section 19 of the Human Rights Act 1998 require ministers to do?

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8. Explain what the term 'dignity' means within the context of human rights.

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SECTION B

A member state has banned the performance of a play written by Anton Diecrat (a national of a member state) because the state considers that the play contains scenes and words which may offend people of the

Anton Diecrat wishes to challenge the state's banning of the play.

9. a) Identify the principle under which the state has purported to exercise its power in the case which illustrates this.

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- b) Explain what the principle allows states to do.

[illegible]

- c) Apply the provisions of the principle to the scenario as to whether the state can ban the play.

[illegible]

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SECTION C

10. Discuss the similarities and differences between rights and liberties.

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2. Protection of the individual's human rights and freedoms in the UK

Topic Test 1.2: History of the European Convention and the European Court of Human Rights; The impact of the Human Rights Act 1998; The entrenched nature of the Human Rights Act 1998

SECTION A

1. A person must have 'standing' in order to bring a claim under the Human Rights Act 1998. What does 'standing' mean?

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2. Describe the two types of public body against which a claim could be made.

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3. Explain what domestic judicial powers are available in the Human Rights Act 1998.

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4. Outline the aim of the creation of the Council of Europe in 1949, and describe the European Court of Human Rights, the Convention, and the Council of Europe.

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5. Explain what a 'declaration of incompatibility' is. Include a case to reinforce y

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6. Explain the remedies available if a court finds that the actions of a public bod

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7. Explain the effect of human rights being passed into domestic law.

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SECTION B

Jade is going on holiday. She arrives at the airport where she goes through security. On usual checks (such as the metal detector and belongings scanner), she is stopped by a security guard who finds a small object in the shoulder bag which she is carrying.

Finding nothing, the security guard takes her into a private room where she performs a strip-search. Finding nothing, Jade is allowed to go on her way. She is humiliated by the experience.

8. a) Should Jade decide to challenge the legality of the strip-search, which has already been engaged under the Human Rights Act 1998.

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- b) Explain the process under which Jade may be able to take action against the security guard on specific grounds upon which she would claim that there was a breach of her rights.

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- c) Should the court not find in her favour, explain the appeal process which she would go through.

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SECTION C

9. Discuss the principle of entrenchment, and how it impacts or affects parliamentary authority of the courts as regards the Human Rights Act 1998.

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EXTENSION

10. Discuss potential reforms of human rights and their impact on the future of c

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3. Key provisions of the European Convention on Human Rights

Topic Test 2.1: Article 5 – The right to liberty

SECTION A

1. Explain the meaning of the term 'liberty'. Include a case to reinforce your answer.

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2. What was the importance of the decision in *Engel v Netherlands* (1976)?

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3. Explain the meaning of the term 'deprivation of liberty'. Use case law to reinforce your answer.

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4. Deprivation of liberty must follow a prescribed procedure. What does this mean?

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5. Describe three exceptions as to when the deprivation of liberty is permitted.

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6. Explain the meaning of the terms 'prompt reasons given' and 'brought prompt

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7. Explain the meaning of Article 5(4) and Article 5(5).

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SECTION B

Adam and his friend Liz decided to go to watch a demonstration in London, organised by 'Human Rights'. They found out that it was due to take place in Trafalgar Square one Saturday morning. They travelled to London by train and arrived in Trafalgar Square just as the demonstration was starting. Adam and Liz joined the crowd.

Within the space of the next half hour or so, the crowd swelled to several hundred people. Some of the people began chanting and shouting at police officers present at the scene, and as a result the police officers at the scene decided to surround the protesters and not let them go. This continued until the crowd were allowed to disperse. The police then presented their evidence to the Crown Prosecution Service, who decided to prosecute for various criminal offences.

8. a) Explain four factors which a court will consider when deciding whether to interfere with the right to liberty (Article 5).

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- b) Explain whether the police actions were lawful. Use case law to reinforce your answer.

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SECTION C

9. Discuss Control Orders and Terrorism Prevention and Investigation Measures are made as to whether they are lawful, even though they are not within the contained within Article 5.

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EXTENSION

10. Evaluate how well Article 5 protects the vulnerable as well as asylum seekers

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Topic Test 2.2: Article 6 – The right to a fair trial

SECTION A

1. What is the main aim of Article 6?

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2. When could a party agree to waive their right to a fair trial?

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3. Describe the concept of 'equality of arms', using a case to illustrate your answer.

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4. Explain the principle of 'representation' within the context of Article 6, using your answer.

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5. Explain the term 'examination of witnesses'.

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6. Identify two types of civil hearing which are not protected by Article 6.

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SECTION B

Shakira has been arrested by the police on suspicion of shoplifting. English is not her first language. She is called for the interview. When interviewed at the police station with her solicitor present, she refuses to answer to all questions put to her by the police.

Later on that day Shakira is charged with shoplifting (theft), although the charge sheet is not present. Her solicitor tells her that he is unable to provide any more legal advice and she is kept in custody to appear before the court the next morning. Shakira does not understand the charge, and is kept in custody to appear before the court the next morning.

Shakira appears at court the next morning where an interpreter is provided for her. She is questioned in court. At the end of the prosecution evidence she is found guilty by the magistrates.

7. a) What is the burden of proof in a criminal case?

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- b) Can Shakira be compelled to answer questions at the police station and what is the potential effect of her silence?

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- c) What rights does Shakira have in respect of Article 6, and have any of the

[illegible]

SECTION C

8. Discuss how the following three key elements of Article 6 are defined: independent and impartial tribunals; public hearings; criminal charges.

[illegible]

Topic Test 2.3: Article 8 – The right to respect for fa

SECTION A

1. Explain what 'private life' means within Article 8.

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2. Explain what 'family life' means within Article 8.

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3. Explain what 'home' means within Article 8.

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4. State what 'correspondence' means within Article 8.

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5. Describe the meaning of the term 'qualified right' in respect of Article 8.

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6. What principle was established in the case of *Bensaid v UK (2001)*?

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SECTION B

Pietre and Sara live in the UK and are the parents of a two-year-old child, Jake. The state has decided to put him up for adoption and have told Pietre and Sara that once the child is adopted, they will no longer have any access to Jake.

While conducting enquiries into the adoption, the state finds out that Sara is in the country where the child was born and sent to the country where she had been immediately before arriving in the UK.

7. a) Has the state violated Pietre and Sara's rights under Article 8 in denying

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b) Has the state breached Article 8 in removing Sara from the UK?

[illegible]

SECTION C

8. Discuss the extent of the restrictions permitted by the European Convention interception of communications.

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

EXTENSION

9. Discuss the effect of Article 8 on celebrities, and environmental issues.

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10. Discuss the areas of technology and surveillance and how Article 8 impacts them.

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Topic Test 2.4: Article 10 – the right to freedom

SECTION A

1. Define the meaning of the term 'freedom to hold opinions'.

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2. Describe the meaning of the term 'freedom to impart information and ideas'.

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3. Explain the meaning of the term 'freedom to receive information and ideas'.

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4. Explain the effect of Article 10 on access to the Internet. Use relevant case law.

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SECTION B

Bob Smith works for a national newspaper and writes specialist articles in relation to business. He obtains some information from a friend who works for the Low Cost Finance Institution. The information relates to the company's financial affairs.

Bob decides that he wants to publish the information, but before he can do so, the Low Cost Finance Institution finds out that he has received the information. The company obtains a court order to make Bob disclose the information. Bob Smith is seeking a court decision as to whether he has to comply with this order.

A few weeks later Bob finds out that an MP has been convicted of a serious offence in relation to financial affairs. Bob decides to write an article about this and asks his editor to ask advice as to whether he would be permitted to publish the story.

5. a) In relation to the disclosure of the source, what are the considerations for the court likely to decide in these circumstances?

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- b) In relation to Bob wanting to publish the story about the MP, what are the considerations for the court likely to decide in these circumstances?

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SECTION C

6. Discuss the criteria which have to be fulfilled in order to lawfully restrict the expression under Article 10.

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Topic Test 2.5: Article 11 – Freedom of assembly

SECTION A

1. What are the two separate rights contained within Article 11?

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2. What does 'freedom of peaceful assembly' mean within the context of Article 11?

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3. What does 'freedom of association with others' mean within the context of Article 11?

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4. What is the right relating to trade unions within the context of Article 11?

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After half an hour or so Simi realises that the group are not having much of an effect, so she persuades them to protest in a more effective way, by sitting in the road and blocking traffic. The police are called and they are all arrested.

5. a) In relation to the protest by the side of the road, determine the lawfulness of the meaning of Article 11.

[illegible]

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- b) In relation to Simi and the protesters blocking the traffic, explain the law within the meaning of Article 11.

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- c) In relation to Simi being sacked, discuss whether the employer acted law of Article 11.

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SECTION C

6. Discuss the circumstances under which the rights conferred under Article 11

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4. Human rights and English law

Topic Test 3.1: Public order offences

SECTION A

1. Define the term 'breach of the peace'. Use case law or legislation to reinforce your answer.

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2. Explain the offence of 'riot'.

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3. What are the differences between 'violent disorder' and 'affray'? Use statute law to reinforce your answer.

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4. Identify three of the police powers (citing the relevant sections) under the Public Order Act 1986 in relation to illegal forms of assembly.

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5. Identify three of the police powers (citing the relevant sections) under the Criminal Order Act 1994 (CJOA 1994) in relation to illegal forms of assembly.

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6. Explain the meaning of the term 'rave'.

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SECTION B

Ben and Sophia live in a rented house, and feel that the local council housing rates are too high. Ben writes a letter to the council leader, Alice Wright, expressing his displeasure with the rates. After three weeks he receives no response. One morning he and Sophia decide to go and demonstrate outside the council offices where Alice works.

On arrival outside the council offices, Ben sees Alice in the foyer of the building. Ben shouts 'You don't come out then I'm coming in. You'll wish you had never ignored my letter'. Sophia joins him and they both hold up placards. Sophia holds one that says 'Council rates too high'. Ben holds one that says 'I'm waiting for you to come out'. Alice looks at them and then back into the foyer. She holds above her head. On the placard she has written 'I'm waiting for you to come out'.

Alice hurries away from the foyer and locks herself in her office, afraid of what might happen.

7. a) In relation to Ben's actions at the council offices, identify and define what offence he might have committed.

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b) Apply your knowledge of the law to determine whether or not Ben has c

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c) In relation to Sophia's actions at the council offices, identify and define v
she may have committed.

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d) Apply your knowledge of the law to determine whether or not Sophia ha

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- e) Explain whether or not either Ben or Sophie may have a defence to the charge of assault. If so, what defence might they have?

[illegible]

SECTION C

8. Discuss which two Articles of Human Rights are predominantly engaged when enforcement action is taken in relation to public order offences, and what the state must show to prove that the offences can be lawfully prosecuted. Use case law to reinforce your answer.

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page, leaving small margins at the top and bottom. There is no handwriting or other markings on the page.

Topic Test 3.2: Police powers

SECTION A

1. Apart from Article 5, which other Article of Human Rights is predominantly about police powers?

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2. Explain the powers of the police under s.60 of the Criminal Justice and Public Order Act 1994.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There is no handwriting or other markings on the paper.

3. Explain the circumstances under which a police officer can arrest someone (v s.24 of the Police and Criminal Evidence Act (PACE)).

[illegible]

4. Describe the rights of an individual under s.28 PACE.

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5. Describe the rights of an individual under s.56 and s.58 PACE 1984.

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6. Describe the occasions when evidence could be excluded under s.76 and s.78 PACE 1984. Reinforce your answer.

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7. Fill in the gaps:

In relation to stop and search (ss.1–7 PACE 1984) a police officer may stop any person or _____ if they have _____ that they may find _____ or _____

SECTION B

Lisa is 25 years old and rents a flat near a jeweller's shop. She is short of money and needs to get some cash. She goes to the back of the shop about midnight armed with a large screwdriver to break through the small window.

A passer-by sees Lisa going around the back of the shop, and calls the police, who arrive. When they ask for her name and address, they arrest her outside the shop with the screwdriver. She is taken to the station and asks for a solicitor and for her father to be informed of her arrest. However, the police refuse her requests. Lisa is interviewed later that day without a solicitor. During the interview the police ask her about her presence at the back of the shop, and also why she had a screwdriver with her. Lisa tells them about her situation throughout the interview.

Lisa is charged with attempted burglary. At trial she says that she had heard someone enter the shop in the past and went around the back to investigate. She also says that she found the screwdriver in case she needed to protect herself.

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8. a) Assuming that the police had reasonable suspicion that Lisa was about to commit an offence, what must they also be able to prove to a court under s.24 PACE in order to arrest her?

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- b) Explain the circumstances under which the police could deny Lisa her right to consult a solicitor before being interviewed. Apply your knowledge to the situation and explain whether this was lawful or not.

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- c) Explain who decides on Lisa's detention, and how long she could have been detained before being charged or released.

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- d) Identify the effect on Lisa's case when she remained silent during the proceedings and when she later mentioned the information at trial.

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SECTION C

9. Discuss the impact of a suspect's detention and subsequent appearance at court on the presumption of innocence under Article 5 (deprivation of liberty). Use case law to reinforce your answer.

[illegible]

Topic Test 3.3: Interception of communications and data

SECTION A

1. Explain five of the key areas under the Investigatory Powers Act 2016 which relate to investigatory activities.

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2. Explain what a breach of confidence is and the potential remedies available.

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3. What must a claimant do in order to prove a breach of confidence?

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4. What are the possible defences to a claim of breach of confidence?

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SECTION B

Michael is a well-known member of an organised crime gang who make money by threat violence in order to commit offences of robbery. The police receive information that Michael is planning a crime against a bank manager by making an appointment to see him at work and then unless the bank manager gives him £1 million in cash from the bank's vaults.

The police decide that they want to record mobile and landline telephone conversations between Michael and the gang he is working for, to commit the crime.

5. a) Which Act of Parliament will the police consider using in order to obtain conversations, and what types of behaviour are covered by the Act?

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b) What criteria would have to be met for the police to obtain a warrant to

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- c) Explain whether the police are likely to be able to obtain such a warrant

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SECTION C

6. As regards the duty of confidentiality in relation to Article 8 (respect for private life) and Article 10 (freedom of expression) discuss how the courts decide which of the two rights prevails when there are competing demands. Refer to relevant case law to reinforce your answer.

[illegible]

Topic Test 3.4: Obscenity and harassment

SECTION A

1. Which two Acts of Parliament regulate the law on obscenity?

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2. Describe when the common law offence of 'outraging public decency' can be reinforced by your answer.

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3. What are the two criminal offences created by the Protection from Harassment Act 1997?

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4. Explain how an offence under the Malicious Communications Act 1998 can be committed.

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5. What civil remedy can be provided in relation to the criminal offence of harassment and the consequences of breaching that remedy?

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SECTION B

Olaf Berger is a famous playwright and a producer of plays with graphic content in them. One of his plays contains scenes where a real human corpse is laid out on the floor. The first scene starts with a corpse being dragged onto the stage and left there on its own for several minutes before the play continues.

On the opening night of the play the audience is full to capacity. After watching the opening scene the audience is so disgusted that she leaves and immediately goes to the police to make a complaint.

6. a) Define the offences which Olaf Berger may have committed.

[illegible]

- b) Apply the elements of the offences and conclude whether or not he is liable. Use case law to reinforce your answer.

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- c) Identify what defence he might be able to use, and whether this defence is available.

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SECTION C

7. Discuss how the European Court of Human Rights uses key principles to justify whether to restrict an individual's rights under Article 10 (freedom of expression). Discuss the proportionality test and the balancing of interests provisions within Article 10 itself. Use case law to reinforce your answer.

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Topic Test 3.5: Tort of defamation and t

SECTION A

1. Explain what the two forms of defamation are, giving an example of each.

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2. Explain which Article of Human Rights legislation is potentially engaged by the tort of defamation. Provide a description of that right.

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3. Define the term 'trespass'. Use case law to reinforce your answer.

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4. Explain three instances where trespass can be legally justified.

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SECTION B

Samantha is the editor of *The Daily News*, a national newspaper. She finds out some information about one of the local MPs, Will Barker, who is a keen road safety campaigner. The information recently been disqualified from driving having been caught speeding and without a valid licence. The matter had been kept quiet because Mr Barker had pleaded guilty by post to the offence and avoided the penalty.

Samantha publishes the news item on the front page of the newspaper's next edition, with the informant. Samantha also puts a personal view in her regular news column in the same issue. She writes that Barker is a criminal who should be ashamed of himself by setting such a bad example, and that he is not a good role model for drivers.

Mr Barker is also part-owner of a car dealership.

5. a) Explain what Mr Barker would have to show in order to successfully claim

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b) Apply your knowledge in deciding whether Mr Barker is likely to be successful.

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c) Identify the defences which are available in respect of the tort you have identified. Use your knowledge to the circumstances to conclude whether Samantha is successful in defending herself.

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SECTION C

6. Discuss how statutory law enables the right under Article 11 of the Human Rights Convention (the right to peaceful assembly and freedom of association) to be restricted as regards the relevant police powers.

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5. Enforcement of human rights

Topic Test 4.1: Role of domestic courts and the process

SECTION A

1. What was the position of the domestic courts before the year 2000 in relation to human rights?

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2. How have the domestic courts been affected since the year 2000 in relation to human rights?

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3. Explain what judicial review is and which court deals with it.

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4. Identify the procedures the court will follow when dealing with a case of judicial review.

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5. What remedies can a court give when dealing with a case brought by way of judicial review?

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SECTION B

The government minister for agriculture wants to introduce a new regulation by way of a statutory instrument to change the way in which potatoes are grown, stored and packaged before sale. The reason for this is the discovery of a newly discovered type of bacteria which threatens to get into the food chain of the country.

The minister circulates the details of the changes to the Potato Growers Association (PGA) which represents farmers and potato growers throughout the country – and explains that the changes are necessary for the safety of the food chain.

The PGA think that the changes will put the prices of potatoes up to a level where profits will be too high.

6. a) Explain whether the PGA can challenge the new regulations by way of judicial review, or in any other way. Include relevant time limits in your answer.

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- b) Explain the grounds upon which any claim of judicial review can be made to reinforce your answer.

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- c) Apply your knowledge to decide whether and on which grounds the PGA

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7. Discuss how the domestic courts can deal with domestic law which is incompatible with EU legislation. Use case law in support of your answer.

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Topic Test 4.2: The role of the European Court of Human Rights

SECTION A

1. Explain the key functions of the European Court of Human Rights.

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2. Explain the meaning of the term 'positive obligations' in relation to the functions of the European Court of Human Rights.

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3. Detail the points introduced in Protocol 14 relating to the European Court of Human Rights.

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SECTION B

Alysha runs a successful and profitable car dealership business. As an investment opportunity, she has put a year's worth of business profits on government bonds which guarantee to provide her with a return. This scheme is run by the Government Bond Department (GBD).

One day Alysha receives a letter from the GBD. They inform her that her personal details, including her passport number, her date of birth, bank details and passcodes have all been sent to an unauthorised person. They further inform her that as a result all of her money and the interest earned thus far – a total of £50,000 – has been taken from the account.

The GBD will not refund her money.

Alysha takes the case through the UK courts to enforce her human rights against the GBD. In the end of the incident the UK courts decide that the GBD does not need to provide her with compensation as it is not considered to be a 'public body'. She is not given leave to appeal.

Alysha speaks to a human rights lawyer who informs her that no domestic court or the European Court of Human Rights have ever dealt with a case such as this.

4. a) Which human right is Alysha claiming has been breached. Be as specific as possible.

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- b) Define the criteria which Alysha would have to fulfil in order to have her case found admissible before the European Court of Human Rights. Refer to the relevant articles of the European Convention on Human Rights.

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- c) Apply your knowledge of the admissibility criteria to decide whether the ECtHR, and whether it is likely to be successful. Refer to relevant case law

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SECTION C

5. Discuss the effectiveness of the United Kingdom in enforcing human rights. Refer to the European Court of Human Rights in your answer, as well as relevant case law

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1. Rules and theory / Protection of

Topic Test 1.1: An outline and overview of and theory of human rights law

SECTION A

1. Explain the concept of universality with regard to human rights.
2. Describe pluralism.
3. Explain the meaning of proportionality.
4. Describe the concept of the separation of powers.
5. Identify four of the key principles of the rule of law.
6. Describe interdependence and indivisible rights.
7. What does section 19 of the Human Rights Act 1998 require ministers to do?
8. Explain what the term 'dignity' means within the context of human rights.

SECTION B

A member state has banned the performance of a play written by Anton Diecrat (a national of the state) as the state considers that the play contains scenes and words which may offend people of the state.

Anton Diecrat wishes to challenge the state's banning of the play.

9.
 - a) Identify the principle under which the state has purported to exercise its power in this case which illustrates this.
 - b) Explain what the principle allows states to do.
 - c) Apply the provisions of the principle to the scenario as to whether the state can ban the play.

SECTION C

10. Discuss the similarities and differences between rights and liberties.

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2. Protection of the individual's human rights and freedoms in the UK

Topic Test 1.2: History of the European Convention and the European Court of Human Rights; The impact of the Human Rights Act 1998; The entrenched nature of the Human Rights Act 1998

SECTION A

1. A person must have 'standing' in order to bring a claim under the Human Rights Act 1998. What does 'standing' mean?
2. Describe the two types of public body against which a claim could be made.
3. Explain what domestic judicial powers are available in the Human Rights Act 1998.
4. Outline the aim of the creation of the Council of Europe in 1949, and describe the European Court of Human Rights, the Convention, and the Council of Europe.
5. Explain what a 'declaration of incompatibility' is. Include a case to reinforce your answer.
6. Explain the remedies available if a court finds that the actions of a public body are incompatible with the Human Rights Act 1998.
7. Explain the effect of human rights being passed into domestic law.

SECTION B

Jade is going on holiday. She arrives at the airport where she goes through security. On the usual checks (such as the metal detector and belongings scanner), she is stopped by a security guard who finds a small object in the shoulder bag which she is carrying.

Finding nothing, the security guard takes her into a private room where she performs a strip-search. Finding nothing, Jade is allowed to go on her way. She is humiliated by the experience.

8. a) Should Jade decide to challenge the legality of the strip-search, which act of law would she be engaged under the Human Rights Act 1998?
b) Explain the process under which Jade may be able to take action against the security guard on specific grounds upon which she would claim that there was a breach of the Human Rights Act 1998.
c) Should the court not find in her favour, explain the appeal process which she would go through.

SECTION C

9. Discuss the principle of entrenchment, and how it impacts or affects parliamentary sovereignty and the authority of the courts as regards the Human Rights Act 1998.

EXTENSION

10. Discuss potential reforms of human rights and their impact on the future of the Human Rights Act 1998.

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3. Key provisions of the European Convention on Human Rights

Topic Test 2.1: Article 5 – The right to liberty

SECTION A

1. Explain the meaning of the term 'liberty'. Include a case to reinforce your answer.
2. What was the importance of the decision in *Engel v Netherlands (1976)*?
3. Explain the meaning of the term 'deprivation of liberty'. Use case law to reinforce your answer.
4. Deprivation of liberty must follow a prescribed procedure. What does this mean?
5. Describe three exceptions as to when the deprivation of liberty is permitted.
6. Explain the meaning of the terms 'prompt reasons given' and 'brought promptly before a judge'.
7. Explain the meaning of Article 5(4) and Article 5(5).

SECTION B

Adam and his friend Liz decided to go to watch a demonstration in London, organised by 'Stop the War' and 'Human Rights'. They found out that it was due to take place in Trafalgar Square one Saturday morning. They travelled to London by train and arrived in Trafalgar Square just as the demonstration was starting. They stayed for a while and both Adam and Liz joined the crowd.

Within the space of the next half hour or so, the crowd swelled to several hundred people. Some of the people began chanting and shouting at police officers present at the scene, and as a result the police officers at the scene decided to surround the protesters and not let them go. This continued for about 15 minutes. The crowd were allowed to disperse. The police then presented their evidence to the Crown Prosecution Service, who decided to prosecute for various criminal offences.

8. a) Explain four factors which a court will consider when deciding whether the right to liberty (Article 5) has been violated.
b) Explain whether the police actions were lawful. Use case law to reinforce your answer.

SECTION C

9. Discuss Control Orders and Terrorism Prevention and Investigation Measures. How are they made as to whether they are lawful, even though they are not within the scope of Article 5?

EXTENSION

10. Evaluate how well Article 5 protects the vulnerable as well as asylum seekers.

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Topic Test 2.2: Article 6 – The right to a fair trial

SECTION A

1. What is the main aim of Article 6?
2. When could a party agree to waive their right to a fair trial?
3. Describe the concept of 'equality of arms', using a case to illustrate your answer.
4. Explain the principle of 'representation' within the context of Article 6, using your answer.
5. Explain the term 'examination of witnesses'.
6. Identify two types of civil hearing which are not protected by Article 6.

SECTION B

Shakira has been arrested by the police on suspicion of shoplifting. English is not her first language. She is called for the interview. When interviewed at the police station with her solicitor present, she remains silent and does not answer to all questions put to her by the police.

Later on that day Shakira is charged with shoplifting (theft), although the charge sheet is not present. Her solicitor tells her that he is unable to provide any more legal advice and she is kept in custody to appear before the court. Shakira does not understand the charge, and is kept in custody to appear before the court.

Shakira appears at court the next morning where an interpreter is provided for her. She is questioned in court. At the end of the prosecution evidence she is found guilty by the magistrates.

7.
 - a) What is the burden of proof in a criminal case?
 - b) Can Shakira be compelled to answer questions at the police station and what is the potential effect of her silence?
 - c) What rights does Shakira have in respect of Article 6, and have any of them been breached?

SECTION C

8. Discuss how the following three key elements of Article 6 are defined: independent and impartial tribunals; public hearings; criminal charges.

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Topic Test 2.3: Article 8 – The right to respect for family life

SECTION A

1. Explain what 'private life' means within Article 8.
2. Explain what 'family life' means within Article 8.
3. Explain what 'home' means within Article 8.
4. State what 'correspondence' means within Article 8.
5. Describe the meaning of the term 'qualified right' in respect of Article 8.
6. What principle was established in the case of *Bensaid v UK (2001)*?

SECTION B

Pietre and Sara live in the UK and are the parents of a two-year-old child, Jake. The state has decided to adopt Jake and have now put him up for adoption and have told Pietre and Sara that once the child is adopted, they will no longer have any access to Jake.

While conducting enquiries into the adoption, the state finds out that Sara is in the country of origin and sent to the country where she had been immediately before arriving in the UK.

7. a) Has the state violated Pietre and Sara's rights under Article 8 in denying Jake to them?
b) Has the state breached Article 8 in removing Sara from the UK?

SECTION C

8. Discuss the extent of the restrictions permitted by the European Convention on the interception of communications.

EXTENSION

9. Discuss the effect of Article 8 on celebrities, and environmental issues.
10. Discuss the areas of technology and surveillance and how Article 8 impacts them.

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Topic Test 2.4: Article 10 – the right to freedom

SECTION A

1. Define the meaning of the term 'freedom to hold opinions'.
2. Describe the meaning of the term 'freedom to impart information and ideas'.
3. Explain the meaning of the term 'freedom to receive information and ideas'.
4. Explain the effect of Article 10 on access to the Internet. Use relevant case law.

SECTION B

Bob Smith works for a national newspaper and writes specialist articles in relation to banking. He receives some information from a friend who works for the Low Cost Finance Institution. The information relates to the company's financial affairs.

Bob decides that he wants to publish the information, but before he can do so, the Low Cost Finance Institution finds out that he has received the information. The company obtains a court order to make Bob disclose the information. Bob Smith is seeking a court decision as to whether he has to comply with this order.

A few weeks later Bob finds out that an MP has been convicted of a serious offence in relation to financial fraud. He decides to publish the story. He asks his editor to ask advice as to whether he would be permitted to publish the story.

5. a) In relation to the disclosure of the source, what are the considerations for the court likely to decide in these circumstances?
b) In relation to Bob wanting to publish the story about the MP, what are the considerations for the court likely to decide in these circumstances?

SECTION C

6. Discuss the criteria which have to be fulfilled in order to lawfully restrict the right to freedom of expression under Article 10.

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Topic Test 2.5: Article 11 – Freedom of assembly

SECTION A

1. What are the two separate rights contained within Article 11?
2. What does 'freedom of peaceful assembly' mean within the context of Article 11?
3. What does 'freedom of association with others' mean within the context of Article 11?
4. What is the right relating to trade unions within the context of Article 11?

SECTION B

Simi is passionate about climate change and decides that she needs to do something about it. She starts an organisation called 'government take action against climate change'. A few weeks she recruits several hundred members from the local area, including some well-known local celebrities. She arranges for her and 20 of the membership to protest along a road near her home, on the day when the local MP will be out canvassing. On the day of the protest they all gather by the side of the road to see the MP's motorists to see. Simi sees that some of the protesters shake their fists when the local MP's car approaches.

After half an hour or so Simi realises that the group are not having much of an effect, so she decides to make her protest more effective by sitting in the road and blocking traffic. The police are called and they are all arrested.

Once Simi has been released from police custody she returns to work. Her employer learns of her protest and sacks her because of her association with the group.

5.
 - a) In relation to the protest by the side of the road, determine the lawfulness of the protest and explain the meaning of Article 11.
 - b) In relation to Simi and the protesters blocking the traffic, explain the lawfulness of the protest and explain the meaning of Article 11.
 - c) In relation to Simi being sacked, discuss whether the employer acted lawfully and explain the meaning of Article 11.

SECTION C

6. Discuss the circumstances under which the rights conferred under Article 11 can be lawfully restricted.

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4. Human rights and English law

Topic Test 3.1: Public order offences

SECTION A

1. Define the term 'breach of the peace'. Use case law or legislation to reinforce your answer.
2. Explain the offence of 'riot'.
3. What are the differences between 'violent disorder' and 'affray'? Use statute law to reinforce your answer.
4. Identify three of the police powers (citing the relevant sections) under the Public Order Act 1986 (POA 1986) in relation to illegal forms of assembly.
5. Identify three of the police powers (citing the relevant sections) under the Criminal Justice and Public Order Act 1994 (CJPOA 1994) in relation to illegal forms of assembly.
6. Explain the meaning of the term 'rave'.

SECTION B

Ben and Sophia live in a rented house, and feel that the local council housing rates are too high. Ben writes a letter to the council leader, Alice Wright, expressing his displeasure with the rates. After three weeks he receives no response. One morning he and Sophia decide to go and demonstrate outside the council offices where Alice works.

On arrival outside the council offices, Ben sees Alice in the foyer of the building. Ben shouts 'You don't come out then I'm coming in. You'll wish you had never ignored my letter'. Sophia joins in and holds a placard above her head. On the placard she has written 'I'm waiting for you to come out and listen to our concerns'.

Alice hurries away from the foyer and locks herself in her office, afraid of what might happen.

7.
 - a) In relation to Ben's actions at the council offices, identify and define what offence he might have committed.
 - b) Apply your knowledge of the law to determine whether or not Ben has committed the offence.
 - c) In relation to Sophia's actions at the council offices, identify and define what offence she may have committed.
 - d) Apply your knowledge of the law to determine whether or not Sophia has committed the offence.
 - e) Explain whether or not either Ben or Sophie may have a defence to the offence.

SECTION C

8. Discuss which two Articles of Human Rights are predominantly engaged when enforcement action is taken in relation to public order offences, and what the state would need to show to show that the offences can be lawfully prosecuted. Use case law to reinforce your answer.

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Topic Test 3.2: Police powers

SECTION A

1. Apart from Article 5, which other Article of Human Rights is predominantly about police powers?
2. Explain the powers of the police under s.60 of the Criminal Justice and Public Order Act 1994.
3. Explain the circumstances under which a police officer can arrest someone (v s.24 of the Police and Criminal Evidence Act (PACE)).
4. Describe the rights of an individual under s.28 PACE.
5. Describe the rights of an individual under s.56 and s.58 PACE 1984.
6. Describe the occasions when evidence could be excluded under s.76 and s.78 PACE 1984. Reinforce your answer.
7. Copy and complete: In relation to stop and search (ss.1–7 PACE 1984) a police officer may stop any person or a) _____ if they have b) _____ may find c) _____ or _____

SECTION B

Lisa is 25 years old and rents a flat near a jeweller's shop. She is short of money and needs to get some cash. She goes to the back of the shop about midnight armed with a large screwdriver to break through the small window.

A passer-by sees Lisa going around the back of the shop, and calls the police, who arrive. They ask for her name and address, they arrest her outside the shop with the screwdriver. She is taken to the station. She asks for a solicitor and for her father to be informed of her arrest. However, the police refuse her requests. Lisa is interviewed later that day without a solicitor. During the interview the police ask her about her presence at the back of the shop, and also why she had a screwdriver with her. Lisa remains silent throughout the interview.

Lisa is charged with attempted burglary. At trial she says that she had heard someone enter the shop in the past and went around the back to investigate. She also says that she found the screwdriver in case she needed to protect herself.

8. a) Assuming that the police had reasonable suspicion that Lisa was about to commit a crime, what must they also be able to prove to a court under s.24 PACE in order to stop and search her?
b) Explain the circumstances under which the police could deny Lisa her right to have a solicitor and her father informed. Apply your knowledge to the situation and explain whether this was lawful or not.
c) Explain who decides on Lisa's detention, and how long she could have been detained before being charged or released.
d) Identify the effect on Lisa's case when she remained silent during the police interview and the information mentioned at trial.

SECTION C

9. Discuss the impact of a suspect's detention and subsequent appearance at court under Article 5 (deprivation of liberty). Use case law to reinforce your answer.

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Topic Test 3.3: Interception of communications and data

SECTION A

1. Explain five of the key areas under the Investigatory Powers Act 2016 which relate to investigatory activities.
2. Explain what a breach of confidence is and the potential remedies available.
3. What must a claimant do in order to prove a breach of confidence?
4. What are the possible defences to a claim of breach of confidence?

SECTION B

Michael is a well-known member of an organised crime gang who make money by threatening violence in order to commit offences of robbery. The police receive information that Michael is planning a crime against a bank manager by making an appointment to see him at work and then threatening him unless the bank manager gives him £1 million in cash from the bank's vaults.

The police decide that they want to record mobile and landline telephone conversations between Michael and the gang he is working for, to commit the crime.

5.
 - a) Which Act of Parliament will the police consider using in order to obtain intercept conversations, and what types of behaviour are covered by the Act?
 - b) What criteria would have to be met for the police to obtain a warrant to intercept communications?
 - c) Explain whether the police are likely to be able to obtain such a warrant.

SECTION C

6. As regards the duty of confidentiality in relation to Article 8 (respect for private and family life) and Article 10 (freedom of expression) discuss how the courts decide which of these rights should prevail when there are competing demands. Refer to relevant case law to reinforce your arguments.

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Topic Test 3.4: Obscenity and harassment

SECTION A

1. Which two Acts of Parliament regulate the law on obscenity?
2. Describe when the common law offence of 'outraging public decency' can be reinforced by statute. Reinforce your answer.
3. What are the two criminal offences created by the Protection from Harassment Act 1997?
4. Explain how an offence under the Malicious Communications Act 1998 can be reinforced by statute.
5. What civil remedy can be provided in relation to the criminal offence of harassment? What are the consequences of breaching that remedy?

SECTION B

Olaf Berger is a famous playwright and a producer of plays with graphic content in them. One of his plays contains scenes where a real human corpse is laid out on the floor. The first scene starts with a corpse being dragged onto the stage and left there on its own for several minutes before the play continues.

On the opening night of the play the audience is full to capacity. After watching the opening scene, a woman in the audience is so disgusted that she leaves and immediately goes to the police to make a complaint.

6. a) Define the offences which Olaf Berger may have committed.
b) Apply the elements of the offences and conclude whether or not he is liable. Use case law to reinforce your answer.
c) Identify what defence he might be able to use, and whether this defence is available.

SECTION C

7. Discuss how the European Court of Human Rights uses key principles to justify whether to restrict an individual's rights under Article 10 (freedom of expression). Use case law to reinforce your answer.

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Topic Test 3.5: Tort of defamation and t

SECTION A

1. Explain what the two forms of defamation are, giving an example of each.
2. Explain which Article of Human Rights legislation is potentially engaged by the tort of defamation. Provide a description of that right.
3. Define the term 'trespass'. Use case law to reinforce your answer.
4. Explain three instances where trespass can be legally justified.

SECTION B

Samantha is the editor of *The Daily News*, a national newspaper. She finds out some information about one of the local MPs, Will Barker, who is a keen road safety campaigner. The informant recently been disqualified from driving having been caught speeding and without a valid licence. The matter had been kept quiet because Mr Barker had pleaded guilty by post to the offence and the penalty.

Samantha publishes the news item on the front page of the newspaper's next edition, with the informant's name. Samantha also puts a personal view in her regular news column in the same edition. She writes that Mr Barker is a criminal who should be ashamed of himself by setting such a bad example, and that he is not a good role model for drivers.

Mr Barker is also part-owner of a car dealership.

5.
 - a) Explain what Mr Barker would have to show in order to successfully claim defamation.
 - b) Apply your knowledge in deciding whether Mr Barker is likely to be successful.
 - c) Identify the defences which are available in respect of the tort you have identified. Use your knowledge to the circumstances to conclude whether Samantha is likely to be successful in defending herself.

SECTION C

6. Discuss how statutory law enables the right under Article 11 of the Human Rights Act (the right to peaceful assembly and freedom of association) to be restricted as regards the powers of the relevant police powers.

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5. Enforcement of human rights

Topic Test 4.1: Role of domestic courts and the process

SECTION A

1. What was the position of the domestic courts before the year 2000 in relation to human rights?
2. How have the domestic courts been affected since the year 2000 in relation to human rights?
3. Explain what judicial review is and which court deals with it.
4. Identify the procedures the court will follow when dealing with a case of judicial review.
5. What remedies can a court give when dealing with a case brought by way of judicial review?

SECTION B

The government minister for agriculture wants to introduce a new regulation by way of a statutory instrument to change the way in which potatoes are grown, stored and packaged before sale. The reason for this is about a newly discovered type of bacteria which threatens to get into the food chain of the country.

The minister circulates the details of the changes to the Potato Growers Association (PGA) which represents farmers and potato growers throughout the country – and explains that the changes are necessary.

The PGA think that the changes will put the prices of potatoes up to a level where profits will be too low.

6. a) Explain whether the PGA can challenge the new regulations by way of judicial review in the courts or in any other way. Include relevant time limits in your answer.
b) Explain the grounds upon which any claim of judicial review can be made. Use your knowledge to reinforce your answer.
c) Apply your knowledge to decide whether and on which grounds the PGA can challenge the new regulations.

SECTION C

7. Discuss how the domestic courts can deal with domestic law which is incompatible with the European Convention on Human Rights. Use case law in support of your answer.

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Topic Test 4.2: The role of the European Court of Human Rights

SECTION A

1. Explain the key functions of the European Court of Human Rights.
2. Explain the meaning of the term 'positive obligations' in relation to the functions of the European Court of Human Rights.
3. Detail the points introduced in Protocol 14 relating to the European Court of Human Rights.

SECTION B

Alysha runs a successful and profitable car dealership business. As an investment opportunity, she invests a year's worth of business profits on government bonds which guarantee to provide her with a return. The scheme is run by the Government Bond Department (GBD).

One day Alysha receives a letter from the GBD. They inform her that her personal details, including her national insurance number, her date of birth, bank details and passcodes have all been sent to an unauthorised person. They further inform her that as a result all of her money and the interest earned thus far – a total of £50,000 – has been taken from the account.

The GBD will not refund her money.

Alysha takes the case through the UK courts to enforce her human rights against the GBD. In the end of the incident the UK courts decide that the GBD does not need to provide her with compensation as it is not considered to be a 'public body'. She is not given leave to appeal.

Alysha speaks to a human rights lawyer who informs her that no domestic court or the European Court of Human Rights have ever dealt with a case such as this.

4. a) Which human right is Alysha claiming has been breached. Be as specific as possible.
b) Define the criteria which Alysha would have to fulfil in order to have her case found admissible before the European Court of Human Rights. Refer to the relevant articles of the European Convention on Human Rights.
c) Apply your knowledge of the admissibility criteria to decide whether the case is admissible to the ECtHR, and whether it is likely to be successful. Refer to relevant case law.

SECTION C

5. Discuss the effectiveness of the United Kingdom in enforcing human rights. Refer to the role of the European Court of Human Rights in your answer, as well as relevant case law.

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Mark Scheme

Section C: 10-mark essay questions

Knowledge (4), Analysis (6)		
	0 marks	No response or no response worthy of credit
Level 1	1–2	Limited analysis of legal concepts or issues. The response has limited discussion of key points. Discussion of key points is minimal.
Level 2	3–5	Basic analysis/evaluation of legal concepts or issues. The response addresses the question. Some of the key points are discussed and partially developed.
Level 3	6–7	Good analysis/evaluation of a range of legal concepts and issues. The response addresses the question. Most of the key points are well discussed and well developed.
Level 4	8–10	Excellent analysis/evaluation of a wide range of legal concepts and issues. The response addresses the question and has a sustained focus on the question. The key points are fully developed.

Topic Test 1.1

Section A

- Two of the following:
 - Human rights are fundamental rights given to a human being.
 - Human rights apply to everyone regardless of personal characteristics.
 - Human rights apply everywhere and in the same way.
- Two of the following:
 - This is the idea that the rights of the majority are recognised.
 - The rights of different groups are recognised (whether those differences arise from political views).
 - The state does not impose a particular belief system on society as a whole.
- The following three:
 - This is a method of interpretation adopted by the European Court of Human Rights.
 - Considers factors such as whether there were alternative measures which could have been taken.
 - Factors such as whether safeguards were inadequate can be taken into account.
- The following three:
 - It is a constitutional theory explaining how power should be divided so that no one has absolute power.
 - The three branches of the state are the legislature, the executive, and the judiciary.
 - The judiciary is more independent from Parliament since the Constitutional Reform Act of the Supreme Court (2009).
- Four of the following:
 - The law must be accessible and clear.
 - Questions of liability must be decided by the law – not by the use of discretion.
 - Laws apply equally to all.
 - Ministers must exercise powers fairly and not exceed those powers.
 - The law must protect human rights.
- Two of the following:
 - Rights are indivisible and are interrelated.
 - These include the right to freedom of expression and the right to freedom of assembly.
 - Rights cannot be taken away indefinitely or permanently without lawful authority.
- Both of the following:
 - They must consider whether proposed legislation is compatible with human rights.
 - They must make a statement of compatibility.
- There is a certain way in which human beings ought to be treated.

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Section B

9. a) The following two points: The principle is the 'margin of appreciation'. It was developed in *Handyside v United Kingdom (1976)* (alternative and relevant cases are acceptable).
- b) The principle allows member states to make determinations because they are best placed to make decisions based on their knowledge of local issues. The margin of appreciation is a factor to be considered. There is less room for a margin of appreciation in relation to absolute rights, such as the prohibition of torture (Article 3)). There is also less room for manoeuvre if the rights are fundamental, such as the right to liberty (Article 5) or the right to a fair trial (Article 6).
- c) The state has purported to pursue a legitimate aim within 'freedom of expression' by banning the play with the state's responsibility to ensure peaceful enjoyment of that right. A court would consider whether the banning of the play was necessary, bearing in mind the demands of tolerance in a democratic society – as in *Handyside v UK (1976)*.

The court may decide that there was a pressing social need for the preservation of public order. Factors that will be taken into account will include whether the Muslim faith is a majority religion in the country, whether it was intended to be performed, and whether it was sufficient to cause offence in the context of the *Institute v Austria (1994)*.

s.12(4) HRA 1998 states that special importance should be attached to artistic expression where it is available to the public. The margin of appreciation in artistic expression is a factor to be considered. Actions may be legitimate on moral grounds.

Section C

10. Human rights belong to everyone. They do not have to be earned, they are given by the state. The state (through public bodies) has an obligation to uphold those rights, and to consider the circumstances if it interferes with those rights. Rights are universal in nature and can be absolute (Article 3 – prohibition of torture), qualified (Article 10 – freedom of expression) or limited (Article 6 – right to a fair trial). Rights cannot be changed, although they can be interpreted in the light of particular circumstances (margin of appreciation). (max. 4 marks)

Liberties are granted by states and can also be granted to certain sections of society or to certain professions. The extent of the liberty is often restricted by the particular law which granted the liberty. For example, this is found in the Employment Act 1989 (ss. 11 & 12). Here, turban-wearing Sikhs are granted protection at a workplace. It is also noteworthy that liberties can be changed through a variety of means, that be an Act of Parliament, delegated legislation, or decisions made by the courts (e.g. *Belmarsh v Secretary of State for the Home Department (2009)*).

Although the differences are therefore rather wide-ranging, the similarities are that both rights and liberties are granted by the state and can also be relied upon by individuals when exercising those rights or liberties. The key difference in deciding whether something is a right or a liberty is what is being affected, and who is affected.

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Topic Test 1.2

Section A

1. The following two:
 - It means that they are or they would be a victim of the unlawful act.
 - They must have been directly affected by the act of the public body.
2. The following two:
 - Core authorities (includes government departments – but not Parliament) and local authorities (e.g. residential care organisations).
 - The functions must be public in nature.
3. Two of the following:
 - Under s.2, a court or tribunal must take into account past judgments, decisions, and opinions of the ECtHR.
 - If the court is faced with a conflicting domestic precedent and a decision of the ECtHR, it must follow the domestic precedent and refer the case to appeal.
 - Under s.3, primary and subordinate legislation is to be interpreted and given effect so far as is compatible with Convention rights, 'so far as is possible'.
4. Three of the following:
 - Its main aim was to prevent the repetition of the wars during the first half of the 20th century.
 - The Council of Europe set out a proposal to promote and protect human rights.
 - The European Convention on Human Rights (ECHR) was drafted in 1950 by the Council of Europe.
 - The European Court of Human Rights was established by the ECHR.
5. The following three: This is where a court finds that a piece of legislation is not in accordance with the Convention. The courts cannot declare the legislation void, although it is then up to Parliament whether to repeal or amend the legislation – or even to ignore the court. Case examples include *Belcher v Minister of Education* (1967), *Belinger v Bellinger* (2003), and *A v Secretary of State for the Home Department* (2005) (one of the grounds for judicial review).
6. The following three: The court can grant damages (compensation) or even an injunction (an order by the court to stop doing something, or on occasion to do something). Damages are 'satisfaction', e.g. *Commissioner of Police for the Metropolis v DSD* (2015). An example of an injunction is *Sunday Times v United Kingdom* (1979).
7. The following four: The Human Rights Act 1998 came into force in October 2000. An individual who has been a victim of a violation of one or more rights by a public body can now argue any of their rights in a domestic court. In *Secretary of State for the Home Department* (2002) – decided by the House of Lords. Before the HRA was passed into domestic law, an individual could only take an action through the European Court of Human Rights.

Section B

6. a) Article 8 (right to respect for private or family life) may potentially have been engaged. Credit can be given if the student mentions Article 3 – inhuman or degrading treatment.
- b) Jade would be able to enforce her human rights in a domestic court. She must bring her claim within six months of the incident, or three months if it is an application for judicial review. The action against the security guard should have respected her right to privacy as the guard's duties are public. The grounds for judicial review are either because they were a core authority, or because they were a hybrid public authority. The specific grounds are that the strip-search was disproportionate in relation to the need for preventing crime and disorder.
- c) Jade could appeal from the county court to a higher court. This would be a court of appeal. An appeal could be heard by the High Court in certain circumstances. It could also be heard by the Court of Appeal. Subsequently it could possibly be heard by the Supreme Court. This would be a final appeal. She could potentially take her case to the European Court of Human Rights. That would be a final appeal as to whether her rights have been infringed.

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Section C

7. Entrenchment of an Act of Parliament is a process by which it would be difficult to repeal. Because of the principle of parliamentary sovereignty, no one parliament can bind another. The Human Rights Act 1998 is not entrenched. Indeed, there was no provision in the Act for its repeal. The House of Commons and the House of Lords have the power to amend or repeal it. The Human Rights Act is, therefore, not entrenched. A position could be reached if Parliament decided that the Act could only be repealed if a two-thirds majority in both Houses allowed this to occur. Devolution settlements with Scotland, Wales and Northern Ireland which prevent any of the devolved powers from modifying human rights or carrying out duties with such rights. (max. 5 marks)

However, a repeal of the Act is extremely unlikely as if this happened, Parliament would lose its ability to protect human rights. On the other hand, it does leave scope for repeal or amendment. Parliament decide to enact its own Bill of Rights. If this were to happen, then Parliament would be able to override decisions of the European Court of Human Rights. The Supreme Court would then be able to interpret rights in the UK. Critics of the system suggest that a Bill of Rights would be a positive step towards protecting rights, but still be able to draw on decisions of the European Court of Human Rights (which the UK is bound by them). (max. 5 marks)

Extension Question

8. The Human Rights Act makes human rights more accessible. Critics consider that a UK Bill of Rights would be a better alternative. As far back as 2012, the then government appointed a commission to look at the possibility of a new Bill but could not decide on the exact details. They recommended a new Bill but looked at again after the Brexit referendum. There were strong arguments that the UK and internationally would be better served by withdrawal from the Convention. It was argued that the Convention was interpreted by judges in a balanced way, reflecting British legal traditions. Furthermore, it was argued that it was in the ideal position to do this.

Arguments for leaving human rights legislation as it is include the fact that our own Bill of Rights is based on existing human rights principles, but that the UK, and its courts, would then not have to be compatible with European human rights and would not be influenced by decisions of the European Court of Human Rights. Some critics of the current system say that the European Convention on Human Rights is too influenced by lawyers from other countries. A counterargument is that British legal minds also have created the Convention. However, a UK Bill of Rights would be an independent piece of legislation with its own needs and ideals. It would strengthen domestic institutions and the primacy of the principle of parliamentary supremacy.

Any Bill of Rights would also affect the devolution arrangements as the respective laws would need to agree to such a Bill unless the devolution arrangements themselves were changed.

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Topic Test 2.1

Section A

1. The following two:
 - Not being under the direct physical control of another person.
 - A relevant case, e.g. *Guzzardi v Italy (1981)*; *Cheshire West and Chester Council v P*
2. 'Liberty' means individual physical liberty, not personal autonomy as such.
3. Three of the following:
 - A person can be deprived of their liberty even if their departure is not prevented by a barrier.
 - Even though they may be allowed extensive social and other contact with the outside world.
 - There is a difference between being deprived of one's liberty and being restricted in one's liberty.
 - Case, e.g. *Austin v Commissioner of Police of the Metropolis (2009)*; *Guzzardi v Italy (1981)*
4. It must be carried out by someone with the authority to do so and not be arbitrary.
5. Three of the following (contained within Article 5(1)):
 - Detention after conviction.
 - The lawful arrest or detention of individuals who breach court orders.
 - The lawful arrest or detention of those suspected of committing an offence.
 - Detention of a minor for educational supervision (or for bringing them before a court).
 - The lawful detention of a person to prevent the spread of disease, or if they are alcoholic, a drug addict or a vagrant (one of these will suffice).
 - To stop a person unlawfully entering the country (or a person subject to deportation).
6. The following four:
 - Prompt reasons given is given meaning by virtue of the Police and Criminal Evidence Act 1984 that a person to be told why they have been arrested.

Brought promptly before a judicial officer means:

 - The official must not be involved in the investigation.
 - The longer the delay, the more likely it is that it will not be prompt.
 - If bail is denied then a court should give reasons as to why.
7. Article 5(4) states:

Two of the following:

 - Everyone who is deprived of his liberty can bring proceedings to have the lawfulness of his detention determined by a court.
 - Where a person is in continued detention then it must be periodically reviewed.

Article 5(5) states:

 - Everyone who has been the victim of unlawful arrest or detention has the right to compensation.
 - The right is mandatory.

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Section B

8. a) Four of the following:
- How long the containment was for
 - Whether the actions of the police were proportionate in relation to potential
 - The imminence of a breach of the peace
 - Whether any other police tactics had been considered beforehand
 - Whether any offences had already been committed

- b) There is no evidence that any crimes had been committed prior to the police tactics. Case – *Mengesha v Metropolitan Police Commissioner (2013)*.

The imminence of any perceived breach of the peace has to be taken into account. There is no evidence of any breach of the peace as chanting and shouting on its own may not constitute a concern for an imminent breach of the peace. Case – *R v Chief Constable of the Metropolitan Police (2012)*.

Even though the containment was for several hours, this on its own is not sufficient to constitute a deprivation of liberty. Case – *Austin v Commissioner of Police of the Met (2009)*.

There is no evidence of the police tactics being used as a last resort.

Although the police tactics do not come within the permitted restrictions under Article 5, the factors are weighed up and it is decided that the police action was done in good faith.

In conclusion, the police actions would appear to be unjustified on the information available.

Section C

9. Control orders and TPIMs. Control orders were used up until 2012 and were then replaced by Investigation Measures (TPIMs) which can be placed on a person who is suspected of committing a serious offence. They can include a wide range of conditions such as electronic tagging and curfew. Conditions can also include limited or no access to the Internet. Foreign travel restrictions are controversial measures as the person has not been convicted of any offence. They can be renewed.

The extent of the restrictions will help to decide whether there is a deprivation of liberty. In *Secretary of State for the Home Department v JJ (2007)* an 18-hour curfew and severe restrictions on movement were considered to be a deprivation of liberty.

In contrast to this, in *Secretary of State for the Home Department v E (2007)* a 12-hour curfew was not considered to be a deprivation of liberty under Article 5.

Credit can be given for any other relevant issues/cases.

Extension

10. • There is an issue as to whether those who have an unsound mind should be treated differently. The Supreme Court has held that those with a mental disability have the same rights as others. Case, e.g. *Cheshire West and Chester Council v P (2014)*. (3 marks)
- As regards asylum seekers, they can be detained as long as it is proportionate and necessary for dealing with the claim. Whether there is a deprivation of liberty does, however, depend on the facts. Case, e.g. *Amuur v France (1996)*. (max. 3 marks)

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Topic Test 2.2

Section A

1. To protect citizens against abuse of power by the state / public authorities.
2. When they agree to settle a dispute by means of Alternative Dispute Resolution (ADR).
3. Three of the following (including a case):
 - Both parties should have equal treatment and equal rights in the trial process.
 - All relevant evidence should be disclosed.
 - Disclosure is not absolute and can be restricted under certain circumstances; for example, for national security.
 - Case example: *Steel and Morris v United Kingdom (2005)*; *Borgers v Belgium (1990)*.
4. Four of the following (a case must be included):
 - Everyone has the right to legal representation at every stage of an investigation.
 - If representation is denied then it could be excluded by s.78 PACE 1984 (discretionary exclusion of evidence if it was unfairly obtained).
 - The denial of legal aid (funded or free legal advice) is more likely to be a breach in a criminal case, as opposed to a civil case.
 - An accused has the freedom to choose their own lawyer.
 - There is a restriction as to whether a person is granted legal aid. The restriction is set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA).
 - LASPOA details tests such as the means test and the merits test.
 - Case example: *Benham v UK (1996)*.
5. Three of the following:
 - Article 6 contains the right to examine witnesses.
 - Our legal system requires witnesses to give their evidence in court.
 - No conviction should be based on the testimony of anonymous witnesses.
 - Evidence should be capable of being tested otherwise it would amount to a violation of Article 6.
 - In limited circumstances evidence can be given by video link or without the witness being present.
6. Two of the following:
 - Civil tax proceedings
 - Civil immigration hearings
 - Civil proceedings relating to school exclusions

Section B:

7. a) Two of the following:
 - It is not for the defendant to prove their innocence, but for the prosecution to prove their case.
 - In a criminal case this must be proven to the standard of 'beyond reasonable doubt' (not 'certainty').
 - Case: e.g. *Woolmington v DPP (1935)*.
- b) An accused cannot be compelled to answer questions (Article 6(2)). There is a presumption of innocence. The court cannot draw adverse inferences from a refusal to answer questions. The Criminal Justice and Public Order Act 1994 restricts the application of the right to silence. It allows adverse inferences to be drawn in certain circumstances, but not always, e.g. *Condron v UK (2001)*. An adverse inference can only be drawn if the accused has not mentioned a fact before charge which she relies on in her defence. Under s.35 CJPOA 1994, the court could draw inferences if Shakira chooses not to answer questions. *Murray v UK (1996)* held that the right to silence is not an absolute right.
- c) Article 6(3) contains several rights. Shakira should be informed of the charge(s) and the rights she has. This has not been followed in Shakira's case as no interpreter was present when she was interviewed. She has not had adequate time to prepare her defence, which includes access to a lawyer. This right has been breached. A lawyer did not represent her after the interview or at the trial. She also has the right to be present at the trial, person or with a lawyer. Again, this right has been breached. She has the right to attend the trial, and this right is complied with in her circumstances. *Italy (2006)*.

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Section C

8. Independent and impartial tribunals: As in *Findlay v United Kingdom (1997)*, several factors are considered to determine whether a tribunal is independent and impartial, e.g. how judges are appointed, how independent they are in decision-making, and whether it appears independent. The appearance of independence is an important factor. Case, e.g. *Scanfuture UK v Secretary of State for Trade and Industry*. A tribunal was found not to be independent and impartial. This was because the Secretary of State was a party to the proceedings. (max. 4 marks)

Public hearings: The right to a public hearing is not an absolute right. Case – *B and P v United Kingdom* in relation to private hearings in respect of residency orders under the Children Act 1989. Reasons why the public can be excluded are protection of morals / public order / national security / protection of the privacy of the parties. Lastly, where it is in the interests of justice to do so.

Criminal charges: A process should be regarded as a criminal charge dependent on the nature of the action, the nature of the offence and whether there is a punishment for it. The principle was established in *Netherlands (1976)*. Antisocial behaviour orders are not criminal offences. Case authority: *Chief Constable of the North Wales Police v Chief Constable of the Merseyside Police (2002)*. (max. 2 marks)

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Topic Test 2.3

Section A:

1. Four of the following:
 - In *Peck v UK (2002)* the term was not considered to be exhaustive
 - It can include the physical integrity of a person
 - The psychological integrity of a person
 - Sex life
 - Gender
 - Personal data
 - Reputation
 - Names
 - Mental health
2. Five of the following:
 - It includes children/grandchildren
 - It can depend on the closeness of the ties
 - It includes cohabiting heterosexual couples
 - It includes foster relationships
 - It includes same-sex relationships
 - It includes ongoing ties after a divorce
 - A relevant case, e.g. *Kroon v Netherlands (1995)*; *Gaskin v United Kingdom (1989)*
3. Three of the following:
 - A person must be allowed to have access to their home.
 - A person must have the right to live in their home.
 - There is no guarantee of a right to a home.
 - A relevant case, e.g. *Novoseletsky v Ukraine (2005)*; *Khatun v United Kingdom (2001)*
4. Two of the following:
It includes:
 - Letters
 - Telephone calls
 - Faxes or emails
 - Those in prison
 - A relevant case, e.g. *Golder v UK (1975)*.
5. Three of the following:
 - Qualified rights may be limited by the state.
 - Any limitation must be in accordance with the law, and
 - Meet a legitimate aim, and
 - Be necessary in a democratic society.
 - It must also be in the interests of national security, or public safety, or economic well-being, or the prevention of disorder or crime, or
 - The protection of health or morals, or the rights and freedoms of others.
6. It encompasses both physical and mental well-being.

Section B

7. a) The actions of the state appear to engage Article 8, specifically the right to family life. It has been allowed before Jake was adopted. Once Jake is adopted then there would be a breach of Article 8 as contact was subsequently not allowed. Refusing contact could, however, be acceptable in certain circumstances. Case: e.g. *Johansen v Norway (1996)*.
- b) This would appear to be lawful providing there is a domestic law containing provisions for the protection of the child who is illegally in the UK. Application of the law would not violate Article 8 (right to family life) as there is any reason as to why Pietre and Sara could not continue their relationship or contact with their child. It would be a breach of Article 8 if there were insurmountable obstacles in the way. In this case, it is allowed to stay in order to comply with Article 8. Case: e.g. *Agyarko and Ikugbo v United Kingdom (2015)*.

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Section C

8. The Investigatory Powers Act 2016 allows the state to intercept communications under the Code of Practice in relation to the Act. It provides guidance on the procedures to be followed for the use of powers. Interception warrants can be used once the Secretary of State and a judge have authorised them. The Investigatory Powers Commissioner who oversees how the powers are used. *Tele2* and *Ministry of Defence* have shaped the law in this area. It said that where national laws allow for data retention, that retention is justified for investigating serious crime. The case also stated that retained data must stay within the UK and that retention of data must only be for what is strictly necessary. *Big Brother Watch* and *Campbell* have challenged the law. Although states are given a wide margin of appreciation as regards Article 8, this case found that the law violated Article 8.

Extension

9. Five of the following:
- Celebrities and those in the public eye are more likely to benefit from the protection of Article 8.
 - Critics suggest this means that there is a danger that investigative journalism will be stifled by action over a breach of privacy.
 - Case: e.g. *Campbell v MGN (2004)*; *Sir Cliff Richard v BBC (2018)*; *Douglas v Hello (2006)*.
 - Article 8 is not designed to provide a general protection of the environment.
 - However, where a public authority has not regulated or enforced the law then it may be found to violate Article 8.
 - As climate change is more relevant now than it used to be, claims of breaches of Article 8 are more likely.
 - Case: e.g. *Kryatakos v Greece (2005)*; *Lopez Ostra v Spain (1994)*; *Hatton v UK (2003)*.
10. As the development and use of technology continues, Article 8 is likely to have more relevance. Automatic Facial Recognition (AFR) has been challenged on the grounds that it was a breach of Article 8. The court decided that the interests of the individual needed to be balanced with the wider interests of the state. The outcome of the challenge is that the use of AFR is permitted, albeit under a revised policy which must be put in place, e.g. searching for wanted people / missing persons / people of interest for national security.

Case: *R v CC South Wales Police (2020)*

The retention of DNA has also been challenged under the provisions of Article 8. This case concerned the retention of photographs of convicted people. This could perhaps be regarded as more controversial. The UK is one of the few jurisdictions in the EU area with the policy of retaining DNA. The court found that there is no provision for allowing a person to challenge the retention policy. Also, DNA is retained for a long time and the seriousness of the offence. The Protection of Freedoms Act 2012 was passed to set limits on the retention of DNA.

Case, e.g. *S and Marper v UK (2008)*; *Gaughran v UK (2020)*.

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Topic Test 2.4

Section A

1. Two of the following:
 - States must not try to indoctrinate their citizens.
 - An individual is free to hold opinions.
 - An individual cannot be forced to communicate their opinions to others.
2. Three of the following:
 - The ability of individuals to take part in political debate and free elections
 - Commercial expression
 - Freedom of the press
 - Freedom to express political and public expression
 - Freedom of artistic expression
3. The following two:
 - The right to gather/seek information through lawful resources.
 - The right to access recorded information held by public sector organisations.
4. Four of the following:
 - The European Court of Human Rights has stated that restrictions of materials or hinder the freedom of the press.
 - Case, e.g. *Editorial Board of Pravoye Delo and Shtekel v Ukraine (2011)*.
 - The complete blocking of access to specific sites can breach the right.
 - Case, e.g. *Yildirim v Turkey (2012)*.
 - Consideration should be given to the restricting of certain sites on the Internet if they contain defamatory or other unlawful material.
 - Case, e.g. *Delfi AS v Estonia (2015)*.

Section B

5. a) A court has to consider whether the freedom of the press and the protection of privacy are protected so that journalistic articles can be published unhindered. A court is likely to find that the disclosure of a confidential source in a journalistic context would be a violation of the European Convention on Human Rights (ECHR). To decide otherwise might seriously undermine the freedom of the press. Case, e.g. *Goodwin v United Kingdom (1996)*.
- b) There is a need to consider the balance between Article 8 (the right to respect for private and family life) and Article 10 (the right to freedom of expression). In considering these competing rights the following criteria need to be weighed:
 - Whether the information contributes to a debate of general interest.
 - The notoriety of the subject concerned and the information in the report.
 - The prior conduct of the person.
 - How the information was obtained and its accuracy.
 - The consequences of publishing the information.
 - The severity of the sanction imposed.
 - A relevant case, e.g. *Axel Springer AG v Germany (2012)*.

Section C

6. There are three criteria under which Article 10 can be interfered with. These are conditions that must be fulfilled.

The interference must be prescribed by law. This means that there must be a law, which allows the interference to occur. Case, e.g. *Sunday Times v United Kingdom (1979)*.

There must also be a legitimate aim. This could be:

- in the interests of national security (e.g. *Observer and Guardian v UK (1991)*).
- to protect territorial integrity / public safety (e.g. *Surek v Turkey (1991)*).
- for the prevention of crime/disorder (e.g. Serious Crime Act 2015).
- for the protection of health/morals (e.g. *Open Door and Dublin Well Woman v Ireland (1992)*).
- for the protection of the reputation/rights of others (e.g. *Twentieth Century Fox v British Film Institute (1992)*).
- for preventing the disclosure of information received in confidence (e.g. *Guja v United Kingdom (2009)*).
- if it is in order to maintain the authority and impartiality of the judiciary (e.g. *A v United Kingdom (2009)*).

Finally, the restriction must be necessary in a democratic society. This means that the interference must be proportionate to the aim. It is also interpreted as meaning that there must be a pressing social need (case: *Observer and Guardian v United Kingdom (1995)*).

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Topic Test 2.5

Section A

1. The following two:
 - The right to meet and associate with others.
 - A duty on the state to take positive measures to ensure effective protection of
2. Any three of the following:
It includes:
 - The organisation of and participation in marches or processions.
 - The organisation of and participation in static assemblies / sit-ins.
 - Involvement in both public and private events.
 - The events could be formal or informal.
 - There is a (an implied) right to choose the time/place/manner/conduct of the a
3. Three of the following:
It includes:
 - the right to form an association or a trade union.
 - The right to not belong to an association.
 - the right to pursue a common cause or interest.
 - The right to belong to a political party.
4. The following two:
 - The right to form a trade union.
 - The right to join a trade union.

Section B

5. a) Simi and her supporters have the right to peaceful assembly under Article 11(1) and associate with others. It is a qualified right so there is no complete protection. Peaceful assembly by the side of the road is within the bounds of Article 11. In this instance, Simi and her supporters have exercised their right to choose the time, place, manner and conduct. Case, e.g. *Saska v Hungary (2012)* or *DPP v Jones (1999)*. There is no interference with the right to peaceful assembly or private property. Case, e.g. *Appleby and Others v The United Kingdom (2003)*. It is unlikely that they could interfere with the Article 11 rights unless there was a proportionate need to be proportionate in their actions. This means balancing the rights of the individual with the rights of the community. Simi does not lose her protection from Article 11 just because some of her actions are not peaceful. Case, e.g. *Ezelin v France (1991)*; *Cisse v France (2002)*; *Faber v Hungary (2012)*.
- b) Where the purpose of an assembly is to cause disorder, then this is not protected under Article 11. Case, e.g. *Federal Republic of Germany (1989)* or *Protopapa v Turkey (2009)*. It is a question of whether disorder has been caused. Blocking the highway for short periods of time may still constitute disorder. In the circumstances the complete blocking of the road may constitute disorder, if it has caused. Case, e.g. *Caroline Lucas v UK (2003)*.
- c) Simi is protected under Article 11, 'freedom of association'. She has exercised the right to pursue a common cause/interest. Case, e.g. *National Union of Belgian Police v Belgium (1975)*; *McFadden v UK (2003)*. A political party has been held to be an association. The right to associate is not limited to political protests. Case, e.g. *Friend v UK (2009)*. Simi's right to associate is a qualified right. The state, which has a 'positive obligation' to protect the right. Case, e.g. *Redfearn v UK (2012)*. The employers' actions appear to have violated Simi's rights under Article 11.

Section C

6. Restrictions can occur within Article 11(2) as follows:
In the interests of national security / public safety. This can include counterterrorism measures. There is an overlap with Article 10, e.g. Terrorism Act 2000, Terrorism Act 2006, *Gloucestershire (2006)*.
For the prevention of disorder or crime. There is a wide margin of appreciation. Case, e.g. *Protopapa v Turkey (2009)*. Public Order Act 1986.
For the protection of health or morals. This could include marches to promote illegal acts. Case, e.g. *Obscene Publications Act 1959/1964*. Common law offence of outraging public decency.
For the protection of the rights and freedoms of others, e.g. Public Order Act 1986, and the Human Rights Act 1998 (which plans *inter alia* to introduce buffer zones around abortion clinics). Case, e.g. *Coventry v UK (2012)* or *Party v Moldova (2006)*.

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Topic Test 3.1

Section A

1. Three of the following:
 - It occurs when harm is done or likely to be done to a person.
 - Or to his property in his presence.
 - Or a person is in fear of being harmed through an assault or other disturbance.
 - Case, e.g. *R v Howell (1981)*, or statute, e.g. Justices of the Peace Act 1361.
2. Three of the following:
 - It comes within s.1 of the Public Order Act 1986 (POA 1986).
 - 12 or more persons must be present together.
 - They use or threaten unlawful violence.
 - They have a common purpose.
 - Their conduct is such that a person of reasonable firmness present at the scene would be concerned for his personal safety.
3. Two of the following:
 - Violent disorder comes within s.2 POA 1986, whereas affray comes within s.3 POA 1986.
 - Violent disorder requires three or more persons to be present together, whereas affray requires only two persons to be present.
 - Violent disorder does not require the use or threat of unlawful violence to be towards another person, whereas affray does.
 - Violent disorder can be committed against persons or property, whereas affray can only be committed against persons (s.8 POA 1986 – section/statute not needed).
4. Three of the following:
 - Advance (written) notice to be provided, under s.11 POA 1986.
 - Conditions can be imposed, under s.12 POA 1986.
 - Prohibitions can be imposed, under s.13 POA 1986.
 - Orders can be imposed on public assemblies, under s.14 POA 1986.
5. Three of the following:
 - Remove people attending a rave, under s.63 CJPOA 1994.
 - Powers to enter land and seize property, under s.64 CJPOA 1994.
 - Powers to stop persons proceeding to a rave, under s.65 CJPOA 1994.
 - Powers to remove persons committing or participating in aggravated trespass, under s.66 CJPOA 1994.
6. Two of the following:
 - It is a gathering on land in the open air.
 - There must be 20 or more people.
 - Amplified music is played during the night.
 - It is likely to cause serious distress to the local inhabitants.

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Section B

7. a) He cannot commit an offence of affray under s.3 because the threat he makes is not one that he has committed the offence of causing fear or provocation of violence. This is under s.3.

Under s.4 it must be proven that he intended to cause Alice harassment, alarm or distress by using threatening abusive or insulting words or behaviour, with intent to cause Alice to believe that violence would be used against her. Or to provoke the immediate use of unlawful violence. Alice must believe that such violence will be used or provoked.

The offence under s.4 is more appropriate than the offence under s.4A. s.4A carries a requirement of intention to cause a person to believe that immediate unlawful violence would be used against them.

- b) On the facts given, Ben intended by his words to cause harassment, alarm or distress to Alice. Alice believed as being threatening. The facts suggest that Ben intended Alice to believe that in the future violence would be used against her. Alternatively that Alice was likely to believe that violence would be used against her.

Therefore, Ben may be guilty of the offence under s.4.

- c) The offence of harassment, alarm or distress is the relevant offence. This comes under s.4. It occurs if a person uses threatening, abusive or insulting words or behaviour. Or distributes any writing, sign or visible representation which is threatening or abusive. Or causes harassment, alarm or distress thereby.

- d) Sophia appears to have used abusive/insulting words on the placard. She has displayed a visible representation which is abusive. It is within the sight/hearing of Alice. Alice is likely to believe that violence would be used against her, alarm/distress, and possibly harassment. Therefore, Sophia may be guilty of the offence under s.4.

- e) The offence under s.4 and s.5 carries a defence if the accused is in a dwelling and the words/behaviour would be seen by anyone outside the dwelling. An alternative defence is that his conduct was reasonable. Case, e.g. *Hammond v DPP (2004)*, or *Gough v DPP (2001)*.

On the facts given, neither Ben nor Sophia is likely to be able to use either of the defences.

The offence under s.5 carries an additional defence if the accused can show that there was any person within hearing or sight likely to be caused harassment, alarm or distress.

On the facts given, neither Ben nor Sophia is likely to be able to avail themselves of this defence.

Section C

8. One Article which is impacted by the enforcement of Public Order legislation is Article 10 – freedom of expression. Another one is Article 11 – freedom of assembly and association. Both of these are qualified rights. The state can interfere with them in certain situations.

The state will need to consider the proportionality of their actions. It will also consider whether the interference is necessary in a democratic society. The state will also have to show that the interference is justified. It also needs to show that it pursued one of the legitimate aims within the Articles.

Cases (max. 2 – 1 mark for each). For example:

Article 10: *Cengiz v Turkey (2019)*; *Bayev and Others v Russia (2017)*; *Stoll v Switzerland (2017)*.

Article 11: *Barankevich v Russia (2007)*; *Kudrevicius and Others v Lithuania (2015)*; *Vyerentsov v Ukraine (2013)*.

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Topic Test 3.2

Section A

1. The following two:
 - Article 6.
 - The right to a fair trial.
2. Five of the following:
 - A police officer of the rank of inspector can give an authorisation.
 - The authorisation can last for up to 24 hours.
 - A police officer of the rank of superintendent can continue the authorisation for a further 24 hours.
 - If they reasonably believe that incidents involving serious violence may take place.
 - Or an incident involving serious violence has taken place and a dangerous instrument in the incident is being carried.
 - Or that a dangerous instrument or an offensive weapon is being carried without lawful authority.
 - The powers enable a police officer to stop any pedestrian or vehicle.
 - The powers enable an officer to search for offensive weapons or dangerous instruments.
 - The officer does not need to have reasonable suspicion that such weapons or instruments are present.
 - The powers can also include an authority to require a person to remove anything which may identify them, their identity, and to seize the item(s) (s.60AA).
3. Four of the following:
 - A police officer can arrest without warrant.
 - Any person who is about to commit an offence.
 - Anyone who is in the act of committing an offence.
 - Anyone whom they have reasonable grounds for suspecting to be about to commit an offence.
 - Anyone whom they have reasonable grounds for suspecting to be committing an offence.
 - Anyone whom they have reasonable grounds to suspect is guilty of an offence where the grounds to suspect has already been committed.
 - Where an offence has been committed, anyone who is guilty or they have reasonable grounds to suspect is guilty of it.
4. Two of the following:
 - The person must be informed that they are under arrest.
 - The person must be informed of the grounds for the arrest.
 - The requirements apply even if the reasons/grounds for the arrest are obvious.
 - The requirements do not apply if the person escapes from arrest before the information is given.
5. Two of the following:
 - An arrested person has the right to have someone informed of their arrest.
 - An arrested person has the right to consult a solicitor / legal advisor privately at the police station.
 - The rights must be complied with as soon as is practicable.
 - Delays are only allowed in limited circumstances.
6. Four of the following:
 - s.76 PACE relates to confession evidence.
 - It states that a confession cannot be given in evidence if it is obtained as a result of oppression.
 - Or as a result of anything said or done which renders a confession unreliable.
 - Case, e.g. *Samuel (1988)*; *Alladice (1988)*.
 - s.78 PACE relates to evidence which has been unfairly obtained.
 - A court may refuse to allow evidence if it would have such an adverse effect on the fairness of the proceedings that it should not be admitted.
 - Case, e.g. *Khan (1996)*; *Looseley (2002)*.
7. In relation to stop and search (ss.1–7 PACE 1984) a police officer may stop and search a person if they have **reasonable grounds for suspecting** that they may find **stolen or prohibited** articles.

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Section B

8. a) The police must also show that the arrest was necessary (s.24(5) PACE). In respect of the criteria must exist: to prevent the loss of or damage to property; to allow the investigation of the offence; to prevent her prosecution being hindered by her conduct.
- b) A delay in her father being informed can only be authorised by an officer of the rank of superintendent. Obtaining a solicitor can only be authorised by an officer of the rank of superintendent. The delay can only be for a maximum of 36 hours (from the relevant time). The delay can be authorised in writing, but if given orally then it must be confirmed in writing as soon as practicable. The delay can only be authorised if there are reasonable grounds for believing that the exercise of the right will cause interference with or harm to evidence connected with the offence; interference with the investigation; alert other persons suspected of the offence but not yet arrested for it; the recovery of property obtained as a result of such an offence; the detained person has benefited from the offence; or the recovery of the property will be hindered.

Under the circumstances, none of the criteria apply so the police actions are unlawful.

- c) A custody officer decides whether Lisa can be detained. Her detention can be authorised in the first instance. This can be extended to 36 hours in total if a police superintendent or above then extend the total amount of time to a maximum of 96 hours. This latter provision applies to warrants of further detention.
- d) Under s.34 CJPOA, when Lisa remained silent when questioned by the police, but later gave evidence, various facts in her defence at court after being charged, a court may draw inferences from those facts.

Under s.35 CJPOA, inferences can be drawn if Lisa remains silent at trial. This section applies if Lisa gave evidence.

Under s.36 CJPOA, inferences can be drawn by a court as Lisa has failed to account for the facts when questioned by police.

Under s.37 CJPOA, inferences can be drawn by a court as Lisa has failed to account for the facts in a jeweller's shop when questioned by police.

However, the inferences under s.34, s.36 and s.37 can only be drawn if she was given a special warning at the interview (the 'special warning'). This does not appear to have occurred.

Furthermore, inferences under s.34, s.36 and s.37 cannot be drawn where Lisa has had the opportunity to speak to a solicitor beforehand. Therefore, such inferences cannot be drawn in this case.

Section C

9. Article 5 permits detention as long as it is in accordance with the law. A person must be detained promptly. This applies to arrest and detention. The various sections of PACE would set out the requirements for detention. This is partly because of the detention periods. Article 5 also demands that a person must be brought before a court within a reasonable time. This is complied with due to the provisions of the Prosecution of Offences Act 1985. The Criminal Procedure Rules 2015 are also relevant. The legislation introduced Custody Time Limits. Case law, e.g. *R v Peterborough Crown Court (2000)*; *R v Wirral District Magistrates Court (2003)*; *McKay v United Kingdom (2007)*; *Brogan v United Kingdom (1989)*.

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Topic Test 3.3

Section A

1. Five of the following:
 - It creates a framework for the use and oversight of investigatory powers.
 - It gathers all the powers together relating to the gathering of communications data.
 - It means that the approval of a warrant by the Secretary of State (Home Secretary).
 - It gives an avenue for appeals.
 - It allows access to the data of private individuals.
 - It allows the collection of bulk data.
 - It creates the role of a commissioner in order to oversee the correct use of powers.
2. Three of the following:
 - Where information is given in confidence.
 - And there is an expectation that it will remain private.
 - If the breach has not yet occurred, it may be possible to obtain an injunction.
 - If the breach has occurred then it may be possible to be awarded compensation.
3. Three of the following:
 - The information was obtained in such a way that there is a duty of confidence.
 - It must have the 'quality' of confidence.
 - It can occur due to an employment contract.
 - It must be used in an unauthorised way.
 - The claimant must suffer a detriment as a result.
4. Two of the following:
 - That the information was already in the public domain.
 - That the information was not confidential.
 - That there is a public interest in disclosure.

Section B

5. a) Three of the following:
 - The regulation of Investigatory Powers Act 2000 will be the relevant piece of legislation.
 - It covers Directed surveillance and
 - Intrusive surveillance and
 - Use of Covert Human Intelligence Sources (CHIS).
- b) Five of the following:
 - The police could apply for a warrant if it is necessary
 - In the interests of national security,
 - Or for preventing serious crime,
 - Or for detecting serious crime,
 - Or in the interests of the economic well-being of the UK,
 - Or giving effect to international mutual assistance in relation to preventing or detecting serious crime,
 - If any of these powers are used then they must be exercised proportionately.
- c) Four of the following:
 - The police may be able to justify telephone intercepts on the grounds of preventing or detecting serious crime.
 - Or detecting serious crime.
 - Serious crime is defined as an offence for which a person could reasonably be expected to serve a term of imprisonment of three years or more,
 - Or when the conduct involves the use of violence,
 - Or substantial financial gain,
 - Or is conducted by a large number of persons in pursuit of a common purpose,
 - Any or all of these definitions of serious crime may be relevant to the current case.

Section C

6. This often occurs because of media interest in pictures. It also includes news items which will consider the relationship between the individuals, such as if they are husband and wife, or whether the claimant(s) had courted publicity in the past. Another consideration is whether the claimant(s) is/are in the public eye. Or whether they are a role model. Or whether they have a high profile. Or whether the claimant(s) is/are painted in a negative or positive light. Or whether there is an issue of privacy. One case, e.g. *Douglas v Hello (2001)*; *A v B (2002)*; *Campbell v MGN (2004)*.

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Topic Test 3.4

Section A

1. The following two:
 - The Obscene Publications Act 1959.
 - The Obscene Publications Act 1964.
2. Three of the following:
 - When there are materials which cause (or are likely to cause) moral outrage, or
 - When an action or actions constitutes lewd or obscene or disgusting behaviour,
 - Where there is no existing statutory provision to make the behaviour illegal.
 - Case, e.g. *Shaw v DPP (1962)*; *R v Gibson and Sylveire (1990)*.
3. Three of the following:
 - Pursuing a course of conduct amounting to harassment,
 - Which he knows or ought to know amounts to harassment, or
 - Pursuing a course of conduct which puts the victim in fear of violence, or
 - Causes the person serious alarm or distress and
 - Which has a substantial adverse effect on the person's usual day-to-day activities
4. Four of the following:
 - When a person is sent a letter, or
 - Electronic communication, or
 - Article.
 - Which conveys a message which is indecent, or
 - Grossly offensive, or
 - A threat, and
 - The information is false and known or believed to be false by the sender.
5. Two of the following:
 - A civil court can impose an injunction.
 - This can prohibit a person from engaging in certain activities.
 - A breach of the injunction is a criminal offence and can be prosecuted.

Section B

6. a) An offence under the Obscene Publications Act 1959 has potentially been committed if a matter to be looked at or read is obscene. It also applies to any sound record or film which is obscene if the matter tends to deprave or corrupt. 'Deprave' is defined as to debase. Or to corrupt morally. 'Corrupt' means to render morally unsound or to corrupt chastity. Or to pervert or ruin good quality. Or to debase or defile.
 An offence under the Theatres Act 1968 may have been committed as Olaf is performing which may be considered as tending to deprave or corrupt.
 An offence under the Obscene Publications Act 1964 has potentially been committed if materials have been made from obscene materials.
 One case example, e.g. *Anderson (1972)*; *Whyte (1972)*; *R v Hicklin (1868)*.
- b) Olaf may be guilty of the offences under the Obscene Publications Act 1959. An offence has been looked at, and it is also a play. The display of a corpse may come within the definition of 'corrupt' (or both). It is not necessary to show that a member of the audience was actually corrupted. It merely needs to be shown that the display of the corpse 'tended to' deprave or corrupt.
 If Olaf has made a financial gain from the performance of the play, then he will be liable under the Obscene Publications Act 1964.
- c) Olaf may have a defence under the Obscene Publications Act 1959. If he proved that the display was justified. It must be for the public good. It must also be on the grounds that it is in the interests of literature or other objective of general concern. Olaf might be able to successfully rely on the grounds of one of these interests, particularly for art.

Section C

7. Some freedoms of expression are given a high value. This can include political. It can include religious expression can also be given a high value. Other freedoms of expression are given a lower value. This is connected with how wide the 'margin of appreciation' is. The more space/flexibility individual states are allowed in fulfilling their obligations under the ECHR, the more likely it is that they will be found to be in breach. Case example, e.g. *Steel and Morris v UK (2005)*; *Garaudy v France (2003)*; *Sunday Times v UK (1979)*.

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Topic Test 3.5

Section A

1. All of the following:
 - Libel: this is defamation in permanent form.
 - This can be by writing/broadcasting.
 - Slander: this is defamation in transient/non-permanent form.
 - This can be by the spoken word / conduct / gestures.
2. The following two:
 - Article 10.
 - Freedom of expression.
3. Five of the following:
 - It is an unlawful and unjustifiable intrusion.
 - By a person onto another's land.
 - Damage does not need to have been caused.
 - The slightest trespass is sufficient (it does not have to be a whole person).
 - It can include removing land / part of land.
 - And a building / part of a building as long as it is attached to the soil.
 - It can also be placing something on or in land.
 - Case, e.g. *Appleby v UK (2003)*; *Ellis v Loftus Iron Co. (1874)*.
4. Three of the following:
 - A licence.
 - A right of way or easement.
 - Necessity.
 - Powers granted under statute or common law / police powers / fire brigade powers.

Section B

5. a) Mr Barker would need to show that the news article and column are defamatory. A reasonable person would think worse of Mr Barker. It must also identify him. It must also be in permanent form. To a third party (not Samantha or Mr Barker). Mr Barker must show that he has caused them or is likely to cause them serious harm. Serious harm can also mean that Mr Barker has been accused of a criminal offence. Alternatively, Mr Barker could claim that he has been accused of a criminal offence to disparage him (put him down or regard him as of little worth).
- b) Mr Barker may be able to claim that an ordinary person may think worse of him if a newspaper article is published to other people. He may be able to claim serious harm if the article caused a loss of business because his reputation as a car dealer may diminish. Alternatively, Mr Barker could claim that Samantha has accused him of committing a crime / crimes. Finally, he could claim that the column is calculated to put him down.
- c) The defences are contained within the Defamation Act 2013. These are truth. Honest opinion. Internet defences. Privilege. Under the circumstances Samantha may be able to show that the information in the article is substantially true. She may also be able to use the defence of public interest if she could show that an honest person could have held that opinion. For the defence of public interest, factors to be taken into account would include whether the information was in the public interest and whether attempts to verify the truth of the information. The nature of the source of the information. Whether Mr Barker had been given an opportunity to comment.

Section C

6. s.61 of the Criminal Justice and Public Order Act 1994 (CJPOA 1994) permits the police to seize vehicles of persons who fail to comply with a direction to leave the land. The occupier of the land must have already taken steps to ask them to leave. And the person must have either damaged the land. Or used threatening, abusive or insulting behaviour. Towards a person. Or family. Or employees or agents. Or between them they have six or more vehicles on the land. Or leave the land on direction to do so. Or return to the land as a trespasser within three hours.
- s.62 CJPOA 1994 allows the police to seize vehicles of persons who fail to comply with a direction to leave the land.
- s.68 CJPOA 1994 creates an offence of aggravated trespass. A person must trespass on land. Or do anything by which he intends to. Intimidate any persons to deter them from carrying on a lawful activity. Or obstruct that activity. Or disrupt that activity. A police officer can arrest a person if he has reasonable grounds for believing that a suspect is committing an offence under s.68.

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Topic Test 4.1

Section A

1. Three of the following:
 - The courts were only obliged to make decisions in line with domestic law.
 - The courts could not hear cases (solely) involving breaches of human rights.
 - The courts were in a position where their decisions could be overturned by an appeal to the House of Lords.
 - The courts were able to use their powers of statutory interpretation to assist them in reaching a decision, taking into account if they so wished.
2. Three of the following:
 - The Human Rights Act 1998 made changes to the way in which the courts are able to make decisions.
 - The courts must take into account any judgment (includes decisions, declarations) of the European Court of Human Rights.
 - This is contained within s.2 Human Rights Act 1998.
 - It affects judicial precedent because it can be overruled if it conflicts with human rights.
3. Four of the following:
 - Judicial review is a challenge to the way a decision has been made.
 - By a public body.
 - It is concerned as to the lawfulness of a decision.
 - This includes whether the correct procedures have been followed.
 - Hearings are heard in the High Court.
 - They are heard in the King's Bench Division.
4. Three of the following:
 - The court proceeds on the basis of agreed facts.
 - Both parties are expected to cooperate.
 - The court will consider bringing issues to the court even if they have not been raised by the parties.
 - The court may not interfere where it involves matters of public policy (or special circumstances).
5. Four of the following:
 - A quashing order (i.e. an order overturning or undoing a previous order).
 - A prohibiting order (i.e. preventing a public body from making an unlawful decision).
 - An injunction (i.e. a temporary order requiring a public body to do something or not to do something).
 - A mandatory order (i.e. making a public body do something which they legally should do).
 - A declaration (i.e. what the law is or what the parties are allowed to do).
 - Damages (i.e. an award, usually of compensation).

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Section B

6. a) The PGA have to have 'standing' in order to bring an action. This means they have to be directly affected by the subject matter. The PGA would appear to satisfy this requirement. The relevant public body. In this case it is the government, so the decision could be challenged in court within three months of the minister's decision. An alternative is to challenge the decision to the relevant ombudsman.
- b) The courts are empowered through the Human Rights Act 1998 to quash delegated legislation if it is inconsistent with the enabling Act. This is part of the judicial review. The first ground is illegality. This means that the public body did not have the legal power to make the statutory instrument (or exceeded their powers).
Case, e.g. *Commissioners of Customs and Excise v Cure and Deeley Ltd (1962)*; *R v Council of Civil Service Unions*.
The second ground is procedural irregularity. This means that the public body did not follow the correct procedure. Or made it in an unfair manner.
Case, e.g. *Aylesbury Mushrooms (1973)*.
The third ground is unreasonableness. The test here is that the decision was so unreasonable that it is perverse or disproportionate).
Case, e.g. *Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1968)*.
- c) The PGA may be successful if it can show that the minister did not follow the correct procedure. The case if the minister did not properly consult with the PGA before introducing the statutory instrument.
As an alternative the PGA may be successful on the grounds of illegality. This is if the enabling Act did not grant the minister powers to introduce the statutory instrument in the way that he has done.

Section C

7. Under s.3 of the Human Rights Act 1998. Legislation must be read / given effect in a way that is compatible with Convention rights. This means that there is a possibility that any interpretation of Act of 1998 year 2000 may be invalid / incompatible with Convention rights.
Under s.4 of the Human Rights Act 1998. If a court decides that any (primary) legislation is incompatible with a Convention right. It may make a declaration of incompatibility. The courts do not have the power to strike down legislation. Parliament. If a declaration of incompatibility is made then Parliament can consider it and then choose to alter the primary legislation.
Case, e.g. *Anufrijeva and Others v Southwark Council and others (2004)*.

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Topic Test 4.2

Section A

1. Four of the following:
 - It is a living instrument.
 - This means that the Court is not bound by previous precedent.
 - And can develop according to changes in society.
 - Effectiveness.
 - This means that the Court aims to enforce rights by making rights accessible.
 - Autonomy.
 - This means that the Court can apply its own meaning to particular legal words.
2. Three of the following:
 - The ECtHR will require a state to take positive steps to prevent violations.
 - An example of this is Article 2.
 - This is the right to life.
 - It means that the state may have to control individuals in order to ensure its po
3. Four of the following:
 - A judge serves for nine years.
 - A single judge rules on the admissibility of a case.
 - A three-judge committee can make a decision on the merits of a case.
 - This is as long as there is established case law.
 - If not, then it must go before a panel of seven judges.
 - If a state refuses to comply with a judgment of the court it can be referred back
 - An applicant must have suffered a significant disadvantage for an application to

Section B

4. a) Two of the following:
 - Article 8.
 - Respect for private and family life.
 - This includes personal information and data.
- b) The person referring the issue has to be a victim and be directly affected. This c
Domestic remedies have to be exhausted. The complainant cannot be anonymous something which has been previously looked at by the courts. It cannot be an ill incompatible with the Convention or an abuse of process. Finally, the applicant disadvantage. These come under Article 35. The application has to be made wit
- c) Alysha is a victim and has been directly affected. She is not an anonymous appli domestic remedies as the courts have not given her leave to appeal. As long as of the decision of the court, then she may be able to have the case heard by the been heard before now. There is nothing to suggest that her application is incor (or that it is ill-founded or an abuse of process). Finally, she appears to have suf Her application may be successful providing the ECtHR deem the GBD to be a 'p UK (2004); *McDonald v McDonald* (2016).

Section C

5. Domestic courts should take account of decisions of the European Court of Human R decision which conflicts with an ECtHR decision then it should follow the domestic de an appeal court. There can also be difficulties in obtaining a lawyer who specialises in Human Rights Act only applies to public bodies carrying out public functions, many p unchallenged. There is also no clear definition of what a public authority is. Even if a may use the 'margin of appreciation' in defining whether any human rights have bee the margin of appreciation gives individual states a great deal of flexibility in certain This in itself can limit the effect of human rights provisions. Also, where there is a la particular issue then the ECtHR may take several years to come to a firm decision.

Case, e.g. *McDonald v McDonald* (2016); *Connors v UK* (2004); *Rees v United Kingdom*

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