

Teaching guide: Guide to A-level Law

Introduction

When teaching A-level Law (7162), the specification is the key document. It sets out what can be assessed and should always be your primary reference point.

The guidance contained in this teaching guide is not prescriptive. Instead, it provides commentary, suggestions and answers to questions that may support your teaching of the specification.

The guide is an optional resource. There is no expectation that you read or use all of its content. In some sections, explanations go beyond what learners need to know. These are included to give additional context and detail that may help you.

This guide has three sections:

- **Specification:** this section provides, where appropriate, additional commentary on the listed specification content
- **Assessment:** a brief overview of the assessment
- **Further guidance:** this section is organised into the following topics:
 - Substantive and non-substantive law
 - Subject content
 - The nature of law and the English legal system
 - Assessment
 - Subject-specific questions.

Contents

Section	Page
Specification	3
3.1 The nature of law and the English legal system	4
3.2 Criminal law	15
3.3 Tort	24
3.4 Law of contract	36
3.5 Human Rights	49
Assessment	62
Further guidance	65
Substantive and non-substantive law	65
Subject content	67
The nature of law and the English legal system	68
Assessment	71
Subject-specific guidance	75

Specification

Our [A-level Law \(7162\) specification](#) requires the delivery and assessment of four subject areas from a possible five.

Three of these are compulsory:

1. The nature of law and the English legal system
2. Criminal law
3. Tort.

The fourth is an option of either:

4. Law of contract
5. Human Rights.

The specification is linear with three exam papers of equal weighting at the end of the two years. These three papers cover substantive and non-substantive content in the five subject areas.

Our [A-level Law: Getting Started](#) course is particularly helpful if you are new to the specification.

Specification content commentary

3.1 The nature of law and the English legal system

Content	Additional information	Commentary
Nature of law	• Basic understanding of the distinction between enforceable legal rules and principles and other rules and norms of behaviour. • Basic understanding of the differences between criminal and civil law and between different sources of law including custom, statute law and the common law.	The first two components of this section represent fundamental aspects of the study of law and may be assessed in questions in any of the papers. However, the reference to 'basic' understanding indicates clearly that assessment is aimed at AO1. Inevitably, more detailed understanding of some of these aspects may be required by other sections of the specification.
Nature of law: law and society	• The role law plays in society. • The effect of law on enforceable rights and the balance required between competing interests (e.g. public and private). • The meaning and importance of fault in civil and/or criminal law.	
Nature of law: law and morality	• The distinction between law and morality and the diversity of moral views in a pluralist society. • The relationship between law and morality and its importance. • The legal enforcement of moral values.	These subsequent elements of the specification, which come within the general umbrella of the 'Nature of law', encourage a more extensive investigation into aspects of the nature of law by way of relevant general theory. They introduce the 'Concepts': • balancing conflicting interests

Content	Additional information	Commentary
Nature of law: law and justice	• The meaning of justice and theories of justice. • The extent to which the law (civil and/or criminal) achieves justice.	• fault • morality • justice. However, in addition to the general theory/Concepts identified above, these sections permit a connection to be made with the elements of theory specific to the substantive law which is the focus of each individual paper (Crime, Tort, Contract, Human Rights). As a result, evaluative issues across the range of general and specific theory may be raised in Question 09 and in the 7-mark component of Question 11 in any of the papers (subject to the distribution of the Concepts among the papers). In answering a question dealing with a Concept, it is important for learners to be able to present a strong general analysis of that Concept before going on to discuss the extent to which its scope and purpose may be reflected or fulfilled in some designated area of substantive law. Though all thoughtful approaches to analysis are to be welcomed, it is usually evident that answers benefit considerably from reference to the work of major philosophers, which tends to support structure and depth. It is also important to consider that analysis of Concepts benefits significantly from perceptive use of examples, which may be drawn from substantive and non-substantive law both within and outside the substantive law of the particular paper being assessed. It may also be the case that material can be drawn from other Concepts as well as from theory specific to the substantive law of the paper (equally, general theory/Concepts may be helpful in contributing to analysis of specific theory).

Content	Additional information	Commentary
The rule of law	Basic understanding of the constitutional doctrine of the rule of law and its application to law making, the legal system and substantive law: • no person shall be sanctioned except in accordance with the law • equality before the law • fairness and clarity.	These are standard aspects of the rule of law, which has come under increasing strain in recent years, but there are numerous other ways of identifying and expressing its importance. Evaluation of the rule of law is not required.
Law making: parliamentary law making	Parliamentary law making including: • Green and White papers • the formal legislative process • the influences on parliament • the doctrine of parliamentary supremacy and limitations on it • the advantages and disadvantages of influences on parliamentary law making.	Learners need to be able to explain the distinctive features of Green and White papers and the part they play in the law-making system, and then, within the formal legislative process, the different types of bills, the roles of the two Houses and the stages through which a bill has to pass before it becomes an Act of Parliament. An understanding of the main influences on Parliament, such as political parties, the media and pressure groups, is also required and, as the specification makes clear, learners need to be ready to identify positive and negative aspects of these influences. An understanding of the meaning of parliamentary supremacy, its features and its limitations is also required, and also some awareness of how changes like the UK's entry into and departure from the European Union and the setting up of devolved assemblies in Scotland and Wales might have affected the supremacy of the Westminster Parliament.
Law making: delegated legislation	• Types of delegated legislation: orders in council, statutory instruments, bylaws (from local authorities and public bodies). • Parliamentary and judicial controls on delegated legislation. • The reasons for the use of delegated legislation.	It is important to be able, in particular, to distinguish statutory instruments from bylaws and explain how such legislation can be controlled by Parliament itself by way of rules for creating the power to issue it, rules for introducing and issuing it, and provisions for scrutiny, as well as by the courts through actions for judicial review.

Content	Additional information	Commentary
	The advantages and disadvantages of delegated legislation.	Reasons for the use of delegated legislation, such as speed, detail, expertise, local knowledge and relevance, should be discussed, as should advantages and disadvantages, generally related to those reasons but also encompassing the doubts about avoidance of democratic processes and the possibility of large amounts of rules going generally unnoticed. Care should be taken, wherever possible, to cite relevant and representative current examples.
Law making: statutory interpretation	- The rules of statutory interpretation: literal, golden and mischief rules; the purposive approach. - Internal (intrinsic) and external (extrinsic) aids. - The impact of European Union law and of the Human Rights Act 1998 on statutory interpretation. - The advantages and disadvantages of the different approaches to statutory interpretation.	As an introduction to statutory interpretation, learners should see the role of the judiciary within the wider context of the balance between statute law and common law which is a particular feature of the English system. As they work through the substantive law in each of the papers, they will become aware that statutory rules dominate in some areas, while in others judges make almost all the rules. But even where Parliament has legislated there is an important role for judges in clarifying the statutory rules and applying them in practical situations. Fundamentally though, judges are constrained by the requirement to implement what Parliament has decreed and not to challenge or overrule it, so the rules of statutory interpretation give judges only limited powers in a narrow range of circumstances. An awareness of the powers given to judges under the Human Rights Act 1998 is needed, as well as limited reference to the (largely former) impact of EU law. Learners need to be able to explain and illustrate each of the rules and to comment on the strengths and weaknesses of each, and they also need to explain what is meant by intrinsic and extrinsic aids and give examples.

Content	Additional information	Commentary
Law making: judicial precedent	• The doctrine of judicial precedent. • The hierarchy of the courts including the Supreme Court. • Stare decisis, ratio decidendi and obiter dicta; law reporting in outline and the reasons for it. • The operation of judicial precedent: following, overruling and distinguishing. • The advantages and disadvantages of the doctrine of judicial precedent and the operation of precedent.	Precedent is the idea that courts are expected to follow decisions made in similar cases by earlier courts. There are different levels of court, and where they come in the hierarchy affects both the extent to which they can create precedents and the extent to which they are bound by the decisions of other courts, so an understanding of the hierarchy of English courts and their powers in respect of precedents is very important. Particular attention needs to be paid to the Supreme Court and the Court of Appeal, and their specific powers understood. Whether or not a precedent is binding (i.e. must be followed) depends also on the extent to which the facts in the earlier case are similar. Even when an earlier precedent is not binding it may be persuasive, and learners need to be aware of the circumstances in which this applies. Stare decisis is the idea that you should ‘stand by what is decided’, i.e. to follow the point of law in the earlier precedent if it clearly applies in the present case. This creates both fairness and certainty. Learners need to be able to distinguish ratio decidendi (the actual reasons for the decision in the earlier case which form the binding precedent) from obiter dicta (other things said in the judgment which will only be persuasive). When judges decide cases, they need to consider any past decisions where the same principle of law was applied, and one of three outcomes is possible. They may follow the earlier precedent and apply it to the case they are deciding, they may overrule it, though this will only be possible if their position in the hierarchy permits it, or they may distinguish the new case from the earlier one by finding that the facts are sufficiently different. Learners need to be confident that they can explain each of these.

Content	Additional information	Commentary
		The system of law reporting is an important part of precedent as without accurate records there couldn't really be an effective system of precedent. Note that although written reports of cases have been made for hundreds of years, they have become steadily more comprehensive, accurate and reliable and all High Court, Court of Appeal and Supreme Court cases are now available online. Many of our legal rules are judge made and therefore precedent plays a significant part in our law-making process. The way it operates has advantages like certainty and consistency and it is also sufficiently flexible to allow new rules of law to emerge. But there are also important disadvantages. For example, because there are so many reported cases it may not be easy to find all the relevant ones and also it may be hard to find the appropriate ratio because of the way the judgment is worded. Also, judges may look for illogical distinctions in order to avoid following the precedent.
Law making: law reform	• The work of the Law Commission: reform, codification, consolidation and repeal. • The advantages and disadvantages of reform through the Law Commission.	The Law Commission was set up in 1965 and is tasked with reviewing the law in areas believed to need reform and making recommendations. Learners need to be able to explain how it works and, with examples, the specific functions of codification, consolidation and repeal. Note that implementation of Law Commission reports requires parliamentary legislation and the success rate has varied over the years. Learners should expect to have to give examples of reforms that have been successfully implemented. The Law Commission is able to review whole areas of law and simplify and modernise the law. The fact that it is staffed by experienced lawyers and headed up by a High Court judge gives it credibility, and it also consults widely before making final recommendations – these are further

Content	Additional information	Commentary
		advantages. An obvious disadvantage is that it is dependent on Parliament, and more specifically the Government of the day, choosing to implement the reforms recommended, and learners should be aware of examples of proposals that were not implemented. Even when there is wide support, there are many other priorities and there is no guarantee that time will be found within the parliamentary timetable for the necessary legislation.
Law making: the European Union	• The institutions of the European Union: the Council, the Commission, the Parliament and the Court of Justice of the European Union and their functions. • The different sources of European Union law: treaties, regulations and directives. • The impact of European Union law on the law of England and Wales.	The Department for Education (DfE) reviewed the subject content for Law relating to the EU following the UK's exit from the European Union. While EU law is no longer applicable in the UK and will no longer be a factor in statutory interpretation within the English legal system, at that time there was still much EU law described as 'retained' law within the UK during the process of exiting the EU. This law was still subject to EU Court interpretation. At that time, the DfE decided that the subject content for Law should continue to include the <i>unamended</i> EU content, while accepting that 'account' must be taken of the withdrawal legislation. Since then, the relevant EU law has ceased to be 'retained law' and is now designated 'assimilated law', which is no longer subject to any EU Court rulings. However, there has been no revision of the official subject content for Law, so that the EU section must still be regarded as within the requirements of the specification. Interpreting the specification in view of UK withdrawal • Most of what was once highly significant is now largely of historical interest to the specification, which does not usually deal with repealed law and/or with the law of other jurisdictions which is of no effect in the UK.

Content	Additional information	Commentary
		• Consequently, the most important principle is that any treatment of any part of the EU content of the specification should be by way of a basic, descriptive outline with no requirement for any deeper explanation/analysis and positively no need to explore any case law interpretation of EU law, whether by the Court of Justice of the European Union (CJEU) or courts in the UK. • In relation to the Institutions, the focus should be on functions, with only a very brief indication of composition. • In relation to sources of EU law, a very basic description of treaties, regulations and directives will suffice, using an example of each. • In relation to the effect on English law, a very basic description of different methods of implementation (direct applicability/direct effect of EU law, use of English law primary and secondary legislation) will suffice. A brief indication can be given of the effect on supremacy/sovereignty by reference to the requirement to implement EU obligations and to the status of the CJEU as the authoritative interpreter of EU law. • Since the general approach of the CJEU to interpretation of ‘statutes’ is purposive, the ‘impact of European Union law ... on statutory interpretation’ could be dealt with when statutory interpretation itself is addressed, where it would form a relatively simple part of the discussion. It can be expected that any question now set on this part of the specification will take due account of the fact that the topic is no longer of more than historical significance.

Content	Additional information	Commentary
The legal system: the civil courts and other forms of dispute resolution	• Basic understanding of civil courts, including the track system and the appeal system. • Other forms of dispute resolution: outline of the tribunal structure and the role of tribunals. The roles of mediation and negotiation.	Our A-level Law specification requires learners to have a basic understanding of the civil courts and other forms of dispute resolution. Appendix 2 of the specification indicates that this area will be assessed only in Paper 2, and it may be appropriate to postpone coverage until you are about to begin work on that paper. The civil courts, tribunals, mediation and negotiation will not be relevant in the Crime paper, which most people start with. The focus should be on the structure, purpose, and practical application of the system, rather than on procedural detail. Learners should be able to explain the track system as a mechanism for efficient case management and the factors influencing track allocation. Detailed procedural knowledge or in-depth understanding of the Civil Procedure Rules 1998 is not required. In terms of alternative dispute resolution (ADR), learners should be familiar with the structure and role of tribunals and the roles of mediation and negotiation. It is not necessary to teach conciliation or arbitration. Learners should be prepared to make some evaluative comments, which might include, for example, considerations of the strengths and weaknesses of each of the ways of dealing with civil disputes (e.g. informality, privacy, time, cost, specialisation and whether any outcome is binding).

Content	Additional information	Commentary
The legal system: the criminal courts and lay people	• Basic understanding of the criminal process including the classification of offences, and the appeal system. • Criminal court powers and sentencing of adult offenders. • The role of lay people: the role and powers of magistrates in criminal courts and the role of juries in criminal courts. • The advantages and disadvantages of using juries in criminal courts.	Under the current specification, sentencing should be taught with a clear but basic understanding of both the types and aims of sentencing for adult offenders. The approach should remain focused and avoid unnecessary complexity. Required content would include the types of sentences: • custodial: mandatory life, discretionary life, fixed term, suspended sentences • non-custodial: community orders, fines, discharges. Distinctions could be made between the mandatory and discretionary sentences (e.g. murder versus manslaughter). The concept of a tariff could also be included. Aims of sentencing requires the learner to briefly explain the major aims of retribution, deterrence, rehabilitation, reparation and public protection. These aims are not specified in the specification content but are considered expected knowledge. However, the aim would only need to be explained in two to three sentences. Additional elements to consider would include aggravating and mitigating factors and the limits on magistrates' sentencing powers, which may also be addressed under magistrates' roles. The focus here is on roles not on qualification, appointment and training, though some awareness of, for instance, qualification and recruitment may assist in assessing advantages and disadvantages of using juries in criminal courts.
The legal system: legal personnel and the judiciary	• Basic understanding of the different roles of barristers, solicitors and legal executives. • Basic understanding of the regulation of legal personnel.	Under the specification, the teaching of the legal profession should focus primarily on the roles and functions of legal professionals, rather than the details of qualification pathways. Teaching should prioritise understanding the distinct roles and responsibilities of barristers, solicitors, legal executives, and paralegals. While learners should be aware of recent

Content	Additional information	Commentary
	• The judiciary: types of judge. • The role of judges in civil and criminal courts. • The independence of the judiciary: security of tenure, immunity from suit, independence from the Executive. • Reason for and advantages of judicial independence and the methods by which it is achieved.	developments, such as the introduction of SQE1, SQE2, and Qualifying Work Experience (QWE) for solicitors, these are not central to assessment. Examination questions are more likely to explore what legal professionals do, rather than how they qualify. On any of the three papers, learners could be asked a question about the judiciary, and so they need to be aware of the different types of judge and of their roles in the courts that are relevant for that paper. Care is needed to remember that on the Crime and Human Rights papers, knowledge of the role in criminal courts is required, while on the Tort and Contract papers it is the role in civil courts. More generally, the topic of judicial independence is very important and, as with the rule of law, has experienced some strain in recent years under various elements of political pressure. It is necessary to explore what is involved in judicial independence and how it is secured and what advantages flow from it. There is also a clear connection with the rule of law.
The legal system: access to justice and funding	• Basic understanding of alternative sources of legal advice: help lines, Citizens Advice Bureau (CAB), law centres and trade unions. • Private funding: own resources, insurance and conditional fee agreements. • Basic understanding of public funding: criminal and civil state funding.	Access to justice could appear in any of the three papers, but its focus will be on what is relevant for each area. Public funding through the legal aid system will be much more relevant in Crime and Human Rights, while alternative sources of legal advice are more likely to feature on the Tort or Contract papers. A 'basic understanding' suggests that detail is not required in any of these areas, but learners should be able to explain the main features of each of the elements mentioned in the specification and be able to comment briefly on the effectiveness or otherwise of each.

3.2 Criminal law

Content	Additional information	Commentary
The rules of criminal law	Rules and principles concerning general elements of criminal liability and liability for offences against the person, property offences and attempt.	When delivering the rules of law, it could be helpful to ensure that learners have: • precise explanation of legal rules • application to factual scenarios which is clear • the skills to identify the primary focus of the question. These areas present clear opportunities for targeted teaching to strengthen legal accuracy, answer structure and exam technique.
Theory in criminal law	Harm as the basis for criminalising conduct. Autonomy, fault and individual responsibility. Principles in formulating rules of criminal law: • fair labelling • correspondence • maximum certainty • no retrospective liability.	It is important to clearly define each of the theories to avoid incorrect definitions. For example, sometimes maximum certainty has been confused with the standard of proof and correspondence confused with contemporaneity. Furthermore, learners are encouraged to engage with criminal law theory analytically, applying it to substantive areas of law rather than relying solely on descriptive approaches.
General elements of liability	Actus reus: • conduct; acts and omissions and state of affairs • voluntariness and involuntariness • causation • consequences. Additional fault elements: • mens rea; intention and subjective recklessness	The requirement of voluntariness within the actus reus is a fundamental principle, and reinforcing this concept can strengthen learners' understanding of criminal liability. Ensuring that learners can clearly distinguish between voluntary and involuntary actions—and appreciate how this distinction shapes liability—is highly beneficial. Illustrative examples involving involuntary bodily movements can effectively demonstrate that control over one's actions is a prerequisite for criminal responsibility.

Content	Additional information	Commentary
	• negligence • transferred malice. No fault: strict liability. Coincidence of actus reus and mens rea.	Causation is an area where learners thrive with a structured approach. Integrating the rules of causation into the context of specific offences helps build confidence and clarity. While factual causation is generally well understood through the 'but for' test, legal causation and the concept of intervening acts present valuable opportunities for deeper engagement. Encouraging learners to explore whether a third party's actions or the victim's own conduct might break the chain of causation promotes critical thinking. Rules concerning, for example, the 'thin skull' rule and foreseeability are particularly relevant here, and guiding learners to apply these elements with reference to established case law enhances both accuracy and analytical skill.
Fatal offences against the person	Common law offence of murder: voluntary manslaughter: • loss of control (s54 Coroners and Justice Act 2009) • diminished responsibility (s2 Homicide Act 1957 as amended). Common law offence of involuntary manslaughter: • unlawful act manslaughter • gross negligence manslaughter.	Learners generally understand the basic structure of murder but could develop their depth of analysis and accurate application further. It may be helpful for teaching to reinforce the need to clearly explain both the actus reus and mens rea, including the distinction between direct and indirect intention. Additionally, learners should distinguish between: • implied malice with oblique intent and • whether death or serious injury was a virtual certainty. Learners are increasingly confident with the structure of the loss of control defence, and there is great potential to deepen their understanding through more precise application. Teaching can highlight the statutory framework, focusing on the key elements: establishing a loss of self-control, identifying a qualifying trigger, and applying the objective test.

Content	Additional information	Commentary
		Common challenges – such as correctly identifying the trigger, recognising the exclusion of revenge, and applying characteristics like short temper or sexual infidelity – can be turned into opportunities for growth. Guiding learners to assess whether the circumstances were of an extremely grave character and whether the defendant had a justifiable sense of being seriously wronged will strengthen analytical skills. The objective test offers a valuable area for development, encouraging learners to consider how a person of normal tolerance and self-restraint might respond. Stronger answers apply the framework methodically, use facts to support each element, and reach a reasoned conclusion. Teaching can promote clarity, reinforce the importance of current case law, and ensure learners understand both the limits and scope of the defence. Diminished responsibility Learners demonstrate a good understanding of the structure of diminished responsibility, and there is scope to enhance precision and depth in application. Emphasising accurate statutory language – such as ‘abnormality of mental functioning’ – and the requirement to establish a recognised medical condition can strengthen responses. Developing the explanation of substantial impairment, including its impact on understanding conduct, forming rational judgment, or exercising self-control, adds clarity. The causal link between the abnormality and the killing is another area where focused attention can improve analysis. Stronger answers apply each element methodically to the facts and reach a reasoned conclusion, while clarity in distinguishing diminished responsibility from other defences ensures accuracy.

Content	Additional information	Commentary
		Gross negligence manslaughter This offence is frequently assessed and offers opportunities for learners to demonstrate structured reasoning. Supporting learners in identifying a duty of care using criminal law authorities, rather than civil law tests, promotes accuracy. Clear explanation of how a breach arises and whether it created a serious and obvious risk of death is essential for strong analysis. The final element – whether the conduct was so exceptionally bad as to justify criminal liability – can be developed further through engagement with recent case law and contextual evaluation of the facts. Unlawful act manslaughter Teaching this topic can focus on ensuring learners understand and apply the full framework confidently. The act must constitute a criminal offence, not merely negligence or a civil wrong, and accurate identification is key. The dangerousness test should be approached objectively, with emphasis on foreseeability of some harm. Learners benefit from recognising the need to establish mens rea for the unlawful act itself, rather than for the resulting death. A structured approach—identifying the unlawful act, applying the dangerousness test, assessing causation, and confirming mens rea—consistently leads to stronger responses and aligns with examiner feedback.
Non-fatal offences against the person	Common assault: • assault • battery. Offences Against the Person Act 1861: • s47 assault/battery occasioning actual bodily harm	Non-fatal offences Learners often show a sound grasp of the basic structure of non-fatal offences, and there is significant potential to strengthen responses through accurate offence identification and structured application. Clarifying distinctions between assault, battery, and offences under the Offences Against the Person Act 1861—particularly between sections 47, 20, and 18—can enhance precision. Emphasising correct terminology and

Content	Additional information	Commentary
	• s20 unlawful and malicious wounding or inflicting grievous bodily harm • s18 unlawful and malicious wounding or causing grievous bodily harm with intent to cause grievous bodily harm.	linking the severity of injury to the appropriate offence supports clarity and accuracy. Application of mens rea offers further opportunity for improvement, particularly in distinguishing intention from recklessness and applying these concepts to the facts. A clear, methodical approach to actus reus, mens rea, and causation consistently leads to stronger, well-reasoned answers.
Property offences	Theft (s1 Theft Act 1968). Robbery (s8 Theft Act 1968).	Theft Learners generally demonstrate a solid understanding of the structure of theft, and there is scope to enhance precision in applying its elements. Emphasising clear identification and explanation of appropriation, property, belonging to another, dishonesty, and intention to permanently deprive can strengthen responses. Common challenges include uncertainty over what constitutes property—particularly in relation to land or wild items—and limited application of the concept of belonging to another through possession or control. The dishonesty element provides an opportunity for improvement, especially in avoiding reliance on outdated tests and considering whether the defendant believed they had a legal right to the property. Intention to permanently deprive is sometimes overlooked or treated superficially. Stronger answers adopt a structured approach, applying each element to the facts and reaching a reasoned conclusion. Clarity, precision, and focus on relevant offences and defences consistently lead to more effective responses. Robbery Robbery is generally well recognised by learners, and further progress can be made by refining application of its elements. Reinforcing that robbery

Content	Additional information	Commentary
		requires a completed theft and that force or the threat of force must be used in order to steal promotes accuracy. Learners benefit from clarifying the timing and purpose of the force and linking it directly to the theft. Responses can be strengthened by addressing whether the force was directed at a person and whether it was sufficiently immediate. Occasionally, misidentification occurs, with robbery treated as theft or assault; encouraging clear differentiation between offences helps avoid this. Stronger answers outline the structure of the offence, apply each element to the facts, and reach a reasoned conclusion. Emphasising sequencing and intent supports clarity and precision.
Preliminary offence	Attempt (s1 Criminal Attempts Act 1981).	Learners often demonstrate awareness of the offence of criminal attempts, and there is considerable opportunity to strengthen responses through clearer application of the legal threshold. Emphasising that the act must go beyond mere preparation and move towards the commission of the offence can support accuracy. Responses benefit from explaining this transition with clarity and maintaining focus on the attempt rather than the full offence. Assessing whether the defendant's actions demonstrate intent to commit the offence – particularly where the act is interrupted or incomplete – adds depth to analysis. Stronger answers distinguish planning from execution and apply the facts to show whether the defendant had entered the implementation phase. Precision in identifying the actus reus and mens rea of attempts, while avoiding unnecessary discussion of the full offence unless directly relevant, consistently leads to more effective responses.

Content	Additional information	Commentary
Defences: Capacity defences	• Insanity. • Automatism. • Intoxication.	Insanity Learners often show awareness of the insanity defence, and there is considerable scope to strengthen responses through clearer structure and application. Emphasising the need to establish a disease of the mind, a defect of reason, and an inability to understand the nature or wrongness of the act can support accuracy. Responses benefit from distinguishing legal and medical definitions and addressing the implications of knowing the act was legally wrong. Stronger answers apply each element to the facts and reach a reasoned conclusion, while clarity in terminology and structured analysis helps avoid confusion with other mental condition defences. Automatism Automatism offers valuable opportunities for learners to demonstrate analytical precision. Focusing on the requirement that the defendant's actions were involuntary and caused by an external factor promotes clarity. Guiding learners to assess whether the loss of control was total and whether the cause falls outside the scope of mental illness strengthens understanding. Responses improve when they avoid confusion with intoxication and apply the defence directly to the facts. Stronger answers clearly outline the conditions under which the defence is available and avoid generalised or speculative reasoning. Intoxication Learners benefit from a clear understanding of the distinction between voluntary and involuntary intoxication and between specific and basic intent offences. Reinforcing that voluntary intoxication does not provide a defence to basic intent offences, and that the key issue is whether the defendant was capable of forming the required mens rea, supports

Content	Additional information	Commentary
		accurate application. Responses improve when they specify the type of offence and apply rules consistently. Involuntary intoxication is generally better understood but still requires careful application to the facts. Stronger answers identify the nature of the intoxication, link it to the offence type, and reach a reasoned conclusion.
Defences: Necessity defences	• Self-defence/prevention of crime. • Duress. • Duress of circumstances.	Self-defence Teaching this topic can focus on ensuring learners understand and apply the two-stage structure with confidence. The defence requires clear reasoning about both the necessity of force and the reasonableness of that force, and responses are strengthened when learners treat these as distinct but connected elements. Emphasising that an honest belief in the need to use force is assessed subjectively, even if it later proves mistaken, supports accurate application of the statutory framework under s76 Criminal Justice and Immigration Act 2008. Learners benefit from avoiding unnecessary discussion of wider necessity-type defences and instead concentrating on why the defendant believed force was required and how their response aligned with that belief. A structured approach, identifying the belief, assessing necessity, evaluating reasonableness, and reaching a justified conclusion, consistently leads to clearer, analysis. Duress and Duress of circumstances Learners benefit from a firm grasp of the legal boundaries of duress and the distinctions between duress by threats (the traditional form) and duress of circumstances (the modern development, which also seems closely connected with, but takes a stricter form than, a defence of necessity). In both, there is a requirement for a threat of death or serious injury, which must be specific in the case of duress and directly connected to the defendant's conduct, or must arise out of the circumstances in duress of circumstances. In the case of duress, teaching can highlight the

Content	Additional information	Commentary
		importance of establishing whether the defendant had a reasonably safe avenue of escape, as this is often overlooked in weaker responses. Incorporating the two-stage <i>Graham</i> test supports structured reasoning, enabling learners to distinguish between the defendant's subjective perception of the threat and the objective expectations of a person of reasonable firmness. Awareness of voluntary association with violent individuals further strengthens analysis and reflects current case law expectations. Stronger responses identify the precise nature of the threat, link it clearly to the offence committed, evaluate escape options and association issues, and reach a reasoned, legally grounded conclusion on whether the defence is likely to succeed. This approach (suitably adapted) applies also to the treatment of duress of circumstances, where the focus will be on issues such as the nature of the circumstances, the defendant's perception of the risk of death or serious injury posed, and the reasonableness of that perception and of the defendant's response.

3.3 Tort

Content	Additional information	Commentary
The rules of tort law	Rules and principles concerning liability and fault in actions for negligence, occupiers' liability, nuisance and vicarious liability, and associated defences and remedies.	This is the standard account of the substantive law of Tort which is elaborated after the comments on theory. Learners have generally been reasonably adept at recognising the primary focus of substantive law, scenario-based questions and in presenting suitably structured and informed answers.

Content	Additional information
Theory of tort law	Analysis and evaluation of when tort law imposes liability, with particular reference to the issues specified below: • basic understanding of the public policy factors governing the imposition of a duty of care (the <i>Caparo</i> three-part test) in a claim for physical injury to people and damage to property • basic understanding of the policy factors governing imposition of liability for pure economic loss and psychiatric injury • basic understanding of the factors governing the objective standard of care in an action for negligence • basic understanding of the factors governing the grant of an injunction as a remedy, and the way in which conflicting interests are balanced • basic understanding of the nature and purpose of vicarious liability.
Commentary	
The theory identified as applying to the law of Tort in the specification may appear to be more closely related to aspects of specific rules of the substantive law itself than is evident with theory in relation, say, to criminal law in Paper 1. This creates the possibility that the distinction between the theory and the rules may be more difficult to perceive in Paper 2 than in Paper 1. Accordingly, this section seeks to address the distinction at rather greater length than its equivalent in the Paper 1 comments. It is important, however, to recognise that the following comments are intended as suggestions for approaches to the issue of theory in Tort, not as prescriptive statements about requirements. In particular, a Question 09 or a Question 11 (part), would deal with only some aspects of the analysis and evaluation of the elements discussed.	

Commentary

The enquiry here is into the policies and principles which might be said to underpin the specific rules associated with the law of tort. Recall that they are not the rules themselves but that they may help to explain those rules, indicating why they have developed to take their current form.

Tort deals with obligations imposed by law rather than by agreement (which are dealt with by Contract, of course). The rules seek to ensure how and to what extent the law should secure redress for a person who suffers loss attributable in some way to the conduct of another.

This raises general issues, including:

- should all kinds of loss be redressable
- who should be able to claim
- who should be held responsible
- what is required (by way of conduct/fault) for responsibility
- what will suffice as redress.

The first three areas of the law of tort identified by the specification which require analysis and evaluation of theory all concern aspects of the tort of negligence, in particular, duty and breach. It may be suggested that the policies and principles which have played some part in guiding courts towards establishing the current rules on duty and breach include that:

- the floodgates to liability should not readily be opened
- a reasonably foreseeable risk of harm is a necessary but not sufficient condition for liability when loss results
- there is a relevant distinction between economic loss and physical injury or damage
- there is a relevant distinction between 'physical' and 'psychiatric' harm
- there is a relevant distinction between acts and omissions
- there is a relevant distinction between words/statements and other forms of conduct
- account should be taken of the capacity to anticipate possible losses and cover them by private insurance
- account should be taken of the public utility of conduct (for instance, responses to incidents by the emergency services).

As indicated in the section above on interpreting 'theory', the ways in which these policies and principles are ultimately translated into rules are usually supported by reasons offered by the courts. These 'reasons' are also part of the theory. To give one example, the Supreme Court decision in *Paul and others* (2024) inevitably (because of long-established precedent) affirmed that, in principle, a distinction is to be made

Commentary

between primary and secondary victims of psychiatric injury but that there can be liability for psychiatric injury to some categories of secondary victim. However, the Court then had to reconsider an important factor in distinguishing between the included and excluded categories of secondary victim, namely the 'event' which allegedly caused the psychiatric injury. The Court held that this must be an 'accident' and that the secondary victim must witness it or its immediate aftermath. The reasons offered in support were that (1) an accident is a clear-cut event and therefore whether the secondary victim was present and perceived it or its aftermath directly should be clear, (2) witnessing an accident or its immediate aftermath involving a close relative is undeniably likely to be a disturbing and upsetting event, and (3) in accident cases, it can be difficult to distinguish between primary and secondary victims; for example, if a mother and child are imperilled together, how can the mother's fears for herself be separated from her fears for the child?

The fourth area identified for the analysis and evaluation of theory is the remedy of an injunction. The award of a remedy in an action in tort is the ultimate outcome of the issues addressed when the claimant's action succeeds. For these purposes, perhaps the most obvious application of the remedy of injunction is found in the tort of nuisance. Since an injunction is an equitable remedy, the court has discretion in whether and how to apply it to any dispute between parties. It can be argued that resolving claims in the tort of nuisance exemplifies the role of law in balancing conflicting interests. When it does so, it may be that guidance is offered, for example by a principle that ordinary/common use of land by either party should not be restricted. If this is so, then it seems that it may be qualified by a further principle of 'give and take' between neighbours, as well as by other factors, such as the 'public utility' principle (as applied to remedies). How the rules of nuisance consequently developed can be applied to take account of such matters clearly includes decisions about remedies, and an injunction stopping, or at least modifying, the nuisance might be a particularly powerful way of readjusting the balance and resolving the conflict.

The final area identified for the analysis and evaluation of theory is vicarious liability, a form of liability in which A may be liable for a tort committed by B because of a particular relationship between A and B and because B's tortious conduct is sufficiently closely connected with that relationship. Though both A and B may be liable, the focus is on the liability of A. Important considerations of policy and principle which may guide courts in developing the rules include:

- fault should not always be required for liability
- fault in A may properly be sought in some way which is located outside of B's tortious conduct
- if A's relationship with B is such that A takes the benefit of B's conduct, A should, at the least, be jointly liable for B's conduct when it is tortious
- if A has far more resources than B to compensate victims of B's tortious conduct, A should be liable to do so
- if A can anticipate possible tortious conduct by B and cover liability by insurance, then A should be liable.

Commentary

In respect of all the theory areas, a Question 09 is likely in the first 10-mark part to invite a fairly wide and open-ended discussion, allowing learners to introduce some of the analysis suggested, but also allowing for learners to adopt an approach in which they consider how well the rules work, or what the reasons for them are.

Note that, in Question 11 (part), the relevant rules underpinned by theory will already have been outlined in answer to the problem-solving part, whereas in Question 09 learners will have to include some brief explanation of relevant rules. For the 5-mark part of a Question 09 theory question, there will probably be a requirement to focus on one specific area within the topic, although the expectation is that the answer to this part should be brief, making just a few points.

Content	Additional information
Liability in negligence for physical injury to people and damage to property	• Duty of care: the 'neighbour' principle; the <i>Caparo</i> three-part test. • Breach of duty: the objective standard of care. • Damage: factual causation and legal causation (remoteness of damage).
Commentary The inclusion of a named case within the specification (the House of Lords decision in <i>Caparo v Dickman</i> [1990]) was not consistent with the general approach of the specification to avoid reference to specific sources, especially case law, because of their vulnerability to change. However, it was dictated by the fact that the case was specifically cited in the official Subject Content for Law (DfE/Ofqual) as authority for the test for duty of care in negligence. Technically, it has been reinterpreted (or, belatedly, 'correctly' interpreted as Lord Reed might insist), rather than overruled, by the Supreme Court decision in <i>Robinson v Chief Constable of West Yorkshire Police</i> (2018). The effect is that <i>Caparo</i> should no longer be regarded as having required a three-part 'test' (reasonably foreseeable risk of injury/damage, proximity, 'fair, just and reasonable') to be satisfied in every case of negligence, whether dealing with established categories of duty or with novel situations in which no duty had yet been determined. Instead, courts should identify and apply the factors in precedents which have been the key to establishing a duty of care in earlier cases, and should be prepared to deal with novel situations only by developing the law	

Commentary

incrementally (so, in small steps), and by analogy with existing duties. However, where it is clear that the facts of a case represent an established category of duty, and no proposed revision is envisaged, no further proof is required that a duty exists. Even so, proof of a reasonably foreseeable risk of injury/damage may have to be provided.

In respect of established (standard) categories, Lord Reed in *Robinson* cited: motorist/(other) road user, manufacturer/consumer, employer/employee, and doctor/patient. Some thought may be given to other possible categories, for example the duty owed by the organiser of events (sports, music concerts etc) to, variously, participants, spectators and bystanders. This might extend also, say, to duties owed by manufacturers of goods and suppliers of services to event organisers and consumers.

Significant doubts remain about various aspects of this new approach, but it seems reasonably clear that incremental development by analogy in novel situations requires assessment of the factors in the comparator duty that *Caparo* would have included within the description of proximity, whether or not it is now described as such, and then an enquiry into whether the extension might be regarded as 'just and reasonable' (Lord Reed).

Learners should now apply the approach in *Robinson*, rather than in *Caparo*. Since they will not be required to deal with novel situations in scenario-based assessment questions, establishing a duty will be relatively straightforward, perhaps raising only the issue of whether a risk of injury or damage was reasonably foreseeable. The strong emphasis will then be on establishing breach and damage, rather than the existence of a duty itself.

It may be possible, however, to confront some of the other issues around duty in answering a theory evaluation question.

In this context, it is worth reporting that learners often spend too long outlining duty rules in detail, only then to conclude that a duty clearly exists, but spend correspondingly less time on elements such as breach or causation which may on the facts require more attention. As in all problem-solving questions, it is important to read the scenario carefully and to identify from the facts the elements that are most important in determining whether liability exists.

Breach of duty is often a more significant issue in the scenario than duty and will therefore necessitate a fuller discussion. Defendants are measured against the notional reasonable person to determine whether they acted appropriately. So, depending on the facts in the scenario, this may involve comparing them to a person with special characteristics such as a child or a professional. It is likely that one or

Commentary

more risk factors will be relevant which might either raise or lower the standard of care required. For example, the claimant may be especially vulnerable or the risk of serious injury particularly high. In both these instances it might be expected that the reasonable person would take additional care. Often there may be deliberate ambiguity or uncertainty in the way the scenario is worded, inviting learners to draw attention to this in their response and consider a variety of outcomes.

It is important to establish that the defendant caused the damage or injury. This requires considering whether they are the factual cause and also whether the damage is too remote from the negligence. There may in a scenario be an intervening act which could contribute to the final outcome or there may be uncertainty about whether the type of injury or damage was foreseeable, or the claimant may have a condition which makes the consequences more serious than would normally be expected. There are legal rules dealing with all these situations and learners need to be able to outline and apply them where they appear relevant.

Content	Additional information
Liability in negligence for economic loss and psychiatric injury	• Liability for pure economic loss caused by negligent acts and negligent misstatements. • Liability for psychiatric injury sustained by primary and secondary victims.
Commentary These are both aspects of negligence which ultimately are decided on the same basis as injury or property damage through establishing duty, breach and causation of damage, but which have additional specific rules to determine liability. They are areas where claims may be from people not directly affected by the negligence, potentially in large numbers and therefore the rules in both areas have sought to set limits on the circumstances in which such claims will be allowed. Answers should focus on these specialist rules in order to establish whether a duty is owed, though it will also be necessary to show that there was breach of duty and that the defendant was the cause of the injury or damage. Pure economic loss is financial loss without any physical loss or damage. For example, if a road accident is caused by negligence some road users may suffer injury or damage to property, but others may experience financial loss through the road being blocked for several hours.	

Commentary

In introducing learners to this topic it may be helpful to begin with such examples and perhaps to look at the range of scenarios that have been used in past questions in order to help them identify when the scenario involves a claim for pure economic loss.

It is important for learners to begin answers to such questions with a clear legal framework, which should then be applied to the facts in the scenario. Care should be taken to distinguish consequential economic loss, which is recoverable, from pure economic loss, which is only recoverable if it is caused by a negligent misstatement.

Psychiatric injury is long-term mental injury which is more than shock or grief and must also be a recognised medical condition. Learners need to be able to distinguish between primary and secondary victims and to be clear about the rules which determine liability for each category. The main rules on secondary victims have generally been known as the *Alcock* criteria following the decision in *Alcock v Chief Constable of South Yorkshire* (1992). Some significant modifications have been made by the Supreme Court in the cases of *Paul, Polmear and Purchase* (2024). As confirmed later in this guide (see Subject content/Guidance on case lists in A-level Law), there is no prescribed or definitive list of cases that learners are required to know for AQA A-level Law, but they are expected to support legal reasoning with major cases that currently establish or interpret legal rules.

Content	Additional information
Occupier's liability	• Liability in respect of visitors (Occupiers' Liability Act 1957). • Liability in respect of trespassers (Occupiers' Liability Act 1984).

Commentary

Those who suffer injury or damage to property while on the premises of another are free, of course, to bring an ordinary negligence claim, but Parliament decided that visitors to premises required specific and defined protection. It is clearly important that learners are able to recognise from the facts in each scenario which Act applies, bearing in mind that a lawful visitor can become a trespasser by exceeding their permission (e.g. by ignoring signs forbidding entry to particular areas or by staying after they have been requested to leave).

The specification does not identify specific sections of either Act which must be studied, but the expectation is that learners will understand the statutory and common law rules that are relevant. This legal framework with appropriate analysis as to what is relevant should then be applied to the facts in each scenario.

Commentary

For both Acts this legal framework should include definitions of both occupiers and premises, while specifically for the 1957 Act learners will be expected to know who qualifies as a lawful visitor and, most importantly, be able to define the duty owed to lawful visitors as set out in s.2(2) of the Act. They also need to know the rules that apply to child visitors, those that relate to people carrying out a trade or calling and those which apply to any negligence caused by the work of independent contractors. In addition, learners should expect to have to consider both warning notices and exclusion clauses and the possibility of contributory negligence or consent.

While the statutory rules must form the basis of any Occupiers' Liability answer, common law rules may also be relevant, and the best answers will be those that are able to pick out the most important facts in the scenario and apply the relevant statutory rules and appropriate case law to produce a convincing analysis and conclusion. It is also important to note that while the Act provides a definition of the duty owed by the occupier, the extent to which the occupier is in breach of that duty will depend on the extent to which they have behaved reasonably and therefore factors like size of risk and cost and effort needed to eliminate the risk may be relevant, as may be issues of causation.

For the 1984 Act the scope of the duty owed to unlawful visitors as set out in s1(1), (3), and (4) is the basis of the legal framework, though as with the 1957 Act, relevant case law, possible defences and the extent to which on the facts the occupier has behaved reasonably will be important. So, proof of breach of the relevant duty to a trespasser under the 1984 Act is no less important than is proof of such breach in the case of a lawful visitor under the 1957 Act. However, such proof must inevitably consider the different status accorded to an unlawful visitor/trespasser.

Identifying whether someone is a trespasser in a scenario is often fairly straightforward, but as pointed out earlier, someone can start as a lawful visitor and then become a trespasser. It is also important to note that just because a person is a trespasser in a question, it does not automatically mean that the rules of the 1984 Act should apply. For example, a *Rylands v Fletcher* scenario might have a trespasser as a potential cause of the dangerous situation or its escape on to someone else's land. Here the actions of the trespasser are relevant as a possible defence for the occupier and not as the basis for a claim under the 1984 Act.

Content	Additional information
Nuisance and the escape of dangerous things	• Private nuisance. • The rule in <i>Rylands v Fletcher</i>.
Commentary	
Private nuisance occurs when the defendant's use of land causes a substantial and unreasonable interference with the claimant's use or enjoyment of their land. This interference can involve physical damage, encroachment, or loss of amenity, such as from excessive noise or smells. To bring a claim, there must be a substantial and unreasonable interference, it must be more than an isolated incident, and the claimant must have suffered damage. It is important to notice that the claimant must have an interest in their land (i.e. be either the owner or tenant). The defendant must be the cause of the nuisance, and it is not necessary for them to have an interest in the land, though in most cases they will have. The basis of a claim in nuisance is that the defendant's use of the land is unlawful in the sense that it unreasonably affects the claimant. In order to determine this, the courts will consider factors such as locality, duration, intensity/degree of interference (including therefore time of day), sensitivity and malice, and whether the use of land by either the claimant or the defendant was 'common and ordinary use'. However, the consideration of issues of social or public benefit is excluded at this stage (strongly affirmed by the Supreme Court judgment in <i>Fearn v Trustees of the Tate Gallery</i> [2023]). There are defences of prescription and consent which may be relevant (statutory authority is a little beyond the scope of what can be expected) but an allegation of 'coming to the nuisance' will not provide a defence. Learners would be expected to apply these rules to the facts in each scenario, bearing in mind that both parties may be using their land in perfectly legitimate ways and that the aim of the law is to try to achieve a balance between them. The essential elements for the tort of <i>Rylands v Fletcher</i> are that the defendant must have brought on to their land and accumulated a dangerous thing. It must be a non-natural use of the land, it must escape, and the escape must cause reasonably foreseeable damage to the claimant. It is a strict liability tort, meaning liability can arise even if the defendant was not negligent, though a number of defences are available. The best way to approach problem-solving questions is to work systematically through these elements, outlining the rules with the use of relevant authorities and applying each element to the facts in the scenario with appropriate analysis. Note that scenarios might well involve situations where one or more element is uncertain, for example whether the use is non-natural or whether there has been an escape. Also, as suggested earlier, defences such as the act of a stranger may be relevant.	

Content	Additional information
Vicarious liability	• Nature and purpose of vicarious liability. • Testing employment status. • Other areas of vicarious liability.
Commentary Vicarious liability relies on the principle that, in some circumstances, one person or organisation should be responsible for the unlawful actions of another. It most obviously applies in employment situations, where an employer is considered to be liable for torts committed by employees. Traditionally, the courts applied a test comprised of two 'limbs' to determine whether an employer should be liable: whether the person was an employee and was the tort committed 'in the course of employment'. But in recent years the courts have widened the scope of the first limb to include situations which are similar or 'akin' to employment and the notion of 'course of employment' has been replaced by a requirement for a "sufficiently close connection between any such relationship and the tort committed" by the employee or person in a relationship akin to employment. Learners should be familiar with the traditional approach to the first limb of the test while having an awareness of the extension into relationships which can be categorised as 'akin to employment'. It will generally be possible to categorise the relationship(s) encountered in scenarios as employer/employee or employer/independent contractor. In respect of the second limb of the test, assuming that the relationship is a qualifying relationship (that is, employer/employee not employer/independent contractor), it will also generally be possible to view the 'sufficiently close connection' between that relationship and the tort within the traditional framework of 'course of employment'. So, though scenarios may well contain facts which challenge learners to determine whether either or both of the two limbs of the test are satisfied, it is likely that they will deal with conventional employment situations and highly unlikely that those facts will take learners into wholly unfamiliar or difficult areas of the kind which the courts have often been obliged to confront in engaging in the reinterpretation of the two limbs. So learners should have a general awareness of current developments in the law on vicarious liability, but they should expect to be able to deal with scenario-based liability largely by reference to traditional approaches. They should be prepared to be a <i>little</i> more expansive when discussing theory and, particularly, the first limb of the test.	

Content	Additional information
Defences	• Contributory negligence. • Consent (<i>volenti non fit injuria</i>). • Defences specific to private nuisance and the rule in <i>Rylands v Fletcher</i>.
Commentary Contributory negligence is a defence to negligence-based torts, including occupiers' liability, and also to <i>Rylands v Fletcher</i>. It is applicable where the claimant may be partly to blame for what has occurred and, if successfully pleaded, results in damages being reduced to reflect the degree of blame accruing to the claimant. The rules are set out in the Law Reform (Contributory Negligence) Act 1945 and these together with relevant case law provide the legal framework, which should then be applied with appropriate analysis in each situation. Consent is when a claimant accepts a voluntary assumption of the risk of harm and is a full defence. It is available in nuisance as well as in the negligence-based torts and <i>Rylands v Fletcher</i>, but note that under s149 of the Road Traffic Act 1988 it cannot be used in road traffic accidents. Learners should note that to succeed in this defence the defendant must prove that the claimant knew of the precise risk involved, exercised a genuine free choice and voluntarily accepted the risk. The defence of prescription needs to be understood and applied in nuisance questions, but as noted earlier, 'coming to the nuisance' is not a defence and the case of <i>Fearn</i> has strongly confirmed that public benefit is not a defence, though it may be taken into account when considering possible remedies. There are a number of defences to <i>Rylands v Fletcher</i>, even though technically it is a strict liability tort. In addition to consent and contributory negligence, learners would be expected to consider act of God and the act of a stranger (e.g. a trespasser).	

Content	Additional information
Remedies	• Basic understanding of compensatory damages for physical injury to people, damage to property and economic loss; basic understanding of the principle of mitigation of loss. • Injunctions.
Commentary The standard remedy for negligence-based torts and <i>Rylands v Fletcher</i> is damages, and the aim is to place the claimant through financial compensation in the position they would have been in if the tort had not been committed. It is also available in nuisance cases where the court considers that it is an appropriate remedy. Most scenario-based exam questions specify a consideration of remedies, but often learner answers deal rather briefly and in a generalised way with a possible award of damages, even when the scenario contains facts indicating specific injuries or losses. Learners should use this information to suggest how the court would work out the most appropriate level of damages, considering, for example: whether there is simply financial loss or whether there are non-pecuniary losses as in personal injury claims; special and general damages; lump sum payments and structured settlements; mitigation of loss. An injunction has been the most commonly applied remedy in nuisance cases, though following the guidance in <i>Coventry v Lawrence</i> (2014) it is possible that fewer injunctions will be granted in the future. Learners should use the information in the scenario to suggest, for example, whether a partial injunction might be more appropriate than a prohibitory order, and whether damages might be considered instead of or alongside an injunction.	

3.4 Law of contract

Content	Additional information	Commentary
The rules of contract law	Rules and principles of contract law concerning formation, terms, vitiating factors, discharge of a contract and associated remedies.	This is the standard account of the substantive law of contract which is elaborated after the comments on theory. This section of the specification has highlighted several recurring challenges in learner responses. Common issues include imprecise explanation and analysis of legal rules, unclear application to factual scenarios and difficulty in determining the primary focus of the question. These areas present clear opportunities for targeted teaching to strengthen legal accuracy, answer structure and exam technique.

Content	Additional information
Theory of contract	Analysis and evaluation of the voluntary nature of a contract and of principles governing contract law, with particular reference to the issues specified below: • outline of the theory of freedom of contract and the competing need to protect the consumer • outline of the distinction between offers, offers in unilateral contract and invitation to treat; outline of acceptances including the rationale for the postal rule and its relationship to electronic communications • outline of the rationale for consideration, and of the relationships between consideration and privity, and between consideration and economic duress • outline of the nature and effectiveness of exemption clauses • outline of the nature and effectiveness of remedies including specifically consumer remedies.
Commentary	
The general comments made on theory in tort are equally applicable to theory in contract. In particular, apart from reference to the general issue of freedom of contract, the theory identified is closely related to specific rules of law. The law of contract deals with obligations imposed by virtue of agreement between the parties. The rules seek to ensure that agreement has truly been reached, that the content of the agreement (and so the obligations arising) can be clearly established, and that there is provision for circumstances in which obligations are broken, enabling the innocent party to obtain appropriate redress. In certain kinds of	

Commentary

contractual relationship, extensive statutory obligations are imposed, from many of which the parties cannot exempt themselves in any way. In the specification, this applies particularly to the relationship of trader and consumer in the supply of goods and services.

There are numerous alternative ways of expressing the policies and principles (and of explaining the reasons) constituting the theory that may help to underpin the rules of law in contract. It is possible to argue that theory includes:

- the general policy that parties should be free to make the agreements that they wish
- the general policy that some contractual relationships are not suitable to be regulated by unconstrained agreement alone
- the general policy that agreement alone is insufficient to create enforceable obligations
- the principle that agreement must be freely and genuinely given
- the principle that third parties to an agreement should not be able to enforce nor be bound by obligations in the agreement
- the principle that parties should be free to determine the value of promises exchanged in agreement
- the principle that agreement and meaning of content should be construed objectively
- the principle that parties should adhere to promises
- the principle that appropriate redress should be available when promises are broken
- the principle that redress for breach should generally prioritise financial compensation over compulsion to perform.

In analysing and evaluating theory in the context of the aspects identified by the specification:

- the policy of freedom of contract still finds its application in commercial dealings, where inequality of bargaining power may be less evident than in dealings between traders and consumers. It also appears in the interpretation of specific rules such as the disregard of imbalance in the value of consideration exchanged ('adequacy' of consideration). It is severely challenged in the sphere of trader/consumer relationships and in the statutory control of terms such as exclusion clauses. It is also challenged by the approach to voluntariness of agreement, which may be undermined by various forms of unconscionability, such as improper pressure in economic duress
- the construction of agreements and contractual content on an objective basis can result in agreements which are not necessarily what parties intended so much as what they appeared to intend
- the requirement for consideration, along with the requirement for intention to create legal relations, follows the policy that agreement alone, however genuine, will not suffice. Privity and its exceptions, particularly that to be found in the Contracts (Rights of Third Parties) Act 1999, exemplify a now rather qualified principle concerning rights and obligations of third parties. The development of the rules on economic duress enables the courts, in some instances, to avoid (doubtful) reliance on the lack of sufficiency of consideration to refuse

Commentary

to enforce alleged obligations. Instead, the court may be able to rely on the fact that a party applied improper economic pressure to secure amendments to obligations previously agreed. The application of this rule exemplifies breach of the principle that free and genuine agreement is required

- in the areas of law covered by the specification, exemption clauses relate mainly to the trader/consumer relationship. Using a very wide-ranging definition of such clauses, they are effectively outlawed by the Consumer Rights Act 2015 in respect of terms relating to the supply of goods and services. This is clearly in pursuit of a general policy of restricting freedom of contract in this sphere
- in considering remedies, effectiveness can be analysed in relation to different kinds of loss as a result of breach of contract, including issues such as the extent to which financial awards can truly redress all such kinds of loss, and the difficulties of and limitations on enforcing actual performance of obligations by an award of specific performance. Consideration of the effectiveness of statutory remedies under the Consumer Rights Act 2015 can take account of the fact that they are highly targeted, operate in a specified sequence, pay close regard to both performance of and termination of the contract, and can be combined with appropriate common law remedies.

As explained in the section on theory in Tort (Paper 2), so also a Question 09 on Contract is likely in the first 10-mark part to invite a fairly wide and open-ended discussion, allowing learners to introduce some of the analysis suggested above, but also allowing for learners to adopt an approach in which they consider how well the rules work, or what the reasons for them are.

Note that, in Question 11 (part), the relevant rules underpinned by theory will already have been outlined in answer to the problem-solving part, whereas in Question 09 learners will have to include some brief explanation of relevant rules. For the 5-mark part of a Question 09 theory question, there will probably be a requirement to focus on one specific area within the topic, although the expectation is that the answer to this part should be brief, making just a few points.

Content	Additional information
Essential requirements of contract	• Offer and acceptance. • Consideration (including privity of contract). • Intention to create legal relations.
Commentary As a preliminary to considering the essential requirements of contract, and also as an introduction to terms of the contract, which follows later, it may be helpful to think about the general description of the parties to the contract, and so to differentiate between two or three categories of contract. However, it is important to avoid overcomplicating the analysis, so the list below should be regarded as a non-technical and not wholly comprehensive description to assist in understanding terms implied/imposed by statute, and the statutory restrictions on terms excluding or limiting liability for breach (for simplicity, only two parties are considered): • private contract: a contract between two parties, neither of whom can be regarded as a business, trader or consumer in relation to the other; for example, a contract in which a house owner sells an unwanted item of furniture to another house owner • trader/consumer contract: a contract in which, as defined by the Consumer Rights Act 2015, one party acts for purposes relating to that party's trade, business, craft or profession while the other party is an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession; for example, a 'shop' (which may be an individual person or a company) sells food to an 'ordinary' customer, or an electrician checks and repairs electrical fittings in a house for the house owner • business to business contract: a contract in which both parties act for purposes of business, and neither can be defined as a 'consumer' within the Consumer Rights Act 2015. Offer and acceptance (agreement), consideration and intention constitute the core elements of an enforceable contract and so demand close attention. It is likely that they will feature prominently in assessment, either individually or in combination, particularly in scenario-based questions. All are based largely on case law, often of some antiquity. This can require some adaptive reinterpretation to be relevant to 21st-century conditions. • Offer and acceptance (agreement): encompasses analysis of invitations to treat, offers, requests for further information, counter offers, termination of offers and acceptance of offers (resulting in bilateral or unilateral contracts). It is very important for learners to be able to apply the rules relating to these various elements to the facts of a scenario to construct a logical progression through the events that can determine whether an agreement has been reached. This may require analysis of alternative outcomes where genuine doubt remains about how to apply the rule(s) to particular facts in the scenario. For example, if it is impossible to be reasonably certain whether a	

Commentary

response made by an offeree to an offer is actually a counter offer or merely a request for further information, then the analysis and application must pursue both possibilities. Where the probability is that it is the one rather than the other, but some doubt remains, the degree of focus on each can reflect this.

- Consideration: this involves explanation and analysis of executed and executory consideration, sufficiency of consideration (including performing/promising to perform an existing obligation, past consideration, the contrast with adequacy of consideration, and the relationship with privity of contract and with economic duress. It is not necessary to deal with promissory estoppel.
- Intention to create legal relations: this requires a focus on the rebuttable presumptions applicable to commercial and domestic/social agreements.

Content	Additional information
Contract term: general	• Express and implied terms. • Conditions, warranties and innominate terms.
Commentary Contractual terms represent the substance of the agreement between the parties and create the rights and obligations on which each party can rely and by which each is bound. Explanation, analysis and application of terms may be required in answers to any of the scenario-based questions, where they are likely to be found in combination with other significant rules. More generally, they may also be important in answers to evaluative questions. Learners should be familiar with the following aspects: • the nature of a term, in contrast with a representation (especially important when the rules on misrepresentation are considered): which details raised/discussed by the parties in and around the formation of an agreement are of sufficient status to be classified as terms, and which, though not necessarily unimportant, must be regarded, at best, merely as representations • the distinction between express and implied terms: learners should understand the distinction between express and implied terms, recognising that any contract may contain a mixture of both. They should be aware of the traditional account of implied terms as derived from sources such as custom and statute and by application of a business efficacy/officious bystander test but, save for statute as further explained, are not required to develop any detailed analysis of implied terms. However, in relation to statute, there should be a focus on those terms implied/imposed by the Consumer Rights Act 2015 in the context of trader/consumer relationships. This should	

Commentary

encompass an understanding of how the statutory implied/imposed terms may combine with express terms to create a comprehensive set of rights and obligations

- methods of incorporation of terms: a general understanding of the requirement for knowledge of terms prior to agreement, of incorporation by reference to other sources, and of incorporation by a course of dealing. These aspects are traditionally important in analysing the common law approach to controlling attempts to reduce or avoid liability for breach of contract by reliance on terms designed to limit or exclude such liability. In that context, their significance has been considerably reduced because of statutory interventions thought essential to improve the control, particularly in relation to trader/consumer contracts
- the distinction between conditions, warranties, and innominate terms: apart from being able to explain the meaning of each, and to assess the probable classification of any term included in the facts of a scenario, learners should be able to relate the relevant classification to the consequences for the remedies available for breach. In particular, this will engage analysis not merely of the remedy of damages but also of the possibility of claiming a repudiatory breach entitling the innocent party to treat the contract as at an end.

Content	Additional information
Contract terms: specific terms implied by statute law in relation to consumer contracts	Consumer Rights Act 2015 • Terms implied into a contract to supply goods: ○ s9 (satisfactory quality) ○ s10 (fitness for particular purpose) ○ s11 (description). • Remedies for the breach of a term implied into a contract to supply goods: ○ s20 (short term right to reject) ○ s23 (right to repair or a replacement) ○ s24 (right to a price reduction or a final right to reject). • Terms implied into a contract to supply services: ○ s49 (reasonable care and skill) ○ s52 (performance within a reasonable time). • Remedies for the breach of a term implied into a contract to supply services: ○ s55 (right to repeat performance) ○ s56 (right to a price reduction).

Commentary

It is not the usual practice for our Law specification to identify particular sections in a statute. Rather, the usual practice is to specify the area of law (e.g. formation of contract) and then to expect that all the relevant law, common law or statute, will form part of the course of study, subject to appropriate adjustments for the level of study.

In the case of the Consumer Rights Act 2015, however, the specification clearly does provide more detail. It identifies relevant terms and associated remedies for breach, and refers to specific sections of the Act. It does assume, though, that it is unnecessary to do this in all instances. So, for example, the specification does not identify specific sections of the 2015 Act which elaborate the nature of a 'consumer contract' or 'a contract to supply goods'. These are dealt with in ss1-3 and understanding them is regarded as forming part of the essential framework underlying understanding of the relevant terms and remedies.

However, because the Consumer Rights Act 2015 is a large and complex statute, a significant degree of selectivity is inevitable, so that the relevant provisions of the Act are identified by section number, as indicated above. Even so, it is important to recognise that, in a statute such as the 2015 Act, it is rarely the case that any individual section can be fully understood without reference to some other section. Consequently, some notice must be taken of references in the specified sections to other sections which elaborate the meaning of their provisions. This can be seen very clearly by reference, say, to s20:

20 Right to reject

- (1) The short-term right to reject is subject to section 22.*
- (2) The final right to reject is subject to section 24.*
- (3) The right to reject under section 19(6) is not limited by those sections.*
- (4) Each of these rights entitles the consumer to reject the goods and treat the contract as at an end, subject to subsections (20) and (21).*

So, for example, it is only in s22(3) that the Act explains that the 'short-term' right to reject is lost if it is not exercised within 30 days. '30 days' is the essence of the notion of 'short-term'. It is difficult to understand what could be meant by 'short-term' unless the statute provided some indication, somewhere in its provisions. The section also expands on this by prescribing, for example, a variable shorter period for perishable goods, and suspension of the running of the period when repair or replacement is requested/agreed.

Additional sections supplying further information which could be of relevance include s19, which lists the remedies available for breach of terms relating to contracts for the supply of goods, provides (very importantly) that common law remedies may be available additionally or

Commentary

alternatively and, in s19(14), provides that if there is a failure to conform to satisfactory quality, fitness for purpose or description at any time within 6 months from sale, the (rebuttable) presumption is that the failure existed from the outset.

Similarly, in relation to terms imposed on a contract for the supply of services, s54 performs the same function for remedies for breach that s19 performs in relation to breach of the terms imposed by the Act on contracts for the supply of goods; it lists the remedies and provides that other (common law) remedies may be available either additionally or alternatively.

The provisions of the 2015 Act and their relationship with other sources of terms and common law/equitable remedies in the context of trader/consumer dealings are a central component of this aspect of the specification and may be expected to be a key component in assessment. Some depth of analysis of relevant terms and associated remedies is indicated. For example, the meaning of 'satisfactory quality' is expanded in s9, while remedies for breach are subject to a sequential structure which must be understood if answers discussing potential liability for breach are to be accurate and comprehensive.

As emphasised here, where contracts are between traders and consumers, the 2015 Act provisions will apply to matters such as satisfactory quality, fitness for purpose and description of goods supplied, and to matters such as the care and skill with which services are carried out. To the extent that any similar statutory terms are implied into private contracts and contracts between business and business, the relevant statutes will be the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982. However, in relation to such terms, the focus of the specification is on trader/consumer contracts, not on private and business to business contracts.

This means that private and business to business contracts may need to be analysed in the context of other aspects of contract, such as formation, express terms, vitiating factors (misrepresentation/economic duress), discharge and remedies but not in the context of the kind of terms to which the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 may apply.

Content	Additional information
Contract terms: exclusion clauses	• Basic understanding of the nature of exclusion and limitation clauses. • Common law control of exclusion clauses: rules relating to incorporation; brief understanding of the rules relating to construction. • Statutory control of exclusion clauses: Unfair Contract Terms Act 1977 (s2 and s3); Consumer Rights Act 2015 (s31, s57 and s65).
Commentary	
Traditionally, various issues arose about the attempts by parties to a contract to exclude or limit their liability for breach of contract (referred to henceforth as 'exclusion clauses'): • understanding and applying the distinction between (1) terms which exclude or limit liability for clear breach of obligations and (2) terms which define/limit the scope of the obligation in the first place, and so potentially deny any breach – the significance of this distinction has largely been eliminated in trader/consumer contracts by the extensive definition of the scope of exclusion clauses controlled by the Consumer Rights Act 2015 and with which the specification is concerned • the application of common law rules requiring proof of incorporation of exclusion clauses – this remains significant for an understanding of incorporation of terms in general (that is, other than exclusion clauses) but is of little ultimate significance in relation to the outcome of attempts to benefit from exclusion clauses in trader/consumer contracts when measured against the effect of controls on exclusion clauses imposed by the Consumer Rights Act 2015 and with which the specification is concerned • the application of rules of construction, such as the contra proferentem rule, to control the scope of exclusion clauses – once again, apart from more general changes in the approach to construction developed in recent years by the courts, there is little scope for reliance on exclusion clauses in the area of trader/consumer contracts with which the specification is concerned. Effectively, then, the significance of these aspects has been substantially affected/reduced by statutory intervention, first in the Unfair Contract Terms Act 1977, and then by the enactment of the Consumer Rights Act 2015 to impose very severe controls on exclusion clauses in the whole field of trader/consumer contracts. For purposes of assessment in scenario-based questions, the focus is on the application of statutory controls on exclusion clauses in trader/consumer contracts. However, analysis and evaluation of the approach to exclusion clauses in private contracts and business contracts may contribute to answers to evaluation questions (Question 09 and Question 11 [part]). The controls on exclusion clauses in the Consumer Rights Act 2015 s31 (as to supply of goods) and s57 (as to supply of services) apply only to breach of the terms stated in those sections. This may suggest that, even in trader/consumer contracts, learners must be familiar with the more general approach to exclusion clauses developed by the common law and applicable to those terms not covered by s31 and s57.	

Commentary

However, this is not so because exclusion clauses not covered by s31 and s57 would be subject to the ‘unfair terms’ controls imposed by Part 2 (ss61-76) of the 2015 Act. The provisions in Part 2 are not within the specification (except for s65, the prohibition on exclusion clauses relating to negligence), so that learners will not be assessed on exclusion clauses not dealt with by s31, s57 and s65.

Content	Additional information
Vitiating factors	• Misrepresentation (nature, types and remedies). • Economic duress (definition and remedies).
Commentary The two ‘vitiating’ factors with which the specification is concerned are misrepresentation and economic duress. A successful plea of either renders the contract voidable at the instance of the innocent party and so can result in a declaration by the court that the contract was void from its inception. This is the process of ‘rescission’. Rescission is a discretionary remedy, so will not always be granted by a court. It requires both parties to be returned to the position that they enjoyed prior to making the contract, so full restitution, in one form or another, must be possible. If that is impossible, or other factors such as affirmation, delay, or the intervention of third party rights occur, rescission may not be available. In the case of misrepresentation, an action for damages may be available, additionally or as an alternative to rescission. This is less certain in the case of economic duress, in which it will not be pursued in scenario-based questions. • Misrepresentation: requires explanation, analysis and application of (1) the nature of a representation, issues around fact, law and opinion, inducement; (2) the kinds of misrepresentation – fraudulent, negligent (common law and statutory) and innocent; and (3) remedies – as indicated above, rescission and damages may be available but they vary with the kind of misrepresentation and may be subject to the discretion of the court, say, to substitute damages for rescission. • Economic duress: unlike misrepresentation, the law on which has evolved over a long period of time and is relatively well understood, the law on economic duress is in the process of evolution and remains uncertain in its details. Currently, there appear to be three requirements: (1) ‘illegitimate’ pressure by one party on the other (C) – this is the aspect that remains unclear since it can include pressure derived not only from unlawful conduct but also from conduct which, in itself, is lawful. The precise scope of ‘lawful conduct’ economic duress is not yet fully determined by the case law; (2) the pressure caused C to enter into the contract; and (3) C had no reasonable alternative but to submit to the pressure. In considering remedies, the focus should be on rescission.	

Content	Additional information
Discharge of a contract	• Performance. • Breach (actual and anticipatory breach). • Frustration.
Commentary Learners should understand the different ways in which a contract can come to an end and should be careful not to confuse the idea of termination of an offer without acceptance (in consequence of which, no contract based on that offer will ever come into existence) with the idea of how an existing contract (which will have involved, among other elements, offer and acceptance) can come to an end. • Performance: the standard way in which a contract comes to an end. Each party renders the full performance of obligations agreed in the contract, and so the contract ends. Learners should also understand (1) the notion of 'entire' contracts (or obligations) in which a party must fully perform an obligation or obligations to be able to compel performance from the other party and (2) the notion of 'substantial' performance as an exception to (1), sufficient to require performance from the other party, while possibly giving the other party a claim in damages. • Breach: the distinction between (1) repudiatory and non-repudiatory breach, and the rights of the innocent party, in the context of the classification of terms as condition, warranty or innominate and (2) actual and anticipatory breach, and the rights of the innocent party. • Frustration: termination by operation of law; (1) frustrating events – impossibility (e.g. destruction of subject matter), illegality, frustration of the common venture/purpose; (2) limitations – not available to escape simple bad bargain, where provision has been made, in the case of foreseen/foreseeable events, where self-induced; (3) consequences – effect of the provisions of the Law Reform (Frustrated Contracts) Act 1943 s1(1)-(4). In the case where frustration is held to discharge the contract, learners should understand that the consequences are determined entirely by application of the rules in the Law Reform (Frustrated Contracts) Act 1943. In particular, there is no scope for the application of other statutory or common law remedies, such as termination for repudiatory breach, rescission or damages. This has often been misunderstood in responses to scenario-based questions.	

Content	Additional information
Remedies	• Compensatory damages (including categories of recoverable loss, causation, remoteness and mitigation). • Equitable remedies of specific performance and rescission. • Termination of contract for breach.
Commentary	
Remedies are an important aspect of analysis and application of the rules of the law of contract but, on the whole, have been treated a little too superficially, especially in dealing with scenario-based questions. The notable exception to this has been the often impressive detail and understanding displayed by learners when dealing with the statutory remedies provided by the Consumer Rights Act 2015 in relation to contracts for the supply of goods and of services. Learners should be aware of the key distinction between common law and equitable remedies, namely that common law remedies are available as of right, following proof of breach, while award of equitable remedies is at the discretion of the court. Learners should also have a basic understanding of the relationship between the statutory remedies provided by the Consumer Rights Act 2015 and the non-statutory remedies (common law/equitable). • Damages: learners should be able to (1) distinguish between expectation loss and reliance loss, (2) determine at a relatively simple level how expectation loss might be quantified (for example, by comparison between the contract price and the market price for goods or services), (3) consider the duty to mitigate loss for both actual and anticipatory breach, and (4) consider the issues of causation and remoteness of damage at a relatively simple level. This level of analysis will enable learners to progress beyond the simple, rather meaningless assertion that ‘C will be entitled to claim damages’ or the unfounded conclusion that the amount of the damages will be, effectively, the whole of the contract price (unless, of course, that is genuinely true!). • Specific performance: learners should be able to distinguish between the situations in which an order for specific performance is, and is not, likely to be made; for example, where damages would not be an adequate remedy (say, in the case of unique items) and correspondingly, where they would; where the contract is for personal services; where the court would be unlikely to be able to exercise adequate supervision. • Rescission: the meaning and scope of the remedy of rescission have been discussed above in dealing with the vitiating factors of misrepresentation and economic duress. Recall that it is an equitable (so discretionary) remedy that enables a court to ‘set aside’ a contract at the request of the innocent party, returning both parties to the position they enjoyed before the contract was made. Effectively, then, it is as if the contract was never made. It is very important to distinguish this remedy from the (common law) remedy for termination of the contract available to the innocent party following a repudiatory breach (see below). Confusion between the two	

Commentary

remedies can result from the fact that, occasionally, academic and judicial commentaries have also described termination for repudiatory breach as rescission, though, of course, giving it a different (second) meaning from that discussed here. In this specification, 'rescission' should be understood as meaning only the equitable remedy and should be reserved for use as a possible remedy for misrepresentation and economic duress. In answering questions, learners have frequently, but incorrectly, asserted that rescission is the general remedy available to the victim of a repudiatory breach of contract to terminate the contract. They have then gone on to discuss the consequences in terms of the equitable remedy of rescission, which are decidedly different from those resulting from termination for repudiatory breach.

- Termination for repudiatory breach: this is a common law remedy available to the innocent party where the other party has broken a term which is a condition or where, in the case of an innominate term, the breach has been sufficiently serious to be regarded as breach of a condition. Learners should understand that (1) this is the standard remedy for terminating a contract for serious breach; (2) the innocent party can choose ('elect') whether to accept the breach and terminate the contract or to 'affirm' the contract by requiring continued performance and being prepared equally to render further performance, unless the effect of the breach is that further performance is impossible; (3) the contract terminates only from the time when the innocent party chooses to terminate, so that all obligations incurred up to that point remain enforceable; (4) this same choice applies to anticipatory breach as well as to actual breach; and (5) whether the innocent party chooses to terminate or continue, it may also be possible to seek damages for any loss sustained.

3.5 Human Rights

Content	Additional information	Commentary
Rules in Human Rights law	Rules and principles of law relating to the right to life, to liberty and security of person, to privacy, to freedom of expression, and to freedom of assembly and association, as recognised by the European Convention on Human Rights and in the United Kingdom.	When introducing learners to the distinction between rights and liberties in the context of Human Rights (Paper 3B), keeping the approach clear and accessible can be helpful. You can keep the topic accessible by focusing on practical understanding rather than abstract theory. Exploring this distinction provides an excellent opportunity to show how English law's approach to individual freedoms has developed over time, particularly in light of the Human Rights Act 1998. Historically, English law operated largely based on civil liberties rather than enforceable rights. Liberties were understood as freedoms that existed in the absence of legal restrictions, and individuals were free to act unless the law explicitly prohibited them from doing so. However, these liberties were residual and vulnerable. They could be reduced or removed entirely by new legislation or judicial decisions, without any requirement for justification. For example, during the 1980s and 1990s, legislation such as the Public Order Act 1986 and the Criminal Justice and Public Order Act 1994 significantly curtailed freedoms such as public assembly and protest, without needing to balance those restrictions against any recognised legal rights.
Theory in Human Rights	• Theories of rights. • Rights contrasted with liberties. • The scope of 'fundamental human' rights.	This liberty-based model meant that individuals had no enforceable claim to protection unless a specific legal rule granted it. There was no corresponding duty on the state or others to uphold a person's liberty. In contrast, rights, particularly human rights, imply a legal obligation on others (often the state) to respect and uphold those rights. If X has a right, then Y (whether an individual, organisation, or the state) has a duty to respect it. The Human Rights Act 1998 marked a fundamental shift in this legal landscape. By incorporating the European Convention on Human Rights (ECHR) into domestic law, it transformed certain liberties into enforceable

Content	Additional information	Commentary
		rights. This change meant that individuals could now challenge state actions that interfered with their rights under Articles such as Article 10 (freedom of expression) and Article 11 (freedom of assembly and association). Had the Act been in force earlier, for example during the introduction of legislation to restrict raves in the 1990s, those measures could have been challenged on human rights grounds. This shift is also reflected in the changing language of legal education. Where university courses once focused on ‘civil liberties’, they now more commonly refer to ‘human rights’, signalling a broader and more structured legal framework for protecting individual freedoms. In teaching this topic, it may be helpful to use practical examples, such as the regulation of protest or public gatherings, to illustrate how the legal approach has changed. Learners should understand that under the old model, freedoms were permitted unless prohibited but not protected. Under the Human Rights Act, certain freedoms are now recognised as rights, meaning they cannot be restricted without justification and legal scrutiny.
Human Rights in international law	The Second World War and its aftermath. The United Nations and the Universal Declaration of Human Rights 1948. The Council of Europe and the European Convention on Human Rights 1953.	It is permissible to apply a ‘light touch’ approach to understanding of the development of human rights in international law, treating it as providing a historical and conceptual context which may help to illuminate aspects of theory and rules of law in the Human Rights specification and may be creditworthy if introduced as a contribution to answers to relevant questions. It will be useful for learners to be able to distinguish between the moral authority of the Universal Declaration and the legal force of the ECHR. Examiner reports have noted that learners often confuse the roles of the United Nations and the Council of Europe or conflate the ECHR with European Union law. Clarity in recognising the distinctions is important.

Content	Additional information	Commentary
Human Rights in the United Kingdom prior to the Human Rights Act 1998	The status of the European Convention on Human Rights in the United Kingdom, and the impact of decisions of the European Court of Human Rights.	Although the UK was bound by the ECHR from 1951, individuals could not rely on it in domestic courts. Claims had to be taken to Strasbourg after exhausting domestic remedies, making enforcement slow and inaccessible. ECHR rights influenced UK law indirectly, but there was no obligation for Parliament to act on European Court of Human Rights (ECtHR) judgments, even though it usually did. This reflected the UK's dualist legal system and the principle of parliamentary sovereignty. While courts sometimes used common law or statutory interpretation to align with ECHR principles, protection was inconsistent and lacked a clear legal framework. Understanding this context helps learners evaluate the significance of the Human Rights Act and its role in making rights enforceable within UK courts.
Human Rights in the United Kingdom after the enactment of the Human Rights Act 1998	Extent and method of incorporation and interpretation of the provisions of the European Convention on Human Rights. Impact on constitutional arrangements and on law in the United Kingdom including entrenched nature of the Human Rights Act 1998 in the devolutionary settlement of Scotland and Northern Ireland. Criticisms of Human Rights.	Learners often show awareness of the Human Rights Act 1998, and there is an opportunity to build clarity around how it operates in practice. Emphasising that the Act did not create new rights but incorporated much of the ECHR into UK law, allowing individuals to enforce ECHR rights in domestic courts, can strengthen understanding. Key provisions such as s6, which makes it unlawful for public authorities to act incompatibly with ECHR rights, and s7, which allows individuals to bring claims or rely on rights in proceedings, can be illustrated through practical examples. s3, requiring courts to interpret legislation compatibly with ECHR rights, is central to appreciating the legal impact of the Human Rights Act. The Act has also reshaped the constitutional relationship between Parliament, the executive, and the judiciary. While it preserves parliamentary sovereignty, courts may issue declarations of incompatibility under s4, which do not invalidate legislation but may prompt reform.

Content	Additional information	Commentary
		Learners should understand the limits of judicial authority and the political significance of these declarations. The Act is embedded in the devolution settlements of Scotland and Northern Ireland, where devolved bodies cannot act incompatibly with ECHR rights. This entrenchment reflects the broader constitutional importance of human rights protection.
The European Convention on Human Rights 1953 Article 2 of the European Convention on Human Rights 1953	Article 2.1: right to life Article 2.2: justified exceptions.	Learners often demonstrate awareness of Article 2, and there is an opportunity to strengthen understanding through precise application of its elements. Emphasising the distinction between the ECHR's standard of "absolutely necessary" force and the English law test of "reasonable force" can clarify a common area of misunderstanding. Stronger responses recognise the higher threshold imposed by Article 2 and illustrate this through case law such as <i>McCann v UK</i> (1995). The state's positive obligation to protect life offers an important area for deeper understanding. While learners often focus on unlawful killing, there is real value in exploring the duty to take preventive measures where a real and immediate risk exists. <i>Osman v UK</i> (1998) serves as a key authority, and applying its principle to scenarios involving police inaction can help illustrate this obligation in practice. Civil liability is underdeveloped in many responses. <i>Robinson v Chief Constable of West Yorkshire Police</i> (2018) provides one illustration of how negligence principles support may support ECHR aims and can be used to reinforce the idea that domestic law complements human rights protection. Procedural duties are frequently neglected. Learners often fail to address the requirement for effective investigation into deaths involving State

Content	Additional information	Commentary
		agents. Teaching should take account of the role of the Independent Office for Police Conduct and coroners' inquests, supported by <i>Jordan v UK</i>. Contemporary examples, such as Do Not Resuscitate orders issued without consultation, demonstrate the relevance of Article 2 in modern contexts. Examiner reports consistently praise responses that integrate legal reasoning with factual analysis and apply the law rather than merely describe it.
Article 5 of the European Convention on Human Rights 1953	Article 5.1: right to liberty and security of person. Article 5.1a–5.1c: justified deprivation of liberty – lawful arrest or detention. Article 5.2–5.5: additional requirements to justify deprivation of liberty in cases of lawful arrest or detention.	Learners often demonstrate awareness of Article 5, and this can be strengthened through precise application of its provisions. Emphasising the structure of the Article, particularly the lawful grounds for deprivation of liberty under Article 5.1(a) to (c) and the requirement that any detention be “in accordance with a procedure prescribed by law”, helps build clarity. Linking these principles to domestic frameworks such as the Police and Criminal Evidence Act 1984 (PACE) reinforces understanding. Common challenges include distinguishing a deprivation of liberty from a mere restriction of movement. Case law such as <i>Guzzardi v Italy</i> (1980) and <i>Austin v UK</i> (2012) illustrates the importance of assessing the degree and intensity of confinement. Learners also benefit from avoiding confusion between the legal tests for stop and search and those for arrest. Application of PACE can be strengthened by addressing both limbs of s24: reasonable grounds to suspect an offence and reasonable grounds to believe arrest is necessary. Examiner reports note that responses often cover one element but neglect the other; applying both to the facts is essential. Procedural safeguards under Article 5.2 to 5.5, such as the right to be informed of reasons for arrest, the right to challenge detention, and the

Content	Additional information	Commentary
		right to compensation, should also be integrated into analysis. <i>Hicks v Commissioner of Police for the Metropolis</i> (2017) provides a useful example for exploring short-term preventive detention and its compatibility with Article 5. Contemporary examples, such as the treatment of children in secure settings or the use of facial recognition technology at protests, can help learners engage with the material and appreciate its relevance. Stronger responses combine legal reasoning with factual analysis and apply the law with clarity and precision.
Article 8 of the European Convention on Human Rights 1953	Article 8.1: right to respect for private and family life, his home and for his correspondence.	Learners should also be familiar with supporting domestic legislation, including the Defamation Act 2013 and the Protection from Harassment Act 1997. These laws reflect the balancing of competing interests. Contemporary examples, such as facial recognition at protests or media coverage of individuals under investigation, help learners apply Article 8 in a modern context. Examiner feedback consistently highlights that learners who use such examples produce more engaged and relevant responses. Learners often demonstrate a sound awareness of Article 8, and there is significant scope to enhance precision in application. Emphasising that the right to respect for private and family life is qualified and must be assessed against the criteria of legality, legitimate aim, and necessity in a democratic society helps build clarity. Stronger responses apply these criteria to realistic scenarios and recognise the breadth of interests protected, including privacy, correspondence, and home life. However, note that the focus is on 'private' life, not on the extensive issues raised by 'family' life.

Content	Additional information	Commentary
		A common challenge is identifying a reasonable expectation of privacy. Learners sometimes assert a breach without explaining why the conduct falls within Article 8. Reference to the objective test from <i>Campbell v MGN</i> (2004) and <i>Murray v Express Newspapers</i> (2008), focusing on whether a reasonable person of ordinary sensibilities would expect privacy in the circumstances, supports accurate analysis. The interaction between Article 8 and domestic law can be complex, and learners benefit from understanding that individuals cannot breach ECHR rights directly. Courts, as public authorities under section 6 of the Human Rights Act, must apply domestic law compatibly with ECHR rights and may breach provisions by failing to do so. This process often leads to the development of private law rights that align with ECHR principles. The tort of misuse of private information provides the framework for balancing Article 8 and Article 10 rights, and learners should be able to apply this structure to case scenarios. Stronger responses refer to the balancing approach in cases such as <i>Axel Springer v Germany</i> (2012), considering factors like public interest, claimant status, and consequences of publication. Examiner reports highlight that learners who use these factors effectively demonstrate how rights are weighed in practice. Supporting domestic legislation, including the Defamation Act 2013 and the Protection from Harassment Act 1997, reflects the balancing of competing interests. Contemporary examples, such as facial recognition at protests or media coverage of individuals under investigation, help learners engage with the material and demonstrate its relevance. Examiner feedback consistently notes that responses incorporating such examples are more engaged and analytically robust.

Content	Additional information	Commentary
Article 10 of the European Convention on Human Rights 1953	Article 10.1: right to freedom of expression. • Receive information and ideas. • Communicate information and ideas.	Learners often demonstrate awareness of Article 10, and there is clear potential to strengthen precision in application, particularly when balancing it against competing rights. Emphasising that freedom of expression is a qualified right, covering not only speech and writing but also protest, artistic expression, and the right to receive available information, helps broaden understanding. Case law such as <i>Handyside v UK</i> (1976) illustrates the breadth of protection, even for views that are offensive or controversial. A common challenge is applying the structured approach to qualified rights. While learners frequently list the criteria, prescribed by law, legitimate aim, and necessity in a democratic society, they sometimes neglect proportionality. Stronger responses evaluate whether restrictions represent the least intrusive means of achieving the stated aim, drawing on examples from cases such as <i>DPP v Ziegler</i> (2021) and <i>DPP v Cathy Eastburn</i> (2023). The interaction between Article 10 and domestic law can also present difficulties. Learners should understand how legislation such as the Defamation Act 2013, the Protection from Harassment Act 1997, and the Public Order Act 1986 both support and limit freedom of expression. Examiner reports note that responses often refer to these statutes without explaining their relevance or practical effect. It is equally important to reinforce the role of section 6 of the Human Rights Act 1998, which requires public authorities, including courts, to act compatibly with ECHR rights. This principle is particularly significant in cases involving protest or media publication, where Article 10 must be weighed against competing rights such as Article 8.

Content	Additional information	Commentary
		Contemporary examples, including the use of facial recognition at protests and the arrest of climate activists, help learners apply Article 10 in a modern context. Stronger responses integrate legal reasoning with factual analysis and demonstrate a clear understanding of how rights are adjudicated in practice.
Article 11 of the European Convention on Human Rights 1953	Article 11.1: right to freedom of peaceful assembly and to freedom of association with others.	Learners often recognise the relevance of Article 11 in protest scenarios, and there is scope to strengthen precision in application. Highlighting that the right to peaceful assembly is qualified and conditional can support clarity. Stronger responses distinguish between peaceful and non-peaceful protest, recognising that behaviour involving violence or serious disruption may fall outside the scope of protection. Case law such as <i>Cisse v France</i> (2002) and <i>Appleby v UK</i> (2003) illustrates the limits of the right, particularly in relation to private land. Applying a structured approach to qualified rights can enhance analysis. While learners frequently list the criteria, prescribed by law, legitimate aim, and necessity in a democratic society, responses improve when proportionality is evaluated. Considering whether police restrictions represent the least intrusive means of achieving the stated aim, with reference to cases such as <i>DPP v Ziegler</i> (2021) and <i>DPP v Cathy Eastburn</i> (2023), adds depth. Familiarity with the domestic legal framework, including the Public Order Act 1986 (as amended), helps learners link principles to practice. Examiner reports note that powers under section 14 are often mentioned without explaining the grounds for their use; clarity on triggers such as serious disruption or intimidation, and how these align with ECHR requirements, strengthens responses.

Content	Additional information	Commentary
		The overlap between Article 11 and Article 10 is also significant. Understanding that protest is a form of expression and that both rights may be engaged simultaneously supports nuanced reasoning. <i>Plattform "Ärzte für das Leben" v Austria</i> (1988) provides a useful example of the State's positive duty to facilitate peaceful protest, even in the face of counter-demonstrations.
Restrictions	Article 8.2, Article 10.2 and Article 11.2: restrictions on the rights under Article 8.1, Article 10.1 and Article 11.1. General requirements relating to restrictions.	Learners often recognise that Articles 8, 10, and 11 of the ECHR are qualified rights, and developing precision in applying the legal criteria for lawful restrictions can strengthen responses. A structured approach, assessing whether an interference is prescribed by law, pursues a legitimate aim, and is necessary in a democratic society, provides a clear framework. Stronger answers link each element to relevant domestic law and evaluate proportionality effectively. One common challenge is identifying a clear legal basis for the interference. Referencing specific statutory powers, such as those in the Public Order Act 1986 or the Police and Criminal Evidence Act (1984) supports accurate analysis of the "prescribed by law" requirement. Similarly, exploring necessity through proportionality, considering whether the interference was the least intrusive means of achieving the aim, adds depth to reasoning. Understanding the role of public authorities under the Human Rights Act 1998 is also essential. Courts and police must apply domestic law compatibly with Convention rights, and this principle underpins analysis of scenarios involving protest, privacy, or police powers. Balancing competing rights, particularly between Articles 8 and 10, can be illustrated through the structured approach in cases such as <i>Campbell v MGN</i> (2004) and <i>Axel Springer v Germany</i> (2012).

Content	Additional information	Commentary
		Contemporary examples, such as protest restrictions or surveillance practices, help learners apply these principles in context. Responses that integrate such examples tend to demonstrate stronger engagement and clearer understanding of how rights are restricted and balanced in practice.
Enforcement	Claims before the European Court of Human Rights; the role of domestic courts; the effect of decisions on states and claimants. The process of judicial review.	Learners often recognise the importance of enforcement mechanisms, and developing precision in their application can strengthen responses, particularly when distinguishing between domestic and international routes. References to the ECtHR are sometimes superficial, with limited understanding of admissibility and the requirement to exhaust domestic remedies. Similarly, the role of the Human Rights Act is often misunderstood, with sections 6, 7, and 8 listed without explanation of their legal effect. Judicial review is another area where clarity can be improved. Responses sometimes misrepresent its procedural nature or overlook its focus on legality rather than outcomes. Awareness of constraints on enforcement, such as the non-binding effect of ECtHR judgments on domestic law and the discretionary impact of declarations of incompatibility under section 4, adds depth to analysis. Stronger answers integrate legal reasoning with factual examples and demonstrate how enforcement mechanisms operate in practice. Exploring the structure, limitations, and practical implications of enforcement helps learners produce more evaluative and well-supported responses.
Human Rights and English law	The right to life: an outline of criminal and civil law provisions and investigatory procedures. Homicide and associated offences (including the defence	Learners often demonstrate awareness of the relationship between English law and the ECHR, and refining precision in evaluating compatibility can strengthen responses. It is helpful to reinforce that English law is not a separate body of law in the Human Rights paper, but the domestic framework through which ECHR rights are applied and enforced following the Human Rights Act 1998.

Content	Additional information	Commentary
	of self-defence/prevention of crime). • Obligations on police and others in planning dangerous operations. • Protective policing. • Civil law negligence. • Independent investigation of deaths in custody or attributable to agents of the State. Deprivation of liberty. Privacy and communication: criminal and civil law provisions which protect or restrict the rights. Expression, assembly and association: in addition to relevant provisions identified above which impact on the balance between privacy and the right to freedom of expression, assembly and association.	A frequent challenge is explaining how specific English legal provisions support or interfere with Convention rights. Stronger answers identify relevant domestic rules and assess their impact on rights such as privacy (Article 8), expression (Article 10), liberty (Article 5), and assembly (Article 11). While detailed doctrinal analysis is not required, learners should be able to apply English law in its human rights context. A structured approach to compatibility analysis is particularly effective. Learners benefit from being able to: • explain the relevant English legal rule • analyse the applicable ECHR provision • assess compatibility and identify potential remedies under the Human Rights Act. Examiner reports confirm that outline knowledge is sufficient for many provisions, and credit is awarded for any relevant material, even if not explicitly listed in the specification. Responses that integrate domestic law with ECHR rights tend to demonstrate stronger understanding and clearer reasoning. Note: further advice on what is included within 'English law' for these purposes is included in the 'Subject-specific guidance' section, from page 76.
Reform	Reform of the protection of Human Rights in the UK.	Learners often show awareness of reform debates, and these discussions provide a useful context for understanding the development of human rights law. Proposals to replace the Human Rights Act 1998 with a British Bill of Rights, or to introduce an equivalent provision, remain relevant, even though practical difficulties have often proved challenging. Supporters

Content	Additional information	Commentary
		highlight arguments around sovereignty and reducing reliance on Strasbourg, while critics raise concerns about weaker protections and potential politicisation. Broader criticisms of the current framework include cultural relativism, ambiguity in qualified rights, selective enforcement, and tensions between individual and collective interests. Exploring these perspectives can help learners appreciate the complexity of reform and the competing values involved.

Assessment

Understanding assessment involves familiarity with key elements, including:

- assessment objectives
- mark schemes
- examiner reports
- example responses.

We do not prescribe a fixed strategy for assessment, giving teachers flexibility to develop approaches that suit their context. Engaging with these materials and reflecting on patterns in past questions supports informed planning and preparation.

Our [A-level Law Mark scheme guidance and application course](#) provides expert instruction from a senior AQA examiner in how to apply mark schemes to key question types.

Assessment material can be found [on our website](#) and on Centre Services.

Breakdown of the assessment

Paper 1

The nature of law and the English legal system. Criminal law

- 33.3% weighting
- 2-hour written exam
- 100 marks in total:
 - The nature of law and the English legal system (25 marks)
 - Criminal law (75 marks)
- A combination of multiple choice, short answer and extended writing questions.

Paper 2

The nature of law and the English legal system. Tort

- 33.3% weighting
- 2-hour written exam
- 100 marks in total:
 - The nature of law and the English legal system (25 marks)
 - Tort (75 marks)
- A combination of multiple choice, short answer and extended writing questions.

Paper 3

The nature of law and the English legal system. Law of contract

OR

The nature of law and the English legal system. Human Rights

- 33.3% weighting
- 2-hour written exam
- 100 marks in total:
 - The nature of law and the English legal system (25 marks)
 - Law of contract OR Human Rights (75 marks)
- A combination of multiple choice, short answer and extended writing questions.

Assessment objectives

Our specification is structured around three assessment objectives (AOs): AO1, AO2, and AO3. See 4.2 of the specification. While marking is holistic, the final mark awarded for each question reflects the quality of treatment across all relevant AOs.

Further guidance on the assessment objectives include:

- AO1: Knowledge and understanding requires accurate identification, definition, and explanation of relevant legal rules and authority. AO1 forms the foundation of all responses.
- AO2: Application involves applying legal rules to factual scenarios to propose credible legal outcomes.
- AO3: Analysis and evaluation. AO3 involves critical evaluation of legal rules in relation to a concept or theory (e.g. justice, fault, morality). AO3 has two distinct interpretations depending on the question type:
 - scenario-based questions (Question 08, Question 10, and Question 11). AO3 refers to the analysis of legal rules and facts to determine liability
 - non-scenario-based questions (Question 09 and the 7 mark component of Question 11).

Question types and marking

Our papers include a range of question types.

All papers follow a uniform structure:

- Questions 01 to 05: multiple choice (1 mark each)
- Question 06: English legal system (ELS) (5 marks)
- Question 07: brief scenario (5 marks)
- Question 08: limited issue scenario (10 marks)
- Question 09: evaluation essay (15 marks)
- Question 10: extended scenario (30 marks)
- Question 11: extended scenario plus evaluation (30 marks: 23 + 7).

Multiple choice questions have fixed answers selected from a set of options, so marking is straightforward and objective. In contrast, extended answer questions do not have a single 'right' answer. Instead, examiners make a holistic judgment based on how well the learner addresses the question, applies relevant legal rules, and meets the assessment objectives. The mark awarded depends on the quality and relevance of the response, not on a checklist of expected points.

However, to ensure fairness and consistency across all learners, we provide mark schemes with guidance on expected standards and indicative content. Each indicative content group (ICG) represents a major legal issue (e.g. murder, loss of control, self-defence). Examiners assess each ICG individually (e.g. Excellent, Good, Satisfactory). These judgments are combined to establish suggested mark ranges based on how well the response meets the assessment objectives. This helps examiners apply the criteria consistently and make accurate, balanced judgments.

A-LEVEL LAW – 7162 – TEACHING GUIDE: GUIDE TO A-LEVEL LAW

- Question 08 (10 marks): may have 1 ICG (narrow focus).
- Question 09 (15 marks): always has 2 ICGs (10 marks for theory/concept and 5 marks for law).
- Question 10 (30 marks): typically, 3 ICGs (possibly 2 to 4).
- Question 11 (30 marks) (2 parts): typically, 2 to 3 ICGs for the 23 marks for scenario (substantive law); 1 ICG for the 7 marks for evaluation (ELS/concept/theory).

Using Question 10 as an example across any of the three papers, examiners must make a judgment about the award of a single mark out of 30.

To achieve this, examiners assess the quality of treatment of the various assessment objectives (AO1 to AO3) in relation to each ICG by reference to the banded mark scheme classifications, Excellent (E), Good (G), Satisfactory (S), Limited (L), and Minimal (M).

The chosen classifications are then combined to form the basis of a holistic judgment, which determines the final mark within a suggested range.

So, for example, if the level achieved in each of 3 ICGs is judged to be E (that is, EEE), the holistic mark will lie within the 25 to 30 range. If the judgments are GGG, the range will be 19 to 24. Of course, the classifications chosen will not always be uniformly of one level but rather may be at different levels, such as EES or SLL. In that case, the holistic mark will represent the outcome, in the examiner's judgment, of the combination of the different levels of treatment of ICGs and corresponding mark ranges.

Further guidance

Substantive and non-substantive law

What is meant by substantive and non-substantive law and how should the distinction be interpreted in terms of the topics?

Our specification distinguishes between substantive law and non-substantive law, both in terms of content and assessment. Understanding this distinction is essential for effective teaching and exam preparation.

Substantive law

Refers to the legal rules derived from statute and case law that determine criminal and civil liability. This includes the core content of 3.2 Criminal law, 3.3 Tort law, 3.4 Contract law, and 3.5 Human Rights law. **Note: this excludes theory and reform components within these sections.**

Non-substantive law (primarily found in Section 3.1 and the theory elements of Sections 3.3–3.5)

Encompasses all specification content that does not directly determine liability but supports the creation, interpretation, and application of substantive law. This includes law-making processes, court structure and personnel, legal procedures, statutory interpretation, and legal concepts and theory.

How are the non-substantive law topics distributed between the three papers?

Our specification does not assess every non-substantive topic in every paper. Instead, content from Section 3.1, The nature of law and the English legal system, is strategically distributed across the three papers, as outlined in Appendix 2 of the specification.

The topic 'Nature of law – legal and other rules; civil/criminal distinction and sources' may appear in any paper, though it is typically assessed in only one paper per exam series.

The 'Nature of law: law and society – fault', the 'Nature of law: law and society – balancing conflicting interests', the 'Nature of law: law and morality', and the 'Nature of law: law and justice' are also strategically distributed across the three papers as identified in Appendix 2 of the specification.

Each paper maintains a 75% substantive law / 25% non-substantive law balance.

Which questions are substantive and non-substantive law assessed in?

In broad terms, the breakdown is as follows:

Non-substantive

- Multiple choice questions (MCQs 03 to 05): 1 mark each (AO1)
- Question 06: 5 marks (AO1)
- Question 09: 10 marks (of a 15-mark, high-value, evaluation question) (AO1/AO3)
- Question 11: 7 marks (of a 30-mark, high-value, combined scenario-based/evaluation question) (AO1–AO3).

Substantive

- Multiple choice questions (MCQs 01 and 02): 1 mark each (AO1)
- Question 7: 5 marks (brief scenario-based question) (AO1–AO2)
- Question 8: 10 marks (medium-level scenario-based question) (AO1–AO3)
- Question 09: 5 marks (of a 15-mark evaluation question) (AO1/AO3)
- Question 10: 30 marks (high-value, scenario-based question) (AO1–AO3)
- Question 11: 23 marks (of a 30-mark, high-value, combined scenario-based/evaluation question) (AO1–AO3).

Subject content

Guidance on including recent changes in the law

The general 'rule' for knowledge of current law is that learners are expected to be familiar with the law as it exists immediately before the start of the academic year in which the exam is due to take place. So, for example, if the exam is in May/June 2026, the cut-off date is 31 August 2025. Inevitably, changes (if any) do not all crowd into that August but may be taking place at any time within the previous 12 months, so the 'grace period' for teachers and learners to become familiar with changes may be substantially more than a year. However, knowledge and understanding of recent, relevant changes will always be appropriately credited, even though they occur after 31 August in the relevant year.

Guidance on case lists in A-level Law

There is no prescribed or definitive list of cases that learners are required to study. Teachers have full discretion to select currently relevant statutes and leading cases. AQA does not issue an official or exhaustive list. The specification explicitly names only two cases, *Caparo v Dickman* and *Rylands v Fletcher*, both within the Tort section. Even these are subject to change in legal relevance (see the discussion of *Caparo v Dickman* in the Tort section below).

Learners are expected to support legal reasoning with major cases that establish or interpret legal rules. This enhances clarity and demonstrates legal authority in application and evaluation. For the use of cases in exams, it is advised that learners are not required to memorise or cite all cases listed in textbooks. They also need to avoid excessive factual detail or irrelevant case discussion. They must ensure that any case cited directly supports the legal point being made. In scenario-based questions (for example, Question 08), case law is used to support legal reasoning. Maximum marks can be achieved with a limited number of well-chosen references. In non-scenario-based questions (for example, Questions 06, 09, and 11), case references may enhance responses but are not mandatory unless explicitly required. Holistic marking applies: the quality of explanation, analysis, and application is prioritised over the number of cases cited.

Our mark schemes, textbooks, and schemes of work provide indicative, not exhaustive, guidance on relevant case law. These may evolve and are not binding.

The nature of law and the English legal system

What are the requirements for knowledge of the advantages and disadvantages in the English legal system (ELS)?

In relation to the law-making content of the English legal system across all three papers, the specification explicitly requires knowledge and understanding of advantages and disadvantages in the following areas: influences on parliamentary law making, delegated legislation, different approaches to statutory interpretation, the doctrine and operation of judicial precedent, the use of juries in criminal courts, and reasons for and advantages of judicial independence, including methods of achieving it.

Where the specification does not refer to advantages and disadvantages, such as in relation to the European Union, civil and criminal courts (excluding juries), alternative dispute resolution, and access to justice and funding, it should be presumed that such evaluative content is not required. However, learners may be asked to provide some rather more basic form of 'assessment' of some of these topics in answering the 7-mark component of Question 11.

What topics require evaluation?

Evaluation is not required for all topics. Instead, it is focused on and structured around legal concepts and theory and is assessed primarily in Question 09 and the 7-mark evaluative component of Question 11 in each paper. Evaluation is not concerned with criticism or reform of legal rules in isolation. Evaluation involves assessing how legal rules relate to legal concepts (balancing conflicting interests, fault, morality, justice) and to theory specific to each area of substantive law. Evaluation of the quality (strengths and weaknesses) of legal rules in each substantive area is not the focus.

There is a paper-specific evaluation focus. In Paper 1 (criminal law) this includes justice, fault, and criminal law theory. In Paper 2 (tort law) the focus is fault, morality, and tort theory. In Paper 3A (contract law) and 3B (human rights law) the focus is on justice, morality, balancing conflicting interests, and respective theoretical frameworks.

In terms of question format, Question 09 (15 marks total) is broken into 10 marks for analysis of the concept or theory (AO1/AO3) and 5 marks for an evaluative application to relevant substantive law (AO3), which examines the match between concept or theory and the relevant substantive law. Question 11 (30 marks total) has a 7-mark allocation to evaluation ('assessment') of a concept, theory, or aspect of the English legal system in relation to some aspect(s) of legal issues raised by the scenario (AO1 to AO3).

Some examples of evaluative topics might include:

- Paper 1: justice in relation to the sexual infidelity exclusion in loss of control
- Paper 2: fault in relation to *Rylands v Fletcher*
- Paper 3: morality in relation to contract or human rights rules; delegated legislation as a source of law.

What study of 'theory' is required?

The specification requires study of 'theory' in two forms:

- general aspects of theory of particular relevance to law in its broadest definition, including institutions, processes, rules, and outcomes. These aspects are termed 'Concepts' in the specification, which identifies them as (1) balancing conflicting interests, (2) fault, (3) morality, and (4) justice
- theory specifically applicable to the particular rules of substantive law (crime, tort, contract, human rights) dealt with in Papers 1, 2 and 3A/3B. The specific theory required is identified in the specification content for each paper in a section headed 'Theory in/of ...'

Even though both of the above are undoubtedly 'theory', for convenience it is usual to distinguish between them in matters relating to study of the specification by referring to the first as the 'Concepts' or identifying individual Concepts by name, and by referring to the second simply as 'theory' (perhaps also including the specific area of substantive law to which the theory relates). So, for example, if the advice is that a Paper 1 Question 09 could examine 'Concepts or theory', it means that the question could concern one of the relevant Concepts allocated to Paper 1 as set out in Appendix 2 of the specification (either 'fault' or 'law and justice') or the specific theory prescribed for criminal law.

Theory can contribute to the development of a deeper understanding of the phenomenon of law and its operation in context. The theory specific to the rules of substantive law is distinct from the rules themselves but promotes the adoption of a broader perspective on the rules, encouraging analysis and evaluation of why and how they are constructed, interpreted and applied. In the process, it should also enable learners to develop a stronger understanding of the substantive law rules themselves.

As indicated in the section above ('What topics require evaluation?'), theory as 'Concepts' and 'theory' as theory specific to each substantive law area may be assessed in any paper in Question 09 or in the 7-mark component of Question 11.

How to interpret the term 'rules and principles'

The opening section of the specification content for each paper refers to 'rules and principles' specific to the substantive law for that paper. The section which follows in the specification details the 'theory' for that paper. The term 'principles' is then often used in the description of that theory. Sometimes, this is accompanied by reference to the term 'policies'.

In the specification, 'rules' should be interpreted as the rules of substantive law which are identified in the subsequent sections for each paper (excluding theory). 'Principles' (along with 'policies' if they appear) should be interpreted as components of theory. The aim of the study of theory, as explained above, is to promote a broader perspective on, and understanding of, both the general phenomenon of law (via the 'Concepts'), and of the detailed components of the rules in each area of substantive law (via specific theory).

When analysing specific theory, it is important not to be distracted by doubts about the distinction between policies and principles, and to bear in mind that 'reasons' (say, for choosing a policy or principle, or for the form in which a rule is developed to implement either) also contribute a significant amount to the analysis. To take an example from the tort

of negligence: the 'floodgates' argument is often cited when restrictions on the scope of liability are being discussed. The proponents of the floodgates argument assert that it is important not to leave the defendant (even though admittedly guilty of negligence which has caused loss) open to liability for "an indeterminate amount for an indeterminate time to an indeterminate class". In other words, do not open the floodgates to liability. This is frequently described as a 'principle', though it provides little specific guidance on what rule(s) to develop to achieve the purpose. It seems more in the nature of a broad policy objective.

Does it matter to any great extent how we describe it? Not really. What is evident is that there must be some further guidelines to establish distinctions between favoured and unfavoured claimants. These guidelines may be sufficiently clear for acceptable distinctions to be made, and might be termed 'principles'. For example, perhaps there is a principle that personal injury and physical damage should be treated differently from economic loss, though the rules which develop may suggest that the principle is 'qualified' (for example, distinguishing between consequential and pure economic loss, or between pure economic loss resulting from statements and from conduct other than statements). As suggested above, running through this will be 'reasons'. Reasons for choosing the policy in the first place. Reasons for choosing categories of loss on which to focus. Reasons for choosing particular qualifications to any principle when devising the particular rule(s). Whatever the terminology used, all of these aspects contribute to the idea of 'theory', and ability to provide at least some analysis and evaluation along the lines indicated will be strongly creditworthy in relevant contexts.

Analysis and evaluation of this kind may be relevant to answers to Question 09 and the 7-mark component of Question 11, whether those questions deal with specific theory or with the more general theory required by 'Concepts'.

Assessment

Clarification of what AO3 (analysis and evaluation) means

The specification defines AO3 as analysis and evaluation, which is assessed across both scenario-based and non-scenario-based questions. The specification distinguishes between two distinct forms of AO3 activity:

- **Scenario-based questions** (e.g. Questions 08, 10, and parts of 11). Analysis in answers to these questions involves breaking down complex legal definitions (e.g. the elements of murder) into their component parts, while evaluation refers to assessing the relevance and significance of facts and specific elements of the legal rules. This does not involve critiquing the law itself, but rather AO3 credit is awarded for evaluating the facts to identify relevant legal issues, evaluating which legal rules apply to those facts, and analysing rules to propose a solution
- **Non-scenario-based questions** (e.g. Question 09 and part of Question 11). Where learners are required to critically evaluate legal rules in relation to legal concepts or theories (e.g. justice, fault, morality), learners are expected to analyse the concept or theory and evaluate how the relevant legal rules align with or contradict that concept or theory. The focus is on linking substantive law to broader theoretical frameworks, rather than proposing reforms or criticising the law in isolation. In terms of mark allocation, Question 09 has 10 marks for analysis of the concept or theory and 5 marks for an evaluative application to the relevant area of law. Question 11 has 7 marks allocated to evaluative content.

How to demonstrate AO1, AO2, and AO3 in problem-based answers

As already stated, there is no prescribed method of answering questions, but this is a possible suggested approach to help learners demonstrate AO1, AO2, and AO3.

- **AO1: Knowledge and understanding.** You could encourage learners to clearly define and explain relevant legal rules, including key terms and authorities. This forms the foundation of their answer but should be concise and focused on what's relevant to the scenario.
- **AO2: Application.** You could guide learners to apply the law directly to the facts of the scenario. They should use legal reasoning to propose a credible outcome, showing how the rules operate in context. Encourage them to consider alternative outcomes where appropriate.
- **AO3: Analysis and evaluation (in scenario-based questions).** You need to clarify that AO3 here does not mean critical evaluation of the law itself. Instead, it involves: (1) analysing the facts to identify the relevant legal issues, evaluating which legal rules apply and which elements need deeper examination; (2) breaking down complex legal definitions (e.g. *actus reus*, *mens rea*) to focus on what matters in the scenario, and (3) judging the significance of particular facts or legal elements in reaching a conclusion.
- This kind of evaluation is practical and fact-based, not theoretical or reform focused. It's about making sound legal judgments, not critiquing the law.
- Reinforce that clarity, structure, and legal reasoning are essential to demonstrating all three AOs effectively.

Approaching extended problem-based questions

It is important to note that there is no definitive correct methodology or strategy for answering problem-based questions. However, the following points can be used as a useful starting point.

- Focus on relevant facts and identify the key legal issues from the scenario and avoid including unrelated content.
- Select the most appropriate offence/rule and prioritise these and do not waste time on minor ones.
- Apply the law selectively by only explaining the legal elements that are central or uncertain in the scenario.
- Use legal reasoning by applying the law to facts to propose credible outcomes and or considering alternative interpretations where relevant.
- Prioritise the key issues by concentrating on the main points of contention (e.g. defences or disputed elements).
- Show judgment by demonstrating the ability to decide what's important and what to leave out as this is a key skill being assessed.

Feedback to help learners improve their legal analysis and evaluation

One effective way to support learners in developing stronger legal analysis (AO3) and application (AO2) is to provide feedback that focuses on clarity, relevance, and legal judgment.

- Feedback should help learners prioritise the key legal issues raised by the scenario. It's important to highlight when they have included irrelevant or unnecessary detail, such as explaining causation when it is not in doubt, and to praise instances where they have selectively applied legal rules that are clearly linked to the facts.
- Learners should be encouraged to aim for depth rather than breadth. Rather than listing multiple offences or legal rules superficially, they should be guided to break down and analyse complex legal elements, such as *actus reus* or *mens rea*, in greater detail. Feedback should reward this targeted analysis and discourage the 'write everything I know' approach.
- Feedback should reinforce the importance of legal judgment. In scenario-based questions, AO3 is about evaluating which facts and legal elements are most significant. Learners should be recognised when they demonstrate sound judgment in selecting the most relevant rules and focusing their analysis accordingly.

Where appropriate, feedback can also be structured around indicative content groups (ICGs). For example, a comment such as "Your treatment of ICG1 was excellent, but ICG2 lacked depth in analysis" mirrors examiner practice and helps learners understand how their work is assessed holistically.

For evaluative essay questions, such as Question 09, learners should be encouraged to balance their analysis of legal theory with its application to substantive law. Feedback should prompt them to include a brief conclusion and, where possible, to consider alternative perspectives, even if they ultimately argue for one side. It's also important to caution against overloading the essay with case detail at the expense of conceptual clarity.

Can both theory and concepts form part of Questions 09 and 11?

Both theory and concepts can form part of Question 09 and the 7-mark component of Question 11 on the papers. The scope of both questions explicitly includes both concepts and theory. Interpretation of the specification treats 'Nature of law' as encompassing both concepts (to include justice, fault, morality, balancing conflicting interests) and specific theory associated with the substantive topic areas (e.g. criminal law theory, tort theory, human rights theory), though, for practical purposes, this is located alongside the substantive law topics in the specification. Any paper may include one or both elements in either question.

Further guidance on content and assessment for Question 09

Question 09 is designed to assess learners' ability to engage with legal concepts and theories, and to evaluate how these relate to areas of substantive law. The question is divided into two components: the first, worth 10 marks, requires explanation and analysis of a legal concept or theory; the second, worth 5 marks, involves evaluating how that concept or theory applies to a specific area of law.

When the question refers to a broad concept, such as fault, learners may draw examples from any area of law, including criminal, tort, contract, or human rights. However, if the question specifies a particular area (e.g. fault in criminal law), learners should focus primarily on that area, though relevant examples from other areas may still be credited if they enhance the discussion.

Each paper has its own set of relevant concepts and theories. For example: Paper 1 (criminal law) includes justice, fault, and criminal law theory. Paper 2 (tort law) includes fault, morality, and tort theory. Paper 3A (contract law) and 3B (human rights law) include justice, morality, balancing conflicting interests, contract law theory/human rights theory.

In terms of time management in answering Question 09, learners are advised to spend around 10 minutes on the explanation and analysis of the concept or theory, and about 5 minutes on the evaluation of its relationship with substantive law. Typically, two well-developed evaluative points are sufficient for the latter, though one strong point may also be enough. Marking is holistic, meaning there is no fixed number of points required. Instead, emphasis is placed on the quality of explanation, depth of analysis, and relevance to the question.

What is the expectation for the 7-mark component of Question 11?

In Question 11, the number and depth of evaluative points required in the 7-mark component will depend on the topic and how it connects to the 23-mark substantive law section. Typically, a well-structured response that includes a brief explanation of the relevant framework and two well-developed evaluative points is sufficient to reach the higher mark bands. Alternatively, a single, well-balanced evaluative point or several brief but relevant observations may also meet the standard.

However, responses that lack meaningful assessment or fail to engage with the evaluative aspect of the question are likely to be capped at the 'Satisfactory' band, usually around 3 out of 7 marks. Therefore, learners should aim to demonstrate clear judgment and relevance in their evaluation to maximise their potential in this component.

How to cite case names

There is no prescribed or mandatory format for citing case names in learner responses. The emphasis is placed on learners' understanding of legal rules and their ability to reference appropriate authority, rather than on the precise format of case citation.

Learners are not required to include "R v ..." when citing criminal cases. It is perfectly acceptable to refer to the case by the defendant's name alone, for example, simply using "Smith" or "Jones". This is often the most efficient approach. However, using "R v ..." may be helpful in certain situations, such as when the defendant is identified only by an initial (e.g. R v D), to avoid confusion with abbreviations like "D" for "defendant", or when the case name could be mistaken for a character in the scenario.

If a learner cannot recall the exact case name, full credit may still be awarded if they refer briefly to the facts of the case – particularly where those facts are necessary to convey the legal principle (ratio) or if they demonstrate a clear and accurate understanding of the case, even if the wrong name is given (e.g. describing the facts of Evans but naming it Ellis). Ultimately, the key criteria for assessment are the learner's legal understanding and their ability to support legal rules with appropriate authority, not the technical accuracy of case citation.

Subject-specific guidance

How to discuss causation when it is not an issue in a problem-style question

In scenario-based questions worth 10 or 30 marks, where causation is clearly not in dispute, it should be addressed only at the AO1 level. This approach helps learners maintain focus on the more relevant legal issues and avoids unnecessary elaboration.

When causation is unproblematic, learners should simply state that the defendant's conduct must have caused the result, such as death, both in fact and in law. A brief definition of factual and legal causation is sufficient, followed by a clear assertion that causation is satisfied on the facts. No further analysis or application is required in such cases. However, if the facts suggest a potential break in the chain of causation, such as through the victim's actions or medical intervention, then full AO3 analysis and AO2 application are necessary. In these instances, learners must evaluate whether the chain of causation remains intact and apply the relevant legal principles to the scenario.

You should guide learners to assess the facts carefully before deciding how to treat causation. This strategy ensures that learners allocate their time and effort appropriately in extended responses, focusing on the issues that genuinely require deeper legal analysis.

What approach should a learner take when liability through an offence or tort is not certain?

When teaching learners how to approach questions involving offences or torts where liability may not be clearly established, it is important to emphasise a balanced and analytical approach. Learners should be trained to assess whether the scenario genuinely invites a discussion of potential liability, or whether the facts make such liability implausible. This distinction is crucial: some scenarios may present a realistic possibility of liability, even if the better view is that the offence or tort has not been committed, while others may be so far-fetched that legal liability is clearly not in question.

Where a scenario does raise a credible possibility of liability, learners should be encouraged to explore both outcomes, liability and no liability, by identifying and addressing all relevant legal elements. They should deal efficiently with elements that are not in dispute and focus their analysis on those that are problematic. This ensures that their answer is complete and demonstrates sound legal reasoning.

A key teaching point is that learners should not dismiss certain elements of an offence or tort simply because they believe another element is missing. Doing so risks overlooking alternative interpretations that could support a finding of liability. Instead, learners should be prepared to consider all elements and present reasoned arguments for both sides, especially where the facts are ambiguous or open to interpretation. For example, in a scenario involving potential theft and robbery, if dishonesty is in doubt, learners should still address the other elements of the offences. They should then explain how the presence or absence of dishonesty would affect the overall conclusion. This approach not only reflects the legal reasoning expected in exams but also mirrors the kind of analysis required in real legal practice.

Ultimately, learners should be taught that uncertainty in a scenario is not a reason to avoid analysis, but it is a reason to engage with it more deeply. A well-structured answer will acknowledge the uncertainty, explore the implications of different interpretations, and reach a justified conclusion. This method ensures that learners produce complete, thoughtful responses and avoid the risk of omitting key legal discussion.

Some suggested guidance points

- Start with the facts: ask learners to identify which facts in the scenario raise doubt or ambiguity. Encourage them to explain why those facts might support or undermine liability.
- Use paired perspectives: have learners work in pairs, with one arguing for liability and the other against. This helps them see both sides of the issue and strengthens evaluative thinking.
- Prompt with questions: use open-ended prompts such as:
 - What would change if this fact were different?
 - Is there a realistic argument for liability here?
 - Which element of the offence is most uncertain?
- Encourage reference to authority: ask learners to support their reasoning with relevant case law or statutory provisions, even when the outcome is uncertain.
- Model uncertainty: show learners how to write conclusions that reflect doubt, such as:
 - 'While the facts suggest (D) may not have been dishonest, this is not certain. If dishonesty were established, liability for theft and robbery would follow.'
- Use real-world analogies: compare the scenario to real legal dilemmas or court cases where outcomes hinged on interpretation of facts or intent.

What provisions of 'English law' are included within the section 'Human Rights and English law'?

The specification for the Human Rights option (Paper 3B) includes a section headed, 'Human Rights and English law'. The purpose of this section is to enable learners to understand how, and how far, the obligations imposed on the United Kingdom by the reception into English law of substantial parts of the European Convention on Human Rights (ECHR) by virtue of the enactment of the Human Rights Act 1998 are met by relevant provisions of English law.

Specific provisions of English law in the context of relevant ECHR Articles

The explanation below identifies specific rules of English law which fall within this heading of the specification. The rules are identified in relation to each relevant Article. However, some preliminary points are worth making:

- there are very many statutory and common law rules of English law which might be significant in relation to fulfilling or failing to fulfil the obligations imposed by ECHR Articles and it would be totally impracticable to address more than a relatively small number of them. Inevitably, then, selectivity will result in some very important rules not receiving any consideration. A very good example is the whole field of data protection. The statutory rules are clearly relevant to Article 8 and to Article 10 but are, nevertheless, just a little too dense and detailed to be treated properly in the Human Rights option
- many rules of English law will be relevant to the obligations imposed by more than one Article, so that the list of rules encompassed in this section may actually be shorter than might appear at first sight. For example, public order legislation (for example, the Public

Order Act 1986) may tend to inhibit freedom of expression (Article 10) and freedom of peaceful assembly and association (Article 11), while harassment legislation (Protection from Harassment Act 1997) may protect private life and the home (Article 8) but inhibit freedom of expression and of peaceful assembly and association (Articles 10 and 11)

- in general, the expectation is that learners will explain and apply rules in the way that they would for any substantive law subject. However, the focus is on rules of law (whether criminal law, tort, contract, or any other) not as, say, rules of substantive criminal law or tort in themselves but in their character as impinging on human rights. This is frequently recognised in examination questions, particularly in Question 10 and in Question 11 by use of the instruction, 'Taking a human rights perspective'. Consequently, the emphasis should always be on those areas of the rules which most prominently impinge on human rights, especially on the balance between different rights. Learners are not expected to treat these rules, whether of criminal law, tort, contract, or any other area of substantive law, as if they were answering questions on a specialist paper in that substantive law area but, rather, to understand the way in which those rules collide with human rights issues. So, for example, a detailed analysis of actus reus and mens rea requirements (such as would be necessary in a criminal law paper) of any relevant crimes is not expected but, rather, a general understanding of the elements of an offence suitable to address human rights issues.

Article 2: the right to life

In connection with the negative obligation on the State not to take life or engage in conduct seriously threatening life (with particular reference to, say, the police as agents of the State/a public authority). Consequently, the knowledge and understanding of English law required is:

- awareness of the general homicide framework (murder/manslaughter as understood from the study of criminal law)
- the use of force in self-defence/prevention of crime/to effect an arrest (statutory and common law rules, as studied in criminal law) – particular significance in the comparison of the 'force reasonable in all the circumstances' requirement of English law with the 'force no more than absolutely necessary' requirement of Article 2.2a-c
- outline knowledge of the requirement for police operations to be properly planned and executed (e.g. training and experience of armed police officers)
- outline knowledge of investigation of deaths attributable to police officers and other agents of the State – Independent Office for Police Conduct (IOPC), coroners' inquests.

In connection with the positive obligation to protect life:

- awareness of general unlawful homicide structure and associated investigation and prosecution of offences (as above)
- duties on police in investigating risk to life posed by third parties – following, say, *Osman v UK* (1998) (in the European Court of Human Rights [ECtHR]), the more recent clarification of the relevance of tort of negligence and of Article 2 to operational and other decisions in cases such as *Robinson v Chief Constable of West Yorkshire Police* (2018) and *Commissioner of Police of the Metropolis v DSD and another* (2018) (decided in relation to Article 3 but clearly applicable to Article 2, also).

Article 5: the right to liberty and security of person

The focus of the discussion of this area is on Article 5.1a-c and the supporting provisions of 5.2-4. Consequently, the knowledge and understanding of English law required is:

- stop and search by police constables – Police and Criminal Evidence Act 1984 ss1-3: note that the greater relevance of these rules is probably to Article 8
- arrest by police constables – Police and Criminal Evidence Act 1984 s24, ss28-30
- rules requiring release from detention pending further investigation/trial – outline understanding of bail (treat this as requiring little more than an awareness of the nature of bail and of its operation – no understanding of any detail is required)
- issues in relation to breach of the peace – this links very directly also to Articles 10 and 11. The requirements for arrest for breach of the peace are discussed in *R (on the application of Laporte) v Chief Constable of Gloucestershire* (2006), while the scope of 'deprivation of liberty' is considered in *Austin v MPC* (2009). *R (Hicks) v MPC* (2017) considers whether arrest for breach of the peace as a temporary preventive measure with no aim to prosecute for an offence could be justified within Article 5.1b or 5.1c (taken with 5.3). On this latter issue, see also the ECtHR judgment in *S, V and A v Denmark* (2018), discussing, in particular, *Ostendorf v Germany* (2013).

Article 8: the right to respect for private life (and for family life, home and correspondence)

The focus here is on the 'private life' aspect of Article 8, though there is some connection with, especially, correspondence. Consequently, the knowledge and understanding of English law required is:

- protection of personal information by action for misuse of private information/breach of the duty of confidentiality (this inevitably invites analysis of the balance with freedom of expression) – making and use of images, especially in relation to public figures, and the children of public figures, in public and non-public locations; acquisition, use and disclosure of other information ('kiss and tell', for example). Cases such as *Campbell v MGN* (2004), *McKennitt v Ash* (2006), *Murray v Express Newspapers* (2008), *PJS v NGN* (2016), *Richard v BBC* (2018), *Bloomberg L.P. v ZXC* (2022). There are many additional/alternative cases
- protection of reputation by the tort of defamation, including defences which promote balance with freedom of expression – truth, honest opinion, public interest (Defamation Act 2013). The focus is not on the minutiae of an action in defamation but, rather, on establishing in broad outline how an action in defamation can be used to protect reputation, and so contribute to the right to respect for private life (Article 8), while, at the same time, a balance is struck with regard to the right to freedom of expression (Article 10) by the provision of the defences recognised in the Defamation Act 2013 as listed above
- protection of physical and psychological integrity by use of the concepts of harassment and stalking via the crimes/torts contained in the Protection from Harassment Act 1997.

Article 10: the right to freedom of expression

This is closely connected also with Article 8 and with Article 11. The knowledge and understanding of English law required is:

- restrictions imposed on freedom of expression in relation to obscenity under Obscene Publications Act 1959 s1 (definition) and s4 (defence of 'public good'); awareness of the prohibition of extreme images (Criminal Justice and Immigration Act 2008 s63) (extreme images)
- restrictions imposed on freedom of expression in relation to protection of privacy, reputation and physical and psychological integrity (harassment/stalking) as already detailed above in relation to English law and Article 8
- restrictions imposed on freedom of expression in relation to public order aspects of marches, demonstrations, protests etc as detailed below in relation to English law and Article 11.

Article 11: the right to freedom of assembly and to freedom of association

Article 11 is closely associated with Article 10, in that freedom of assembly and association support freedom of expression, an integral component of the proper functioning of a democratic society, in the view of the ECtHR. The knowledge and understanding of English law required is focused on the restrictions on assembly and association on grounds of public order, and the protection of the rights of others:

- notice, control, and prohibition of public 'processions' under the Public Order Act 1986 ss11-13 (note that s12 was amended in 2022 to deal with 'noisy' protests – consequently, learners should have a general outline awareness of how the 'noisy protests' amendments add to those originally enacted to control processions without having to be able to explain, analyse and apply all new provisions in detail)
- control of public 'assemblies' under the Public Order Act 1986 s14 (note that s14 was amended in 2022 to deal with 'noisy' protests – consequently, learners should have a general outline awareness of how the 'noisy protests' amendments add to those originally enacted to control assemblies without having to be able to explain, analyse and apply all new provisions in detail)
- prohibition of trespassory assemblies under the Public Order Act 1986 s14A-C
- control of 'one-person' protests under the Public Order Act 1986 s14ZA (added by amendments to the 1986 Act in 2022 – again, understanding in outline only)
- prohibition of aggravated trespass under the Criminal Justice and Public Order Act (1994) ss68-69
- breach of the peace – as detailed above in connection with Article 5.

It is not necessary to include consideration of the provisions of the Public Order Act 2023.

Note that *DPP v Ziegler and others* (2021) provides an interesting discussion of the way in which limitations on rights under Articles 10 and 11 may intersect with possible defences to (excuses from) liability under English legislation (in that case, the Highways Act 1980 s137 – not, in itself, a statute of which knowledge is required). Note also the decision on the Public Order Act 1986 s14 and its relationship with Articles 10 and 11 in *DPP v Cathy Eastburn* (2023).

As explained above, there are many other aspects of English law which could be of relevance in answering questions on human rights, but which are not required for study by learners. Accurate reference to any areas of law (though not within the specification as interpreted above) which have relevance to issues raised will always be deemed creditworthy. However, such reference should not be prioritised over consideration of areas of law which are within the specification.

Cases and other sources

The information supplied above includes reference to cases and other sources. All are relevant but they should not be treated as definitive or comprehensive. Credit will always be given for reference to any material which is relevant, whether identified above or not.

Guidance on Questions 10 and 11 on Paper 3B Human Rights

It is important to note that there is no definitive correct methodology or strategy for answering problem-based questions. However, the following could be used as a useful starting point.

When approaching scenario-based questions that involve human rights and English law, begin by identifying and applying the relevant aspects of English law. This includes pinpointing applicable statutory provisions and common law principles. Clearly explain what the law demands or prohibits in the context of the scenario and then apply it to the facts presented. Consider the actions of the individuals involved: did they breach the law? Also assess whether the authorities acted within their legal powers.

Next, turn to the European Convention on Human Rights (ECHR). Identify which Articles are relevant to the scenario and determine the nature of the rights involved, whether they are absolute, limited, or qualified. For qualified rights, apply the three-part test: first, assess whether the interference is prescribed by law; second, determine if it pursues a legitimate aim, such as public safety or the prevention of disorder; and third, evaluate whether the interference is necessary and proportionate in a democratic society.

Following this, balance the outcome under domestic law with the rights protected by the ECHR. Ask whether the interference with the right is justified under the Convention and support your analysis with relevant case law to illustrate compatibility or conflict.

Finally, conclude by summarising whether the actions of the public authority, such as the police, were compatible with human rights standards. If they were not, explain how an individual could challenge the action under the Human Rights Act 1998, particularly sections 6 and 7. Mention the possible remedies available, such as a declaration of incompatibility or an award of damages.