Chapter 1 The nature of law and the English legal system

1. Which of the following most accurately describes an Order in Council? [1 mark]
   
   A A law made by Parliament

2. A local council intends to introduce a law banning dogs from walking on beaches in its area in the summer months. From the following list, choose the best form of legislation for the council to use: [1 mark]
   
   C By-law

3. Which of the following statements best describes alternative dispute resolution? [1 mark]
   
   D Negotiation is the most basic form of alternative dispute resolution and involves a simple discussion between parties.

4. Which statement most accurately describes the effect of an EU treaty on UK law? [1 mark]
   
   B It automatically becomes part of UK law.

5. Which of the following statements about magistrates in criminal trials is correct? [1 mark]
   
   C Magistrates can send convicted citizens to prison.

6. Following a serious fire, building regulations need to be updated. Suggest which type of delegated legislation would be the most suitable form for the new rules and give reasons for your answer. [5 marks]

   Answers could include:

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• The phrase, ‘building regulations’, would suggest an existing parent act in this area of law. 
• A parent act can be amended quickly by a statutory instrument as it doesn’t need to go through the same Parliamentary process/stages as a full Act. This will allow urgent enactment to prevent or reduce future fires with immediate effect. 
• The government department with specific responsibility for that area of law, for example the Department for Work and Pensions, would have experts to draft new improved laws.

7 Explain two reasons why a barrister's work is regulated. Use an example from civil or criminal law to illustrate one of your suggested reasons. 

Answers could include:  
• To provide recourse for a barrister’s client, for example if the barrister is negligent (Hall v Simons). 
• To ensure the barrister’s work and conduct is to the highest standards possible for fear of being sued if they are not.

8 Explain two reasons why stare decisis is so important. Use an example from civil or criminal law to illustrate one of your suggested reasons.

Answers could include: 
• Stare decisis is a latin legal phrase which translate as “to stand by things decided” and sometimes referred to as judicial precedent. This principle generally binds courts to follow the decisions established by previously decided cases with similar facts and issues. Therefore, providing certainty and consistency in the judicial system. 
• An example in the civil law of stare decisis is the case of Donoghue v Stevenson (1932) where the House of Lords (now the Supreme Court) established that manufacturers owe a duty of care to the ultimate customers of their products. This was subsequently followed in Grant v Australian Knitting Mills (1936).
Answers could include:

- A new law making its way through the formal stages of becoming an Act of Parliament is known as a bill. Normally a bill will start in the House of Commons.
- The bill has its ‘First reading’ in the House of Commons. Here the short title of the bill is read out and an order to print the bill is made.
- The bill has its ‘Second reading’ in the House of Commons. This is the first opportunity for MPs to debate the bill. If it is a government bill, the government will open the debate and the opposition will respond. A vote is taken at the end to decide if the bill will continue to the next stage.
- The bill goes to ‘Committee stage’ and is discussed. A small committee of all-party MPs debate and suggest amendments to the bill. The bill is reprinted to reflect the changes.
- The bill goes to the ‘Report stage’. The potentially amended bill is debated by the full House of Commons MPs. Further amendments can be suggested and is usually immediately followed by the ‘Third reading’.
- The bill has its ‘Third reading’ in the House of Commons. The final debate in the Commons is on purely what is in the final bill post-Report stage. No amendments are suggested or considered. A final vote is taken and if successful passes to the House of Lords to debate.
- The above stages are repeated in the House of Lords, although at Committee stage any member of the House can take part.
- If approved, the bill is given Royal Assent and the bill becomes law, or certain parts may be phased in over time.

Chapter 2 Criminal Law

1. Which of the following statements about robbery is false? [1 mark]

   D Robbery is a basic intent crime.

2. Which of the following statements about the defence of automatism is true? [1 mark]

   B The defence cannot succeed if D understood the nature and quality of their actions.
3 Explain two reasons why the actus reus of theft may sometimes be difficult to establish. Using a decided case from criminal law, illustrate one of your suggested reasons. [5 marks]

Answers could include:
• The *actus reus* of theft was designed as a ‘catch-all’ definition to cover all potential ways and eventualities of committing theft. In doing so, the definition in the Theft Act 1968 is arguably ambiguous and despite definitional sections, is sometimes difficult to establish and has relied upon the common law to help.
• For example, In *Morris* (1983) the defendant switched price labels on items in a shop in order to pay a lower, incorrect price. The court decided that this was an appropriation under s.3 as he had interfered with the rights of the owner (to set and charge the correct price) and guilty of theft.

4 William has been threatened by his girlfriend, Delia, that unless he steals a very expensive painting from an art gallery, she will pour paint over his neighbour’s car. She says that she will tell the neighbour it was William who did it. The last time Delia threatened William, she persuaded her brother, who has a series of convictions for violence, to punch William in the face. William reluctantly steals the painting but is arrested by the police while he tries to escape.

Advise William on whether he could avoid criminal liability for the theft/burglary by pleading duress by threats. [10 marks]

Answers could include:
• William may have the use of the defence of duress by threat.
• Threat from Delia is not of death, serious injury or rape, but of criminal damage (*Howe, Valderrama-Vega*).
• The threat is aimed at William’s neighbour, so it is unlikely that there is a close enough connection between the two in order for William to act on the threat (*Wright*).
• There is a nexus between the crime (theft or burglary) and the threat to steal the painting.
• If William associated with criminals, then the defence is unlikely to operate. However, his girlfriend does have a violent brother, but this is unlikely to be seen by the court as associating with known criminals or their associates (*Hasan*).
• William won’t satisfy the *Graham* part 1 test on subjectivity due to no threat of death, etc.
• William won’t satisfy the *Graham* part 2 test on objectivity as a sober person of reasonable firmness sharing the ‘same’ characteristics as William is unlikely to have acted in the same way.
• There is no indication as to when the threat was to be carried out, so there may, or may not have been, an avenue of escape (Hudson and Taylor).
• For the above reasons, it is unlikely William will be able to successfully use the defence of duress by threat against a charge of theft or burglary.

5 Denzel was furious as his neighbour, Victor, had blocked his drive. He banged on Victor’s door. Victor began to open the door but when he saw who was there he tried to close it again. Denzel pushed the door hard, Victor fell back and hit his head on a coat peg in the hallway. When the ambulance arrived, the crew dropped Victor on the way to the vehicle. On arrival at hospital, Victor was misdiagnosed with mild concussion. The following day, he died from brain damage. The effects of the concussion were more serious for him because he suffered from brittle bone disease, which meant that his skull did not adequately protect his brain. Consider the criminal liability of Denzil for the involuntary manslaughter of Victor (including whether there was a break in the chain of causation). [30 marks]

Answers could include:
• Denzel could be liable for involuntary manslaughter, for example, unlawful act manslaughter.
• Actus reus: Denzel is likely to have caused a criminal act (indirect battery, for example) when he forces Victor’s door (Franklin, Lowe).
• Actus reus: Denzel’s act is dangerous, in that a sober and reasonable person would realise that forcing the door would subject Victor to the risk of physical harm, though not necessarily serious harm, whether or not Denzel realised this (Church).
• Actus reus: Victor’s unlawful and dangerous act must cause (factually and legally) Victor’s death, and this is so in this situation as he has died of his head injury as a result of falling backwards when Denzel forced his door (Carey).
• The mens rea of unlawful act manslaughter is that of the unlawful act. If the unlawful act is battery, for example, then Denzel must have intended to apply the unlawful force or was reckless as to applying the force. It looks likely that if he didn’t intend to apply the force, he must surely have seen a risk of this since Victor was right behind the door when it was forced open.
• There may be a novus actus interveniens in the form of third-party intervention when the ambulance crew dropped Victor, although this is unlikely to break the chain (Pagett).
There may be a novus actus interveniens in the form of the misdiagnosis at the hospital; if this can be seen as ‘palpably wrong’ then it could break the chain (Cheshire Jordan).

There may be a novus actus interveniens in the form of the thin skull rule as Victor has ‘brittle bone disease’, a specific medical condition that could break the chain (Blaue).

6 Examine the meaning of ‘fault’ and discuss its impact on the application of the rules of self-defence. [15 marks]

(a) Fault is an important part of English criminal law in apportioning the defendant’s blameworthiness. Fault identifies the culpability of the defendant in as far as how much the guilty act was through their own determination. The exception is strict or absolute liability offences (Sweet v Parsley).

The defendant’s act must be accompanied by fault to equal a crime. An act without fault is an accident. So, in many situations, a person cannot be found guilty of a crime where there is no mens rea. It would be unjust to penalize someone for an act when the outcome was not their fault.

(b) The most basic form of self-defence, defending yourself, comes under the common law. It must be necessary to use force and reasonable to do so. In true cases, where a person uses self-defence to defend themselves, the fault leading to any subsequent injury on an attacker is eliminated and no crime occurs. However, the law on self-defence comes with strict criteria for the courts to apply. A person is allowed to defend themselves, but only if it is necessary to do so and the force they use is reasonable. Anything outside this scope would incur fault and criminal sanction, for example an intent to cause GBH.

The law was clarified in s 76 of the Criminal Justice and Immigration Act 2008 as to the test of reasonableness. It is a complete defence, including to murder, as the defendant’s use of force is justified in the circumstances.

• To avoid fault in the criminal law it must be necessary to use some force: this is a subjective test, based on the defendant’s genuine belief. The defendant can be mistaken but can still plead the defence. A pre-emptive strike is possible and allowable. The defendant can prepare for an attack and there is no duty to retreat.
To avoid fault in the criminal law, degree of force must be reasonable: the 2008 Act’s definition acknowledges that in a pressurised situation it might be difficult to weigh up the exact degree of force needed, so such a situation must be assessed by what the defendant honestly and instinctively thought was reasonable. However, the force must be used when the danger of the situation is still ongoing and must not be excessive or ‘disproportionate’ otherwise fault is incurred.

7 Ronald dislikes Ken and has recently argued with him over some money that he claims that Ken owes to him. One evening Ronald overpowers Ken when he is walking home. Ronald ties Ken’s hands and feet and pushes him into his car. He drives him to Felixtowe docks. At the dockside he unties his feet and hands and throws him into the water. Ronald shouts at him, ‘that will cool you off’ and drives off. Ken can swim but is unable to climb up the steep dock wall and drowns some two hours after being thrown into the water.

In court Ronald argues that he thought Ken could swim and that he did not intend to kill him, but he admits that he had read a newspaper report a week earlier which said that a child had drowned in Felixtowe docks because he was unable to climb up the dock wall.

Consider Ronald’s criminal liability for Ken’s death and assess the value of jury trial in determining his criminal liability. [30 marks]

Answers could include:

- Ties hands and feet and pushes him into car:
  - Common assault: battery under s 39 of the Criminal Justice Act 1988 (Venna). Ronald applies intentional unlawful force to Ken to tie him up.

- Throws him in water:
  - Common assault: battery under s 39 of the Criminal Justice Act 1988 (Venna). Ronald applies intentional unlawful force to push Ken into the sea.

- Drowns:
  - Murder under the common law: indirect/oblique intent (Nedrick, Woollin) – did Ronald know for sure Ken couldn’t swim, had he even thought about it? It is unlikely that he wants Ken dead as he owes him money. It is possible to argue that he intended to kill, or that
there was a virtual certainty of death, since a person had drowned in similar circumstances, albeit a child.

- Manslaughter under common law: unlawful act manslaughter. Ronald carries out an unlawful act when he ‘throws’ Ken into the water; this act is dangerous (Church) and death has occurred as a result of being thrown into the sea by Ronald. The mens rea of the manslaughter is that of the unlawful act, here battery, so Ronald clearly intended to apply unlawful force in pushing him into the water.

8 Charlie lives next door to Edith, aged 85. Edith has complained to Charlie’s father about Charlie and his friends playing football in the back garden. Annoyed, Charlie puts a letter through Edith’s door which says, ‘I’m coming to get you!’ Charlie doesn’t sign the letter. Edith is very upset about this.

Edith decides to go to the police, but as she leaves her house she slips on a banana skin that Charlie has deliberately left on her doorstep. Edith breaks her hip in the fall. Edith’s twin sister, Jean, who lives with Edith, reads the letter and is so frightened and shaken by it that she refuses to leave the house and becomes severely depressed.

Consider the criminal liability of Charlie leading from his actions of writing the letter and leaving the banana peel. [20 marks]

- Letter read by Edith and Jean:
  - Edith - common assault: assault under s 39 of the Criminal Justice Act 1988. Edith is upset and may fear immediate unlawful application of force (Venna, Smith, Ireland, Burstow).
  - Jean - common assault: assault under s 39 of the Criminal Justice Act 1988. Jean is upset and may fear immediate unlawful application of force (Venna, Smith). Although the letter is likely to be aimed at Edith, transferred malice may allow the intended victim to move to Jean (Latimer, Mitchell).

- Banana skin and Edith’s fall:
  - Section 18 GBH: serious injury had been caused by Charlie intentionally and indirectly to Edith who, as an 85-year-old, suffered a broken hip (Smith, DPP v K).

Chapter 3 Tort Law

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1 If established by the defendant, the defence of consent has the following effect on a claim brought by the claimant: [1 mark]

D No damages will be awarded.

2 Zeena’s property was damaged by Yannick’s negligence. Most of the damage was of a kind that might have been expected, but some of the damage was much more extensive than might have been expected.

Apply the remoteness of damage principle to Zeena’s claim against Yannick for compensation in an action in negligence, suggesting why she is likely to recover compensation for some, but perhaps not for all, of the damage. [5 marks]

Answers could include:

- Compensation is unrecoverable in tort for any damage that is too remote and is only recoverable if it satisfies the ‘reasonable foreseeability’ test. As the damage is caused by Yannick’s negligence, and we assume reasonably foreseeable, damages are probably recoverable (Wagon Mound (No. 1)).
- It is not necessary for the claimant to demonstrate the precise manner in which the damage occurs, nor its full extent, provided it is reasonably foreseeable. Whether any extensive damage occurs, and if the same kind or of another kind, is not mentioned so it is difficult to quantify if at all. Therefore, recovery for any more extensive damage is unclear (Hughes v Lord Advocate).

3 On an ice rink owned by NICE-ICE, some figure skaters were in the habit of skating in an area clearly marked out for speed skating only. While doing so, Jon (a figure skater) skated into the path of Kylie (a speed skater). In the resulting collision, Jon suffered severe facial injuries and Kylie was knocked out.

Advise Jon and Kylie as to their rights and remedies against NICE-ICE. [15 marks]

Answers could include:

- Occupiers’ Liability Act discussion of whether Jon is a trespasser or not; the effect of warning signs. Are the premises dangerous? Kylie is clearly a visitor so is covered by the 1957 Act.
- Duty could be alternatively established through Common Law negligence.
• **Breach** – did NICE-ICE act reasonably to keep both skaters safe given the dangers involved?

4 Explain the importance of fault-based liability, in particular in relation to Rylands v Fletcher. [15 marks]

**Answers could include:**

- **General basis of fault:**
  - Candidates should identify potential fault under civil law and under the criminal law.
  - The importance of the requirement of the voluntary nature of conduct and causation.
  - The impact of intention, recklessness and negligence as requiring higher level.
  - The relevance of any defences.

- **Liability through the rule in *Rylands v Fletcher*:**
  - Candidates should summarise the basic rule in *Rylands v Fletcher*: (a) property damage is caused by an ‘escape’ from land onto other land; (b) of ‘something’ brought onto the land by the defendant which, if it escaped, would be likely to do ‘mischief’; and (c) that the accumulation was ‘non-natural’.

5 Previously a quiet lake overlooked by a few cottages, Linacre Lake has recently been developed by its new owner, Wetlife Developments, to provide extensive leisure facilities, including swimming and powerboating. In consequence, Ingrid, a cottage owner has experienced a large increase in noise, especially at weekends and during frequent competition weeks. Additionally, damage to a diesel oil storage tank owned by Wetlife Developments resulted in a leak which caused extensive contamination of Ingrid’s vegetable garden.

Some swimmers were in the habit of swimming beneath the surface in an area of Linacre Lake clearly marked out for powerboating only. While doing so, Jon surfaced into the path of a powerboat being driven by Kylie. In the resulting collision, Jon suffered severe facial injuries and Kylie was knocked out of the boat and had her arm severed by the propeller. Kylie’s friend, Rachel, who was in another boat, dragged her out of the water to safety. The experience caused Rachel deep emotional disturbance.

Consider the rights and remedies of Ingrid, Jon, Kylie and Rachel against Wetlife Developments. [30 marks]

**Answers could include:**

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• **Re: Noise and increase in noisy activities:**
  o This scenario involves the area of private nuisance where the law protects the rights of the occupiers of land against any ‘unreasonable interference with the enjoyment or use of his land’.
  o Here, Ingrid is in dispute with her neighbour, Wetlife Developments. The courts will need to balance, where possible, the conflict of interests between Ingrid who lives in a cottage overlooking a previously idyllic lake, with that of the leisure company organising frequent and noisy watersports activities and competitions on the lake.
  o Ingrid has a clear interest in the land being a resident and she should be able to claim that her enjoyment of her land has been ‘unreasonably interfered with’ (*Kennaway v Thompson*).
  o Ingrid must have a legal interest and clearly has, as owner of the cottage (*Malone v Laskey, Hunter v Canary Wharf*).
  o Wetlife does not need to own/occupy the land they are using, they simply need to have used or be using the land. This is clear here as the lake is being used for watersports (*Jones Ltd v Portsmouth City Council*).
  o In determining whether there is an ‘unreasonable interference’, the courts will have regard to:
    o **Nature of the locality/Neighbourhood** – the reasonableness of the use of watersports will depend upon the nature of the location. The area appears to be sparsely populated, with Ingrid being the only one to complain (*Sturges v Bridgman, Hirose Electrical v Peak Ingredients*).
    o **Duration** – clearly a temporary and necessary interference would have to be accepted, but the noise seems to be seven days a week at times with weekend activity and competitions (*DeKeyser’s Royal Hotel v Spicer Bros*).
    o **Sensitivity** – the watersports must amount to a nuisance to a reasonable person using the land in a normal manner. It could be argued due to the regularity of the noise and no doubt increase of traffic that the this would amount to a nuisance to a reasonable person and there is nothing to suggest Ingrid is abnormally sensitive, which would preclude a claim (*Robinson v Kilvert, McKinnon Industries v Walker*).
    o **Malice** – it is unlikely that Wetlife’s activities can be seen as malicious, but if they were then they would be held as being unreasonable.
Ingrid must establish foreseeability in relation to damage (Wagon Mound (No. 1)).

Re: Spillage of diesel:
- Private nuisance in the form of flooding (Sedleigh-Denfield v O’Callaghan or Rylands v Fletcher).
- Encroachment (Lemon v Webb).

Re: Jon’s injury while swimming in an ‘out of bounds’ area and the resultant injury to Kylie:
- This scenario is likely to be covered by the Occupier’s Liability Act 1984 in respect of Jon, as a swimmer, being a trespasser in the area ‘clearly marked out for powerboating only’ or having exceeded his permission to be there (Revill v Newbery).
- Section 1(8) clearly applies as there is personal injury as Jon suffers severe facial injuries.
- Under s 1(3) Wetlife will owe Jon a duty of care, and therefore liability under the 1984 Act if: (a) they were aware that swimming in a restricted area was occurring, or there were reasonable grounds it was happening; (b) the ‘other’ (Jon) is in the vicinity of the danger/risk, or there were reasonable grounds the ‘other’ may come into the area; and (c) the danger/risk is something Wetlife would have been reasonably expected to have done something about. The scenario is unclear, but if Wetlife were aware, or had reasonable grounds to be aware (for example, employees had seen the dangerous swimming, or complaints had been made by visitors to the lake), and did nothing, then they could be liable (Donoghue v Folkestone Properties Ltd).
- The standard of care is objective in that Wetlife should take reasonable care to ensure that ‘others’ are not injured.
- Wetlife could argue contributory negligence as Jon must have been aware of the risk in swimming in a restricted area of being hit and injured by a powerboat (Ratcliff v McConnell).
- Indeed, under s 1(5) Wetlife’s duty could be discharged as there was a sign warning of the danger (Tomlinson v Congleton).
- Remedies – general damage (if possible) for Jon.

Re: Kylie’s injury:
- Jon would be liable under negligence to the injury caused to Kylie.
- Remedies – general damages, special damages.
• **Re: Rachel’s psychological harm:**
  - Rachel’s psychiatric injury must be a long-term, diagnosed mental injury greater than simply shock or grief.
  - Rachel must suffer from a diagnosed psychiatric injury (*Behrens v Bertram Mills Circus Ltd*).
  - Whether Rachel is a primary or secondary victim depends on her geographic position in relation to witnessing Kylie’s accident. It seems Rachel is close-by, and if so, could be treated as a primary victim in the zone of physical danger – this is an objective test.
  - Rachel only needs to establish that physical harm to Kylie was foreseeable. There is no requirement that psychiatric injury was foreseeable, provided personal injury was foreseeable (*Page v Smith*).
  - If she is seen as a secondary victim then the tests in *Alcock v Chief Constable of South Yorkshire* apply.
  - Remedies - general damages, special damages.

**Chapter 4 Contract Law**

1 Which of the following is an accurate statement concerning the postal rule for the purposes of forming a contract? [1 mark]

C An offer cannot be revoked after an acceptance is posted.

2 Select the false statement about the Unfair Contract Terms Act 1977 (UCTA). [1 mark]

A UCTA applies to both consumer and business-to-business contracts.

3 Which of the following is not a suitable way for an exclusion clause to be validly included into a contract: [1 mark]

D Using a ticket with the clause on the reverse.

4 Choose the best description of misrepresentation as a form of vitiating factor in contract law. [1 mark]
D  It can be a false statement of material fact.

5  Select the true statement about the doctrine of consideration: [1 mark]

A  Consideration does not have to be sufficient.

6  Explain two types of contractual term. Briefly explain why the breach of either term leads to different remedies available to the parties. [5 marks]

Answers could include:
- A condition is a type of term which ‘goes to the root of the contract’. If this type of term is breached, the claimant has remedies available in the form of either, or both, repudiation of the contract or suing for damages (Poussard v Spiers). For example, the brand of car a person wants to buy.
- A warranty is generally seen as a descriptive term which does not go ‘to the root of the contract’. If this type of term is breached, the claimant can only sue for damages (Bettini v Gye). For example, the brand of brakes on a car a person wants to buy.

7  Paige is employed as a taxi driver and agrees to drive her sister, Hope, to the cinema on Friday night. Hope says she will let Paige borrow her expensive shoes for a party later that month if she does. Paige drives Hope to the cinema, but Hope later refuses to let her borrow her shoes.

Suggest whether there was an intention to create legal relations in the agreement between Paige and Hope. [5 marks]

Answers could include:
- There is clearly an agreement of some sort: Hope asks for a lift (offer) and Paige agrees (acceptance) to drive her sister to the cinema.
- There is consideration as Hope allows Paige to borrow her shoes in return for the lift (Thomas v T).
- Whether the agreement is enforceable as a binding contract: in order for Paige to sue for breach depends on whether there is an intent to create legal relations from a business point of view which is prima facie enforceable, rather than some simple family agreement which is prima facie unenforceable (Balfour v B).
- This could be a business arrangement since Paige is a taxi driver, however as they are sisters this could be seen as a
social and domestic arrangement, unless Paige suffers an obvious detriment and could successfully sue Hope for breach, for example she turned down a lucrative fare to take Hope to the cinema (Parker v Clark).

8 Craig is learning how to become a nightclub DJ. He hears that the resident DJ at a local nightclub has not turned up for work and the owner, Gary, is trying to find a replacement. Craig offers his services for free and the owner agrees. At the end of the night, Gary told Craig that he was so grateful that he would give him £100. Craig was very upset when Gary later refused to give him any money.

Advise Craig as to his rights and remedies against Gary. [10 marks]

Answers could include:

- There is clearly an agreement of some sort: Craig has said he would DJ at Gary’s nightclub (offer) and Gary has willingly confirmed this (acceptance). This is not a social or domestic arrangement, so must be one of business, albeit provided for free.
- There appears to be two issues surrounding Craig’s rights in contract: (a) whether there is any consideration at the time of or during the agreement to DJ; and (b) whether the subsequent promise of £100 is enforceable.
- Whether there is a contractual agreement is a matter of construction enforced by the proof of consideration from the offeree (Gary). As there is unusually no agreed initial payment, the usual form of consideration, it looks like there may be no consideration for the ‘free’ DJ services. However, while there must be some consideration, it need not be adequate (Thomas v T). So, as Craig is a novice DJ, by allowing him to play in a busy nightclub for the first time, this could be seen as sufficient as it is real (White v Bluett), is clearly tangible (Chappel v Nestle) and has ‘value’ – his experience (Ward v Byham).
- Whether there is a subsequent contractual agreement is a matter of construction enforced by the proof of consideration from the offeree (Gary). The general rule is that where Craig carries out a voluntary act with no mention of payment at that time, then no payment is expected or enforceable (Re McArdle). The exception to this rule, the rule in Lambleigh v Braithwaite, where past consideration is enforceable appears to not operate here since Gary did not ask for Craig’s services and did not mention payment. Rather Craig offered for free and therefore didn’t expect to be paid. The subsequent offer
of £100 was most likely to not have been supported with consideration from Craig and is unenforceable.

- If the agreement was enforceable, Craig would be able to sue for damages, specifically the payment of £100. However, this looks unlikely, but he did get the experience!

[For questions 9 and 10 you are required to provide an extended answer which shows a clear, logical and sustained line of reasoning leading to a valid conclusion.]

9 Examine the relationship between the doctrines of consideration and privity of contract.

Discuss the extent to which the doctrine of privity is necessary in contract law. [15 marks]

Answers could include:

- Consideration was defined in *Dunlop v Selfridge* as ‘an act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable’. Consideration’s purpose is to provide further, if not absolute, proof that an agreement is to be enforceable.

- Privity of contract was discussed in *Dunlop v Selfridge* where the court stated that generally, a contract is only enforceable by the parties to the contract (*Dunlop v Selfridge*).

- The privity of contract rule seems fair, since why should someone who is not part of a contract be allowed to enforce the contract. However, the contrary is perhaps truer, since those to whom the contract provides a benefit, third parties, are *prima facie* unable to sue for the benefit of a contract where they are neither the offeror or offeree (*Tweddle v Atkinson*).

- It is due to this unfairness that the law has created exceptions to this rule of unenforceability. This is normally through statute (*Beswick v B*), or the common law (*Shanklin Pier v Detel*).

- The law has championed such unfairness in the Contract (Rights of Third Parties) Act 1999, which provides: ‘A person who is not a party to a contract may in his own right enforce a term of the contract if ... the contract expressly provides that he may, or ... the term purports to confer a benefit on him.’ The Act also requires that this party is expressly identified in the contract by name, or as a member of a class, or answering a particular description.
Joe is a student in the final year of studying A-levels. In his spare time, he designs and makes decorative greetings cards. Joe can supply ready-made cards from his catalogue and ‘made to order’ cards at the request of a buyer. Joe has just received an enquiry for 100 ready-made cards and 100 ‘made to order’ cards from his father, who runs a newsagent’s shop.

However, Joe has told his father that he is going to give up his studies in order to become a professional skateboarder. Alarmed at this, Joe’s father places the order for the cards and says he will pay him £200 per month to finish his studies in six months’ time. Joe says that this is not enough and he would need at least £500. His father says he will only pay Joe £300 per month: ‘Take it or leave it.’ Joe reluctantly agrees to continue with his studies and accepts his order for the cards. Joe’s father pays on time for the order for the cards, but after three months he stops paying £300 monthly and refuses to continue to do so. In fact, his father says that he only had enough money for three months and had no intention of paying Joe after that.

(a) Consider the rights and remedies of Joe against his father.
(b) Assess the extent to which the rules that you have applied in the case of Joe and his father achieve an appropriate balancing of interests between the parties. [30 marks]

Answers could include:
(a) The enquiry from Joe’s father:
   • This is unlikely to be an offer to order/buy as Joe’s father is simply making an enquiry and not a firm order. This is most likely to be seen as an invitation to treat (Partridge v Crittenden).

The order from Joe’s father:
   • Here there is an offer from Joe’s father to buy the cards which we assume is accepted by Joe. The consideration would be the price Joe’s father has to pay. Therefore, there seems to be a valid contract struck here (Dunlop v Selfridge).

The offer to pay £200 per month:
   • Ordinarily the offer to pay the £200 would constitute an offer which, if accepted by the offeree, would form a contract. However, there are two potential complications here. The first is whether this would, in these circumstances, be seen as a social and domestic arrangement with, therefore, no intention to create legal relations and unenforceable. The second issue is that Joe rejects the offer of £200, insisting that this is not enough
and wants £500. This would potentially amount to a counter offer (Hyde v Wrench).

- Nevertheless, the £500 is rejected by Joe’s father who again counter offers £300, which is ‘reluctantly’ agreed to by Joe. When Joe’s father stops paying, whether this is a breach of contract depends upon the intention between the parties (Balfour v B, Merritt v M, Jones v Padavatton).

- There may be an issue of undue influence or duress if Joe’s father had actually forced or made his son take the counter offer of £300.

- Consider whether Joe can sue for unliquidated damages for the unpaid maintenance, if there was not a formal business contract containing an amount for liquidated damages. Consider whether Joe would be successful in an application for specific performance (Dyster v Randall and Sons).

(b) The balance of interests between Joe and his father:

- An investigation and evaluation should be carried out on the formation of the agreement between father and son; of the rules of offer, including the counter offer; and of Joe’s reluctant acceptance. This should be supported by case authority.

- An investigation and evaluation should be carried out on the formation of the agreement between a father and son and of the consequent implications of a social and domestic agreement or whether this is a business arrangement. This should be supported by case authority.

- An evaluation must be formed as to whether there is, or is not, a balance struck between the Joe and his father as identified above.

- Discuss the need for a balance in the law of contract in such situations and what may be a reasonable balance.

- Evaluation of the balance struck by reference to the analysis and evaluation of the rules on offer and acceptance, as identified above.

Chapter 5 Human Rights Law

1 Select the one true statement about the theory of natural law: [1 mark]

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B Developed from the law of nature, natural order and selection, the theory of natural law forms the basis of a peaceful and co-existing society.

2 Select the one false statement. There are slight differences between rights and liberties: [1 mark]

A Rights are considered universal to all human beings regardless of origin, whereas liberties are those specific to a particular country.

3 Select which one of the following is not a right or freedom guaranteed under the European Convention on Human Rights: [1 mark]

A The right to die

4 Choose the best explanation of judicial review as a method of enforcing rights and freedoms. [1 mark]

D This process allows remedies under public law, for example prohibition, certiorari and mandamus.

5 Select the true statement about the European Court of Human Rights. [1 mark]

B If it finds that a member country has breached an Article, the Court has the power to award compensation to the complainant.

6 Explain Article 8 of the European Convention on Human Rights. Briefly explain why this right can be restricted. [5 marks]

Answers could include:
• Article 8(1) is the right to respect for family and private life and therefore covers a large, broad range of rights which were not specifically or satisfactorily covered through the existing law.
• Under Article 8(2) the rights under Article 8(1), thus the right to respect for family and private life, can be restricted if there is a law required in a democratic society and it:
  (a) benefits national security, the public’s safety or the financial safety of the country,
(b) prevents disorder or crime,
(c) protects health or morals of its citizens, or
(d) protects the rights and freedoms of others.

7 Anytown County Council has decided to grant permission to a mining company to extract gas from land close to a large housing estate. The mining company will be allowed to mine 24 hours a day and run its vehicles between the hours of 10 p.m. and 7 a.m. Andrew, a local resident, has decided to challenge the County Council’s decision to grant the permission to mine.

Consider how judicial review could assist Andrew, and which remedies would be appropriate for him. [5 marks]

Answers could include:

- The process of judicial review would be open to Andrew as it allows citizens to challenge the decisions of public bodies, here a local authority/council’s decision to allow the extraction of gas close to a nearby housing estate. The judicial review will be carried out by the Queen’s Bench Division of the High Court.
- Andrew’s main challenge under judicial review would be for irrationality in that the decision to grant the mining company permission by the Council is so unreasonable that no reasonable public body would have made such a decision (Associated Provincial Picture Houses v Wednesbury Corporation).
- Private remedies are available, and under judicial review Andrew could seek:
  (a) Prohibition – this order prevents or prohibits the public authority from continuing with the decision or from doing the same act in the future.
  (b) Certiorari – this order allows the High Court to quash a decision made by the public body.
  (c) Mandamus – this order forces a public body to do something, for example to hear a case or argument that it has refused to hear.

8 Information received by prison officers has suggested that six prisoners are planning to escape from a high-security prison. The information also suggests that the prisoners have homemade weapons and that a handgun has been smuggled into the prison to be used in the escape. On the morning of the escape, members of a specialist police firearms team raid the cells. Three of the prisoners are shot dead and a toy handgun is found in one of the prison cells.
Advise the police on how the provisions of Article 2 of the European Convention on Human Rights might apply to these facts. [10 marks]

Answers could include:

- Under Article 2.1 there is a basic obligation on the UK and its agents, here a specialist police firearms team, not to take life (i.e. kill people).
- As intelligence was gathered, the police team were required to plan and carry out the operation under guidelines and any plan must consider innocent life as well as those believed to be planning violence with the use of firearms.
- Under Article 2.2 there are exceptions to the rule under Article 2.1: (i) in defence of any person from unlawful violence; and (ii) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained. In order to carry out an act authorised under Article 2.2, the requirement is that force used for such purposes must be ‘no more than absolutely necessary’.
- Intelligence had been gathered to suggest the police would be met with violence and firearms, which would allow more force to be used than in a routine search of the prisoners’ cells (McShane v UK).
- However, as the gun was in fact a toy gun, intelligence would need to be questioned and a potential independent investigation carried out. This is reinforced by obligations dictated by the European Court of Human Rights.
- Cases such as McCann v UK, Bubbins v UK, Jordan v UK and Gul v Turkey can be used for further exploration.

[For questions 9, 10 and 11 you are required to provide an extended answer which shows a clear, logical and sustained line of reasoning leading to a valid conclusion.]

9 Examine the relationship between the common law and the development of human rights. Discuss the extent to which the common law is founded on moral rules. [15 marks]

Answers could include:
- The common law is the law common to the land, sometimes known as a custom or customary law. This could be unique to an area and adopted by adjacent areas.
Morals are subjective personal codes of values or beliefs that are based on levels of fault and determine what is right or wrong, for example lying.

The common law has spread through custom and been adopted and developed as the norm around the UK for centuries and, where required, ratified by judges in legal cases.

Historically, indigenous tribes and races would develop their own codes and rules which have been influenced or reformed at the behest of invading armies – Romans, Angles, Jutes, Saxons, Romans, etc, or via peaceful means such as through immigration.

The UK has benefitted by being a multicultural society, so races, creeds and cultural differences have been reflected in the moral rules and customs of its citizens.

The common law itself has its basis in moral rules. Moral rules are essentially based around Christian values such as ‘thou shalt not kill’ (common law murder) or ‘thou shalt not steal’, which has been enacted into statute by the Theft Act 1968.

The strong religious line in the common law has been balanced through local customs such as trading rules, for example contract law.

Moral rules morphing into the common law have been adopted or rejected through court procedures, for example the historic assize circuits courts, which would rule on acceptable customs through judges’ decisions.

Common law is the basis of the English legal system and of many ex-British colonies, such as the USA, Canada, India and Australia (Entick v Carrington, Bushell’s Case).

One afternoon, a supermarket store detective detained Mika, who is from Poland, for three hours in the manager’s office. The store detective detained Mika because she believed she had stolen a bottle of whiskey and some baby milk. When the police arrived, Mika was arrested and had her rights read to her. However, Mika does not speak a lot of English and did not understand what was happening. Mika was put on remand and her trial date was set for six months’ time. She was refused access to a solicitor for the first two weeks. When the date arrived for her trial, the judge was ill, so the trial date was postponed for another six months. At Mika’s trial, she was sent to prison for two years.

Consider what rights and remedies Mika may have against the supermarket, and whether her rights or liberties were breached while on remand or during the trial.

Answers could include:

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• Mika could bring an action under Article 5(1) of the European Convention on Human Rights, the right to liberty and security of person.
• Article 5(1) states, ‘Everyone has the right to liberty and security of person. No one shall be deprived of his liberty.’
• For Mika, there are two potential issues under Article 5(1):
  o ‘Liberty’ means autonomy or independence from arrest or detention and is a fundamental right in a free and democratic society. A person cannot be arrested or detained without cause. Mika has been arrested. We are not told if she has carried out the theft or whether any evidence leading to a conviction has been found, for example CCTV or the goods themselves.
  o ‘Security of person’ means that an individual cannot have their liberty removed or restricted without just cause. Mika has been detained for three hours and doesn’t understand the police when they read her rights. Assuming she hasn’t stolen the items, this would be a very frightening experience for her.
• For Mika, despite having such a right to liberty and security of the person under Article 5, it is restricted in cases where the law allows arrest or detention ‘and in accordance with a procedure prescribed by law.’
• Under Article 5(1)(c) deprivation of liberty is justified when it is ‘The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.’
• If Mika has committed an offence, the store detective and the police are lawful in arresting on reasonable suspicion that she has committed an offence, or to prevent her ‘fleeing’ the scene, and later detaining her before an appearance in court.
• However, under Article 5(2), ‘Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.’ Therefore, Mika must be informed as soon as possible that she is or has been arrested, the reason for the arrest and all in a language she understands. This clearly hasn’t happened in Mika’s case as she may be unaware why she is detained for three hours, then unaware why the police are called and unable to understand them when her rights are read to her.
• Article 5.2 allows, for example, the police time to find a translator if required, or if there is a struggle in order to arrest a suspect, time to provide the information. Neither of these safeguards have been adhered to here.
• However, under Article 5(3), ‘Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.’

• Therefore, Mika under Article 5(3) must be brought to trial, bailed (with or without conditions) to appear at a trial or released within a reasonable period of time. Mika was put on remand for six months, refused a solicitor and then sent to prison for two years. For a theft charge this is unlawful and a breach of her human rights under Article 5.

• Under Article 5(4), ‘Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.’

• There is nothing to suggest that Mika didn’t commit a crime, probably theft, but as an arrested person she is entitled to a swift trial to decide her innocence or guilt. This includes any appeals against conviction and/or sentence. Being kept on remand with no bail set seems excessive and being sent to prison for two years would again seem an excessive if not impossible sentence (MH v United Kingdom).

• Under Article 5(5), ‘Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.’

• For Mika, as an arrested person, if any of the rights under Article 5 are infringed she is entitled to compensation, usually in the form of a financial reward. So, if she did commit the crime, she must be punished for that fact, however, the method of the detention and the court’s resultant decision would appear to breach her rights under Article 5.

11 Belinda is the leader of a pressure group Women4Rights who support the rights of women in employment. The group had decided to organise a march through the city centre to promote their campaign. Sharon, the local chief inspector of police, was concerned about the march, as the group had deliberately caused criminal damage on some, but not all, of their previous marches. One of Sharon’s police officers, Anne, has been working undercover and had read all of Belinda’s letters while staying at her house. One of the letters contained information about entering a fast-food restaurant and a department store to throw paint during an upcoming march. The letter does not state which march this is planned for. Another letter contained information about Belinda secretly running a clothing company that uses child-labour in a developing country to manufacture its
Anne took photos of the two letters and gave them to Sharon. Sharon gave a copy of the first letter to the local newspaper, the *Daily News*, but a copy of the second letter was stuck to the bottom by mistake. The newspaper contacted Belinda saying it was going to print a story which contained information about both letters.

Consider what rights and remedies Belinda may have against the police and the *Daily News* arising from these incidents. [30 marks]

**Answers could include:**

- **In the case of the march:**
  - Under Article 11 citizens have the right to freedom of peaceful assembly and association. This Article allows citizens to come together for peaceful protest, while disallowing the forcing of people to join an organisation, such as a trade union, or to take part in a protest against their will. Belinda is therefore entitled to organise a lawful pressure group and is able to protest peacefully for her cause.
  - Under Article 11(1), ‘Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.’
  - ‘Assembly’ means that citizens can meet and gather with other citizens as a group for lawful purposes, such as Belinda’s pressure group’s march through the city centre.
  - ‘Association’ means that citizens can form lawful groups, organisations or clubs for their own interests. This freedom included the forming of trades’ unions to protect workers’ rights, their freedoms and their interests, such as Belinda’s pressure group for the rights of women in employment.
  - Belinda’s rights can be restricted under Article 11(2). The right to freedom of peaceful assembly and to freedom of association states that, ‘No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.’
  - Thus, the freedom of assembly and association can be restricted if there is a law, required in a democratic
society and it: (a) benefits national security or the public’s safety; (b) prevents disorder or crime; (c) protects health or morals of its citizens; or (d) protects the rights and freedoms of others.

Therefore, as Sharon has information suggesting that there will be criminal damage caused during the march, a restriction can be placed on Belinda’s request for the march under Article 11(2) in order to keep the peace.

Therefore, it would be unlikely that any objection to the ban on the march Belinda might have would be upheld in court.

**In the case of the correspondence:**

- Under Article 8(1) every person has a right to respect of privacy, family life, home and correspondence.
- Correspondence – this means respecting a person’s post, email, phone calls, texts, etc.
- Article 8(1), the right to respect for family and private life, is restricted under Article 8(2), which states: ‘There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’
- Thus, the right to respect for family and private life can be restricted if there is a law, required in a democratic society and it: (a) benefits national security, the public’s safety or the financial safety of the country; (b) prevents disorder or crime; (c) protects health or morals of its citizens; or (d) protects the rights and freedoms of others.
- The use of an undercover agent, Anne, would appear lawful and the methodology acceptable in obtaining the information legal under Article 8(2).
- However, the mistake of allowing that information about her work practices using a sweatshop to be published is likely to be breach under the duty of confidentiality and breach of Article 8(1), which reinforces the police’s interest in maintaining privacy, under the Article’s demands in situations where there is a reasonable expectation of privacy (*Douglas v Hello! Ltd*).