


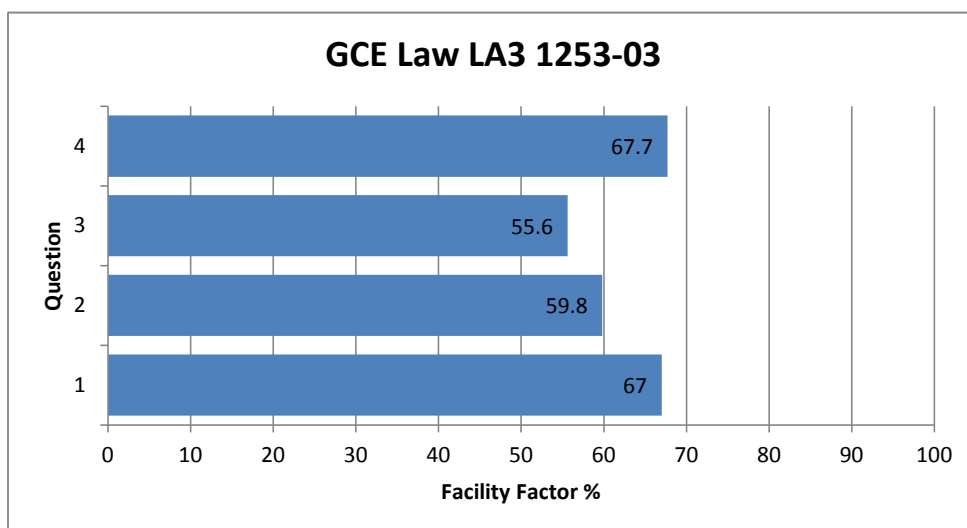


GCE Law LA3 1253-03

All Candidates' performance across questions

						
<i>Question Title</i>	<i>N</i>	<i>Mean</i>	<i>S D</i>	<i>Max Mark</i>	<i>F F</i>	<i>Attempt %</i>
1	167	16.7	4.2	25	67	79.5
2	138	14.9	5.6	25	59.8	65.7
3	37	13.9	5.8	25	55.6	17.6
4	77	16.9	4.9	25	67.7	36.7



1. Study the text below and answer the questions based on it.

Emma, a wealthy young socialite, became a popular guest on television talk shows because of her willingness to express controversial opinions on any subject. One evening when Emma was having dinner in a restaurant with a group of friends, the conversation turned to whether sick and disabled people should be allowed to claim state benefits. Emma said, "You just have to be firm with these people. Mummy's maid has terrible heart trouble, but she never misses a day's work because she knows we'd kick her out." One of the other members of the group, Ryan, used his mobile phone to film Emma's speech and sent the recording to Damien, the editor of the Daily Slur. Damien printed Emma's comments word for word on the front page, together with a photo of Emma eating lobster in the restaurant, and topped it off with the headline: "Mummy's Little Madam Slams Sick Servant". Emma is very hurt by what she considers to be Ryan's breach of confidence, and feels that Damien's article was defamatory.

- (a) In the light of reported case law and other sources of law, consider whether Emma may be able to sue Ryan or Damien. [14]
- (b) Explain the role of the jury in civil cases. [11]

Q1A In this case we test whether Emma may be able to sue for defamation or confidentiality regarding leaks about comments made in private. This person is already known for controversy being in the public domain.

During a private debate she had expressed her view regard state benefits. It was filmed by another member of the group. In this case a balance is regarding balance of privacy under Art. 8 of the European Convention on Human rights with Art. 10 ECHR and the Freedom of Expression.

In the restaurant she was filmed stating her opinion. This case proves that she could not sue Ryan because ~~there is~~ there is under the Tort of Defamation and Confidence no absolute right to privacy. In this case they were in a public place which meant that she could not defend that privacy had been breached because her opinion although intended for the group was public for people to hear.

Under the s7. defences under the Defamation Act 1996 Ryan could use the defence that his actions ^{were} ~~were~~ ~~as~~ ~~is~~ ~~as~~ her. no right to sue in the first place because it was not published by her and using Tort of Confidence, there was no contractual or other ~~other~~ obligation to keep the comment and recording private.

In this case the recordings were sent to Damien. He published the comments word for word in the newspaper along with a photo of Emma eating in the restaurant implying that there was an element of "snobbery" as the innuendo of the article. In Cassidy-v-Daily Mirror the innuendo must be untrue of the claimant ~~because~~ but in this case the wording was true as to what she had said meaning that although it referred to her, the newspaper could use the ~~first~~ defence of justification ~~to~~ because it had not been altered. Defamation is defined in Sims-v-Stretch as "lowering the claimant in the eyes of right-minded thinking people" and in this case there is an argument that this is true ~~but~~ and the fact that it refers to the claimant and is published ~~to~~ means that this is actionable against the newspaper however under s7 Defamation Act 1996, they are able to defend their actions. Also Ryan has not breached confidence because at the time of the disclosure.

01B Juries recognise through the Magna Carta our right to be tried by our peers but in civil cases are becoming less common because their role under the ~~19th century~~ Woolf reforms ~~was~~ was questioned because cases were too long and complex to understand and so were replaced by judges who called upon expert knowledge.

~~Their~~ Their first role is to provide a verdict on the evidence they hear in the few remaining ~~types~~ types of law they are involved in such as defamation - one. They will sit and listen to all the evidence and return a verdict. Then they must decide the level of damages, however ~~recent~~ changes in the law - Juries Act 1976 - means that a judge can set out guidelines as to the level of

damages awarded, however the judge may overrule this if the level is excessive such as in John -v- Mirror Group Newspaper where on appeal the level of damages was reduced from £350,000 to £75,000 after it ~~was~~ ~~the~~ the jury awarded the damages. However this questions the equity of the jury and means that even though it may lead to absurdities the jury must maintain balanced and uninterfered.

They also play a role in some small fraud cases but with the Access to Justice report 1999 is actively discouraged by judges ~~where they~~ ~~unless~~ ~~if~~ ~~necessary~~ unless it is absolutely necessary.

~~They~~

Q1A In this case we test whether Emma may be able to sue for defamation or confidentiality regarding leaks about comments made in private. This person is already known for controversy being in the public domain.

During a private debate she had expressed her view regard state benefits. It was filmed by another member of the group. In this case a balance is regarding balance of privacy under Art. 8 of the European Convention on Human rights with Art. 10 ECHR and the Freedom of Expression.

In the restaurant she was filmed stating her opinion. This case proves that she could not sue Ryan because ~~there is~~ there is under the Tort of Defamation and Confidence no absolute right to privacy. In this case they were in a public place which meant that she could not defend that privacy had been breached because her opinion although intended for the group was public for people to hear.

Under the s7. defences under the Defamation Act 1996 Ryan could use the defence that his actions ^{were} ~~were~~ ~~as~~ ~~is~~ ~~an~~ her no right to sue in the first place because it was not published by her and using Tort of Confidence, there was no contractual or other ~~other~~ obligation to keep the comment and recording private.


In this case the recordings were sent to Damien. He published the comments word for word in the newspaper along with a photo of Emma eating in the restaurant implying that there was an element of "snobbery" as the innuendo of the article. In Cassidy-v-Daily Mirror the innuendo must be untrue of the claimant ~~because~~ but in this case the wording was true as to what she had said meaning that although it referred to her, the newspaper could use the ~~first~~ defence of justification ~~to~~ because it had not been altered. Defamation is defined in Sims-v-Stretch as "lowering the claimant in the eyes of right-minded thinking people" and in this case there is an argument that this is true ~~but~~ and the fact that it refers to the ~~claimant~~ and is published ~~to~~ means that this is actionable against the newspaper however under s7 Defamation Act 1996, they are able to defend their actions. Also Ryan has not breached confidence because at the time of the disclosure.



01B Juries recognise through the Magna Carta our right to be tried by our peers but in civil cases are becoming less common because their role under the ~~19th century~~ Woolf reforms ~~was~~ was questioned because cases were too long and complex to understand and so were replaced by judges who called upon expert knowledge.

~~Their~~ Their first role is to provide a verdict on the evidence they hear in the few remaining ~~types~~ types of law they are involved in such as defamation. They will sit and listen to all the evidence and return a verdict. Then they must decide the level of damages, however ~~recent~~ changes in the law - Juries Act 1976 - means that a judge can set out guidelines as to the level of

damages awarded, however the judge may overrule this if the level is excessive such as in John -v- Mirror Group Newspaper where on appeal the level of damages was reduced from £350,000 to £75,000 after it ~~was~~ ^{the} jury awarded the damages. However this questions the equity of the jury and means that even though it may lead to absurdities the jury must maintain balanced and uninterfered.

They also play a role in some small fraud cases but with the Access to Justice report 1999 is actively discouraged by judges ~~where they~~ ~~unless~~ ~~if necessary~~ unless it is absolutely necessary. 

71

51

14

1(A) Defamation consists of the publication of untrue defamatory statements about another person. There are two different types of defamation: slander and libel. Slander is spoken, libel arises where the defamation is published in some permanent form.

The statement must be ~~true~~ ^{false} in order to be defamatory, for example Wayne Rooney was unable to sue newspaper companies for publishing articles about him sleeping with prostitutes, because it was true.

The first thing we must consider is whether the statement is actually defamatory. s.1 Defamation Act 2013 states that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

In Sin v Aesch (1936) it was held that a statement is defamatory if it ~~causes~~ ^{is likely to cause} a lowering of right-thinking members of society who would of you as a result of the statement. In Byrne v Dean (1937) the claimant was unsuccessful ~~when~~ ⁱⁿ suing for defamation because right-thinking members of society would have approved of his actions.

In relation to the passage, Emma may be able to sue Ryan or Damien because the publication ~~was~~ ^{is} likely to ~~cause~~ ^{be a lowering of} her reputation because her alleged comments concerning disabled people would be considered wholly inappropriate by right-thinking members of society.

In the case of Chacko v News Group Newspapers (1995) the potentially libellous headline "Strength: what's Harold up to with our mudge" was saved by the accompanying text. The House of Lords held that the whole article must be considered not just the headline, ~~therefore~~ ^{it must be considered as the effect of the ordinary reasonable reader who would read the article not just look at the headline.}

In Emma's situation it appears that the headline "mummy's little matriarch stands sick servant" could be considered libellous because there is no portion of the article explaining the situation as it was, therefore Emma's reputation would be lowered as it could be considered defamatory.

Next, we must consider intention, intention arises where a statement is regarded as defamatory when considered in a particular context, or in a particular context as demonstrated in the case of Tolley v Fry (1931). In this case the plaintiff (claimant) was an amateur golfer

whose Page was used, without authorisation, for an advertisement for Fry's chocolate. It was ~~not~~ ~~not~~ assumed that Bailey had received payment for the endorsement and thereby prostituted his reputation as an amateur golfer for advertising purposes. In the passage you could argue that ~~the defendant Emma~~ Emma could sue Damien for defamation because he published the article which could be considered defamatory in a particular context.

3.1 Defamation Act 1952 and s.4 Theatrical Act 1968 extended defamation to cover broadcasting and the theatre.

There are various defences that Ryan or Damien could use against Emma's claims that she can sue for defamation. The first defence may could be is the defence of 'truth'. The 'truth' defence was established under s.2 Defamation Act 2013, which replaced the previous defence of 'Justification'. It is for the defendant to prove that the imputation conveyed by the statement complained of was substantially true. However there appears to be no truth in the published article, as Emma didn't both these words for words were merely taken out of context therefore Ryan or Damien could not use the defence of 'truth'.

Another defence is honest opinion, introduced by s.3 Defamation Act 2013. The defence of honest opinion requires that the statement complained of was a statement of opinion, the statement complained of indicated whether in general or specific terms the basis of ~~the~~ ^{an} opinion or ~~the~~ ^{an} honest person could have held the opinion based on any fact which existed at the time the statement complained of was published. It is unlikely that honest opinion could be used as a defence by Damien or Ryan because it doesn't satisfy the criteria.

A final defence which could be used is governed by section 4, Defamation Act 2013, which abolished the defence of Reynolds privilege which derived from Reynolds v Times Newspaper (1999). The new defence requires that the statement was on a matter of public interest and the defendant reasonably believed that publishing the statement was in the public interest.

In conclusion, Emma could sue Damien for defamation as he published an article on her which had not been true, it was not in the public interest and appeared to not be an honest opinion. It is unlikely that Emma could sue Ryan for his involvement.

1 (b) The role of the jury in civil cases consists of hearing the arguments for both sides and coming to a decision in favour of either the claimant or the defendant. The use of juries in civil cases is now extremely rare, in fact less than 1% of cases are heard in the civil courts with a jury.

~~The~~ Juries are used in both criminal and civil courts, though admittedly now limited in the civil aspect by s.69 Supreme Court Act 1981. s.11 Defamation Act 2013 further limited the use of juries in civil courts, this act made it very unlikely for cases of defamation to be heard by a jury.

Where juries are used in the civil courts they not only decide on whether the claimant has proved his case but also what damages should be awarded. s.69 Supreme Court Act 1981 also provided that an action shall be tried with a jury unless the court is of opinion that the trial requires any prolonged examination of documents or accounts or any local or scientific investigation, which cannot conveniently be made with a jury.

In all other cases trials by jury in civil courts is to the discretion of the court. In Ward v James (1966) it was held by the Court of Appeal that personal injury cases should be heard by judge alone except in special circumstances.

Juries are required for inquests in the coroners courts in special circumstances, though the general rule is that the coroner reviews the case alone. Section 7 Coroners and Justice Act 2009 sets out the exceptions where juries are used in the coroners court, of some importance, the section states that a jury should be summoned where the deceased died while in police custody and the death was violent, unnatural or of unknown cause; or the death was a

result of an act or omission of a police officer. S.7CJA 2009 states that it is up to the coroner or to the jury if summoned for inquest.

In conclusion, the role of the jury in civil cases is to listen to each side of the argument and provide a decision, however the use of juries has become extremely limited due to legislation such as DA 2013, and SCA 1981.

1(A) Defamation consists of the publication of untrue defamatory statements about another person. There are two different types of defamation: slander and libel. Slander is spoken, libel arises where the defamation is published in some permanent form.

The statement must be ~~true~~^{false} in order to be defamatory, for example Wayne Rooney was unable to sue newspaper companies for publishing articles about him sleeping with prostitutes, because it was true.

The first thing we must consider is whether the statement is actually defamatory. s.1 Defamation Act 2013 states that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

In Sin v Aesch (1936) it was held that a statement is defamatory if it ~~causes~~ is a lowering of right-thinking members of society who look at you as a result of the statement. In Byrne v Dean (1937) the claimant was unsuccessful ~~when~~ when suing for defamation because right-thinking members of society would have approved of his actions.

In relation to the passage, Emma may be able to sue Ryan or Damien because the publication ~~was~~ is likely to ~~cause~~ be a lowering of her reputation because her alleged comments concerning disabled people would be considered wholly inappropriate by right-thinking members of society.

In the case of Charleston v News Group Newspapers (1995) the potentially libellous headline "Strength: what's Harold up to with our mudge" was saved by the accompanying text. The House of Lords held that the whole article must be considered not just the headline, ~~therefore~~ it must be considered on the effect of the ordinary reasonable reader who would read the article not just look at the headline.

In Emma's situation it appears that the headline "Mummy's little Nathan stands sick seven" could be considered libellous because there is no portion of the article explaining the situation as it was, therefore Emma's reputation would be lowered as it could be considered defamatory.

Next, we must consider intention, intention arises where a statement is regarded as defamatory when considered in a particular context, or where other intention as demonstrated in the case of Tolley v Fry (1931). In this case the plaintiff (claimant) was an amateur golfer

whose Page was used, without authorisation, for an advertisement for Fry's chocolate. It was ~~not~~ assumed that Bailey had received payment for the endorsement and thereby prostituted his reputation as an amateur golfer for advertising purposes. In the passage you could argue that Emma could sue Damien for defamation because he published the article which could be considered defamatory in a particular context.

3.1 Defamation Act 1952 and s.4 Theatrical Act 1968 extended defamation to cover broadcasting and the theatre.

There are various defences that Ryan or Damien could use against Emma's claims that she can sue for defamation. The first defence may could be is the defence of 'truth'. The 'truth' defence was established under s.2 Defamation Act 2013, which replaced the previous defence of 'Justification'. It is for the defendant to prove that the imputation conveyed by the statement complained of was substantially true. However there appeared to be no truth in the published article, as Emma didn't both these words for words were merely taken out of context therefore Ryan & Damien could not use the defence of 'truth'.

Another defence is honest opinion, introduced by s.3 Defamation Act 2013. The defence of honest opinion requires that the statement complained of was a statement of opinion, the statement complained of indicated whether in general or specific terms the basis of ^{the} opinion or ~~the~~ an honest person could have held the opinion based on any fact which existed at the time the statement complained of was published. It is unlikely that honest opinion could be used as a defence by Damien or Ryan because he doesn't satisfy the criteria.

A final defence which could be used is governed by section 4, Defamation Act 2013, which abolished the defence of Reynolds privilege which derived from Reynolds v Times Newspaper (1999). The new defence required that the statement was on a matter of public interest and the defendant reasonably believed that publishing the statement was in the public interest.

7+1 In conclusion, Emma could sue Damien for defamation as he published an article on her which had not been true, he was not in the public interest and appeared to not be an honest opinion. It is unlikely that Emma could sue Ryan for his involvement. **no breach of confidence missing elements in defamation.**

1 (b) The role of the jury in civil cases consists of hearing the arguments for both sides and coming to a decision in favour of either the claimant or the defendant. The use of juries in civil cases is now extremely rare, with less than 1% of cases are heard in the civil courts with a jury.

~~The use~~ Juries are used in both criminal and civil courts, though admittedly now limited in the civil aspect by s.69 Supreme Court Act 1981. s.11 Defamation Act 2013 further limited the use of juries in civil courts, this act made it very unlikely for cases of defamation to be heard by a jury.

Where juries are used in the civil courts they not only decide on whether the claimant has proved his case but also what damages should be awarded. s.69 Supreme Court Act 1981 also provided that an action shall be tried with a jury unless the court is of opinion that the trial requires any prolonged examination of documents or accounts or any local or scientific investigation, which cannot conveniently be made with a jury.

In all other cases trials by jury in civil courts is to the discretion of the court. In Ward v James (1966) it was held by the Court of Appeal that personal injury cases should be heard by judge alone except in special circumstances.

Juries are required for inquests in the coroners courts in special circumstances, though the general rule is that the coroner reviews the case alone. Section 7 Coroners and Justice Act 2009 sets out the exceptions where juries are used in the coroners court, of some importance, but section states that a jury should be summoned when the deceased died while in police custody and the death was violent, unnatural or of unknown cause; or the death was a

Result of an act or omission of a police officer. S.7CJA 2009 states
that it is up to the coroner as to whether a jury is summoned for
inquest.

In conclusion, the role of the jury in civil cases is to listen to each
side of the argument and provide a decision, however the use of juries
has become extremely limited due to legislation such as DA 2013, and
SCA 1981.



9+2

19/25

10) ~~the~~ S. 1 Defamation Act defines Defamation as hurting someone financially. Libel is written defamation whereas Slander is spoken defamation. Emma cannot sue Ryan or Damien under S. 2 Defamation Act which says that if the statement was true then it was not defamatory. The article ~~that~~ about Emma was true and no editing had been done to the film to change it or take it out of context.

The Defamation Act 2013 replaced the defence of justification with the defence of truth.

S. 3 Defamation Act 2013 says that defamatory statements can now be made on the internet. This can be increasingly difficult to track those who have made or placed them on. A new case must be opened everytime someone accesses the website, this is increasingly difficult if it is an archive.

S. 4 Defamation Act involves the Reynolds v Times case. This ~~is~~ looks at defamation from a more political point of view. In this case Lord Reynolds gives points on ways he thinks ~~the~~ the law against defamation could be improved.

Emma could not sue either Ryan or Damien for defamation

4a) as her speech was made word for word and there was no restrictions in place to stop anyone of her friends being able to sue her for defamation.

S.1 Defamation Act 2013 lists these special circumstances where Defamation cannot be the reason for a court case. These include in parliament, in courts, when someone is speaking to their solicitor or when someone is reporting a criminal act.

In a case a politician sued another for a defamatory statement about him. one politician to another in parliament is the only exception.

4b) In a civil case juries consist of 8 people. The Bushell's case was very important to the representation of jurors.

In the Coroners Court juries are only used for two purposes. To identify the name of someone who has died and to identify, how, when and where they died.

Juries are very representative of society as they are made up of society however they are randomly selected this does not mean they are necessarily representative of society.

To be on a jury you must be at least

27 and signed upon the electoral register. Jury duty can be delayed until a further date if an unpostponable event comes up, such as a wedding or exams.

It is very unusual for a jury to be used in a civil case because they are very complex. A jury can only be used in a civil case in an exceptional circumstance. ~~§~~ Juries are not used in defamation cases. ~~A~~

In a case that lasted two years the ~~claimant won~~ ~~the claimant won~~ claimant won her case and was awarded £100,000. This, however, was then partly claimed back because it was said that the case was too complex for the jury to understand and could not have possibly come to that verdict and understood all of the elements of the fact. This accounts for another reason why less than 1% of civil cases are tried by a jury.

10) ~~S. 1~~ Defamation Act defines Defamation as hurting someone financially. Libel is written defamation whereas Slander is Spoken defamation. Emma cannot Sue Ryan or Damien under S. 2 Defamation Act which says that if the statement was ~~true~~ then it was not defamatory. The article ~~that~~ about Emma was true and no editing had been done to the film to change it or take it out of context.

The Defamation Act 2013 replaced the defence of justification with the defence of truth.

S. 3 Defamation Act 2013 says that defamatory statements can now be made on the internet. This can be increasingly difficult to track those who have made or placed them on. A new case must be opened everytime someone accesses the website, this is increasingly difficult if it is an archive.

S. 4 Defamation Act involves the Reynolds v Times case. This looks at defamation from a more political point of view. In this case Lord Reynolds gives points on ways he thinks ~~the~~ the law against defamation could be improved.

Emma could not sue either Ryan or Damien for defamation

4a) as her speech was made word for word and there was no restrictions in place to stop anyone of her friends being able to sue her for defamation.

S.1 Defamation Act 2013 lists these special circumstances where Defamation cannot be the reason for a court case. These include in parliament, in courts, when someone is speaking to their solicitor or when someone is reporting a criminal act.

In a case a politician sued another for a defamatory statement about him. one politician to another in parliament is the only exception.

3+1



very narrow answer - no breach of confidence

4b) In a civil case juries consist of 8 people. The Bushnell case was very important to the representation of juries.

In the Coroners Court juries are only used for two purposes. To identify the name of someone who has died and to identify, how, when and where they died.

Juries are very representative of society as they are made up of society however they are randomly selected this does not mean they are necessarily representative of society.

To be on a jury you must be at least

27 and signed upon the electoral register. Jury duty can be avoided with a further date if an unpostponable event comes up, such as a wedding or exams.

It is very unusual for a jury to be used in a civil case because they are very complex. A jury can only be used in a civil case in an exceptional circumstance. Juries are not used in defamation cases.

In a case that lasted two years the ~~claimant won~~ claimant won her case and was awarded £100,000. This, however, was then partly claimed back because it was said that the case was too complex for the jury to understand and could not have possibly come to that verdict and understood all of the elements of the fact. This accounts for another reason why less than 1% of civil cases are tried by a jury.



3+1

8/25

4. Study the text below and answer the questions based on it.

Liam, a law student, took part in a televised question and answer session in which members of the public were invited to discuss matters of current debate with a panel of experts. The topic happened to be human rights. Next day, Liam was recognised in the street by PC Pinch, who had watched the programme and disliked Liam's views. PC Pinch ordered Liam to stop and submit to a search. In Liam's trouser pocket he found an asthma inhaler. PC Pinch said, "You could do someone serious damage with this," and took Liam to the police station for questioning. At the police station PC Pinch said to the custody officer, "This one doesn't need a lawyer. He knows his rights. You can put him straight in a cell." Liam was kept in a cell for twenty-six hours before being charged with carrying a weapon and being released on bail.

- (a) In the light of reported case law and other sources of law, consider whether the police were acting within their powers. [14]
- (b) Explain what powers the police have to grant bail to someone charged with an offence. [11]

04 A

The Police and Criminal Evidence Act 1984 is an act that regulates and sets out the ^{legal} framework for which the police are able to exercise their powers set out in S66. of the Act.

The first issue in this case is how the police officer recognised the suspect. He had seen him ^{on TV} ~~and~~ after disliking his views. To exercise the power to stop and search any member of the public, under Code A of the Act and under S2(1) the officer must have a reasonable suspicion or belief that the suspect is carrying ~~an~~ an offensive weapon or prohibited item ~~on the case~~ based upon factual evidence or basis as defined in Castorina-v-Chief Constable of Surrey [1998]. In this case it is clear that the suspicion is based upon his views rather than his ~~the~~ factual basis to warrant a search. ~~Under~~ In the search PC Pinch had found an asthma inhaler. In this case, it is clear that PC Pinch has no ~~justifiable~~ justifiable ground for arresting the suspect.

The next issue is the role of the custody officer. Under S. ~~38~~ ³⁸ of PACE, the law requires the custody officer to explain the individual his rights and assess him to make sure that he did not suffer from any mental or physical impairment which would prevent him from questioning. Here there is another instance where the police are acting beyond their power.

The next issue is not, under S.58 being able to consult a legal representative. Here ~~the~~ the officer claims that with his findings of carrying a weapon, then there is an assumption that he has all the necessary evidence so allowing Liam to consult with a legal representative would ^{not} hinder the investigation meaning that there is another ~~human~~ rights breach. In R-v-Samuels, it is said that preventing a ~~a~~ suspect ^{from consulting with a lawyer} would only be justified in ^{rare} ~~some~~ circumstances and ~~this~~ in this case does not seem justified.

Finally, the length of time in which he was kept was illegal because under S41. of PACE, a suspect

may only be kept in detention for 24 hours and under S42 of PACE, if it can be reasonably justified a 36 hour extension ^{can be authorised} ~~by granted~~ by a superintendent ~~may be requested~~. Here he has kept him beyond the time limit under S41 and breached S42 of PACE. In total, the police breached the powers setup by PACE in 5 circumstances and were most definitely acting beyond their power.

~~Q4b~~ The magistrates court is the first point of law in England and Wales dealing with 97% of all criminal verdicts and deals with some civil matters. If an appeal is made against a verdict in a magistrates court, then the appeal is dealt with in the Crown court usually concerning a matter of fact such as the legality of evidence used against the defendant. If however a magistrates appeal concerns the sentence or a point of law where the magistrates may have mis-interpreted the law so that it lead to an absurd decision, then the appeal will be heard by the High Court Criminal Division. Appeal from the ~~the~~ Crown court is only ever permitted where the appeal like in the ~~the~~ magistrates court concerns a point of law where the judge has misinterpreted the law. Then appeals from the magistrates can go no further as if to limit the

04 A

The Police and Criminal Evidence Act 1984 is an act that regulates and sets out the ^{legal} framework for which the police are able to exercise their powers set out in S66 of the Act.

The first issue in this case is how the police officer recognised the suspect. He had seen him ^{on TV} ~~and~~ after disliking his views. To exercise the power to stop and search any member of the public, under Code A of the Act and under S2(1) the officer must have a reasonable suspicion or belief that the suspect is carrying ~~an~~ an offensive weapon or prohibited item ~~on the basis of~~ based upon factual evidence or basis as defined in Castorina-v-Chief Constable of Surrey [1998]. In this case it is clear that the suspicion is based upon his views rather than his ~~the~~ factual basis to warrant a search. ~~Under~~ In the search PC Pinch had found an asthma inhaler. In this case, it is clear that PC Pinch has no ~~justifiable~~ justifiable ground for arresting the suspect.

The next issue is the role of the custody officer. Under S. ~~38~~ ³⁸ of PACE, the law requires the custody officer to explain the individual his rights and assess him to make sure that he did not suffer from any mental or physical impairment which would prevent him from questioning. Here there is another instance where the police are acting beyond their power.

The next issue is not, under S.58 being able to consult a legal representative. Here ~~the~~ the officer claims that with his ~~findings~~ findings of carrying a weapon, then there is an assumption that he has all the necessary evidence so allowing Liam to consult with a legal representative would ^{not} hinder the investigation meaning that there is another ~~human~~ rights breach. In R-v-Samuels, it is said that preventing a ~~suspect~~ ^{from consulting with a lawyer} would only be justified in ^{rare} ~~some~~ circumstances and ~~this~~ in this case does not seem justified.

Finally, the length of time in which he was kept was illegal because under S41 of PACE, a suspect

may only be kept in detention for 24 hours and under S42 of PACE, if it can be reasonably justified a 36 hour extension ^{can be authorised} ~~by granted~~ by a superintendent ~~may be requested~~. Here he has kept him beyond the time limit under S41 and breached S42 of PACE. In total, the police ~~breached~~ the powers setup by PACE in 5 circumstances and were most definitely acting beyond their power.

~~Q4b~~ The magistrates court is the first point of law in England and Wales dealing with 97% of all criminal verdicts and deals with some civil matters. If an appeal is made against a verdict in a magistrates court, then the appeal is dealt with in the Crown court usually concerning a matter of fact such as the legality of evidence used against the defendant. If however a magistrates appeal concerns the sentence or a point of law where the magistrates may have mis-interpreted the law so that it leads to an absurd decision, then the appeal will be heard by the High Court Criminal Division. Appeal from the ~~the~~ Crown court is only ever permitted where the appeal like in the ~~the~~ magistrates court concerns a point of law where the judge has misinterpreted the law. Then appeals from the magistrates can go no further as if to limit the

74

041

9

4(A). Section 1 Police and Criminal Evidence Act 1984 states that a constable may search anyone that is in public access not a dwelling. The constable should only carry out the search where he has reasonable grounds to suspect that the person is in possession of offensive weapons, stolen goods or prohibited articles. Code of practice A states that reasonable suspicion differs based on the circumstances in each case. There must be an objective justification for that suspicion based on facts, information and/or intelligence. According to code A, a person's race, age, appearance or previous convictions can't constitute reasonable suspicion.

It could be argued the PC Pinch acted unlawfully because he stopped and searched Liam without any reasonable suspicion that he was carrying an offensive weapon, prohibited article or stolen goods.

S.2 Police and Criminal Evidence Act 1984 (PACE) states that ~~the officer~~ ~~(or Pinch)~~ must provide the person being searched (Liam) with information such as the grounds for the search, his name and station. Failure to supply this information could make the search unlawful as seen in Quinn v Leathey where the conviction was quashed.

S.3 PACE ensure that a custody officer keeps a written record of the search. It appears that early on the police have not acted within their powers in relation to S.2, although it could be argued the PC Pinch was correct in arresting Liam as he reasonably believed the the ~~knife~~, was an offensive weapon, which is something made or adapted for causing injury.

The police can arrest for breach of the peace, with a warrant under S.1 Magistrates Court Act 1980 or without a warrant under S.24 PACE.

The police have the authority to arrest anyone they reasonably believe to be in the act of committing a crime, already guilty of committing a crime or ~~being~~ about to commit a crime. It appears that PC Pinch arrested Liam because he reasonably believed that he was about to commit a crime. S.28 PACE recognises that where a person has been arrested they must be informed of the grounds of the arrest, PC Pinch didn't make this clear to Liam thereby acting unlawfully. In Robert v Chief Constable of Police Commissioner (1993) it was held that where a reason is given for the arrest it must be a valid one.

S.56 PACE allows the person that has been detained in police custody (Liam) to make a call to a relative, interested person or friend. There is no mention of Liam being allowed this right.

S.58 PACE recognises that where a person has been detained in police custody they are allowed a right to legal advice. This right can be delayed for up to 36 hours by a ²superior where the detention is in connection with an indictable offence. Liam was denied this right therefore the police acted outside their powers.

S.41 PACE creates the general rule that someone who has been held in police custody for 24 hours should be released or charged. Although the detention can be extended by S.44. As no extension was applied for the police acted outside of their powers because Liam was held for 26 hours before charge.

In conclusion, the police acted outside their powers on many occasions such as denying Liam the right to be released or charged after 24 hrs detention and failing to provide a valid reason for the search.

4(b) Bail can arise in various situations and can be granted by the police, magistrates and crown court. Being given bail means that the person is not in custody until the next stage of the trial.

Section 30 Police and Criminal Evidence Act 1984 allows the police to grant street bail. Street bail is usually given as a result of riot and street scuffles.

Section 37 PACE states that a person who has been arrested but not charged should be granted bail or released without bail, unless more detention is necessary to preserve or secure evidence or to obtain evidence through questioning.

S.38 PACE recognises that a person who has been charged should be released on bail unless their name or address can't be ascertained or they have a previous bail record.

The Coroners and Justice Act 2009 recognising that bail should not be granted in cases where the charge is murder.

The Criminal Justice and Public Order Act 1994 allow the police to impose conditions on bail, this is known as conditional bail. Conditions may include asking the suspect to, surrender his passport, regularly report to the police station or wear a tag. Conditions may only be imposed where the relevant officer reasonably believed that conditions are necessary to prevent the person committing a crime whilst on bail, interfering with witnesses or obstructing the course of justice, or, ~~causing~~ putting the safety of a child or other vulnerable person in danger.

The Police (Bail and Detention) Act 2011 states that the police may keep someone on bail without charge for as long as they consider necessary. This legislation was in response to the decision in Graham v. The Crown Prosecution Service (2011). This ruling had the effect of only allowing the police to keep someone on bail for 96 hours before they had to be charged or detained. Therefore, the current home secretary called the ruling one of great concern.

In conclusion, the police have a wide variety of powers to grant bail through various pieces of legislation such as PACE.

4(A). Section 1 Police and Criminal Evidence Act 1984 states that a constable may search anyone that is in public access not a dwelling. The constable should only carry out the search where he has reasonable grounds to suspect that the person is in possession of offensive weapons, stolen goods or prohibited articles. Code of practice A states that reasonable suspicion differs based on the circumstances in each case. There must be an objective justification for that suspicion based on facts, information and/or intelligence. According to code A, a person's race, age, appearance or previous convictions can't constitute reasonable suspicion.

It could be argued the PC Pinch acted unlawfully because he stopped and searched Liam without any reasonable suspicion that he was carrying an offensive weapon, prohibited article or stolen goods.

S.2 Police and Criminal Evidence Act 1984 (PACE) states that ~~PC Pinch~~ ~~(PC Pinch)~~ the custody officer (PC Pinch) must provide the person being searched (Liam) with information such as the grounds for the search, his name and station. Failure to supply this information could make the search unlawful as seen in Alima v DPP where the conviction was quashed.

S.3 PACE ensure that a custody officer keeps a written record of the search. It appears that early on the police have not acted within their powers in relation to S.2, although it could be argued the PC Pinch was correct in arresting Liam as he reasonably believed the the ~~knife~~, was an offensive weapon, which is something made or adapted for causing injury.

The police can arrest for breach of the peace, with a warrant under S.1 Magistrates Court Act 1980 or without a warrant under S.24 PACE.

The police have the authority to arrest anyone they reasonably believe to be in the act of committing a crime, already guilty of committing a crime or ~~being~~ about to commit a crime. It appears that PC Finch arrested Liam because he reasonably believed that he was about to commit a crime. S.28 PACE recognises that where a person has been arrested they must be informed of the grounds of the arrest, PC Finch must make this clear to Liam thereby acting unlawfully. In Robert v Chief Constable of Police Commission (1993) it was held that where a reason is given for the arrest it must be a valid one.

S.56 PACE allows the person that has been detained in police custody (Liam) to make a call to a relative, interested person or friend. There is no mention of Liam being allowed this right.

S.58 PACE recognises that where a person has been detained in police custody they are allowed a right to legal advice. This right can be delayed for up to 36 hours by a Inspector where the ~~detention~~ is in connection with an indictable offence. Liam was denied this right therefore the police acted outside their powers.

S.41 PACE creates the general rule that someone who has been held in police custody for 24 hours should be released or charged. Although the detention can be extended by S.44. As no extension was applied for the police acted outside of their powers because Liam was held for 26 hours before charge.

In conclusion, the police acted outside their powers on many occasions such as denying Liam the right to be released or charged after 24 hrs detention and failing to provide a valid reason for the search.



11+1

lacks application to facts.

4(b) Bail can arise in various situations and can be granted by the police, magistrates and crown court. Being given bail means that the person is at liberty until the next stage of the trial.

Section 30 Police and Criminal Evidence Act 1984 allows the police to grant street bail. Street bail is usually given as a result of riots and street scuffles.

pre-charge

Section 37 PACE states that a person who has been arrested but not charged should be granted bail or released without bail, unless more detention is necessary to preserve or secure evidence or to obtain evidence through questioning.

S.38 PACE recognises that a person who ~~has~~ been charged should be released on bail unless their name or address can't be ascertained or they have a previous bail record.

The Coroners and Justice Act 2009 recognising that bail should not be granted in cases where the charge is murder.

The Criminal Justice and Public Order Act 1994 allow the police to impose conditions on bail, this is known as conditional bail. Conditions may include asking the suspect to, surrender his passport, regularly report to the police station or wear a tag. Conditions may only be imposed where the relevant officer reasonably believed that conditions are necessary to prevent the person committing a crime whilst on bail, interfering with witnesses or obstructing the course of justice, or ~~causing~~ putting the safety of a child or other vulnerable person in danger.

The Police (Bail and Detention) Act 2011 states that the police may keep someone on bail without charge for as long as they consider necessary. This legislation was in response to the decision in Manchester Police v Harkany (2011). This ruling had the effect of only allowing the police to keep someone on bail for 96 hours before they had to be charged or detained. Theresa May, the current home secretary called the ruling one of great concern.

7+1

20/25

In conclusion, the police have a wide variety of powers to grant bail through various pieces of legislation such as PACE.



4a) In *Connelly v Rice* Lord Parker talked about the right of the citizen and the fact that they can not be detained by the police short of arrest.

The Police and Criminal Evidence Act 1984 gives the police their powers to stop and search someone.

S. 1 Police and Criminal Evidence

ACT 1984 (PACE) allows the police the power to stop and search any one, vehicle or thing as long as it is not in a dwelling.

The reported case law does not say if PC PUNCH complied with S. 1 which says that the police officer must give their name, the police station name and the grounds for the arrest.

S. 2 PACE 1984 says that the police officer must have been told information to give him reasonable suspicion that someone has, is, or will commit an offence. This suspicion cannot be based on the ~~fact that~~ the person's age, race, or gender, or if they have a previous conviction. A high number of ethnic minorities are stopped and searched.

In Black v DPP the police were carrying out a search for illegal drugs, under the Misuse of Drugs Act in the defendant's flat. The defendant's brother arrived and is searched because he is 'visiting a well known drug dealer' and might be there to buy/sell illegal drugs. The Divisional Court ruled this unlawful and said that Black had a legitimate reason to be on the premises.

In Hough v Chief Constable of Staffordshire a passenger in a car was stopped and searched after it showed up on

The police computer that someone in the car could be armed with a firearm. Both members in the car were searched and nothing was found, it was a faulty entry on the police computer. However Hough was unsuccessful in his case as the police officer was seen to have held reasonable suspicion for the arrest.

So, PC Punch was not acting within his powers as he had no 'reasonable suspicion' and only searched Liam as he had watched a programme he was a part of and didn't like his views.

The reported case law does not state if PC Tumbull complied with S.3 PACE 1984 which states that the account of the search must be lodged as soon as is practicable. The person searched is entitled to a copy of the search.

The ~~asthma~~ asthma inhaler found in Liam's pocket could also not constitute for Liam's arrest. PC ~~Tumbull~~ told him it could do serious damage, however this is not reasonable grounds for arresting someone. → Punch

When arriving at the police station ~~the~~ the case law does not state if Liam was given his right to have a friend, relative or interested person.

Liam being refused legal advice was also not a power of the police or PC Pines. If an arrested person does not have a lawyer or cannot afford one, one should be given to them. If they refuse a lawyer the reasons should be noted in the 'custody log'.

The custody officer is in charge of what goes on in the defendant's time in the police station and records it all in the 'custody' log.

Liam being kept in the cell for twenty-six hours before being charged was unlawful. After twenty-four hours he should have either been charged or released.

A review officer, who should be of a rank no lower than superintendent should have reviewed Liam after 6 hours, then any time after that the review should take place every 9 hours.

This was false imprisonment and the police were not acting within their powers, as a result Liam could have sued for damages.

4b) Bail is the temporary release of someone who is awaiting trial.

S. 37 Police and Criminal Evidence (PACE) Act allows bail on the condition as long as certain conditions are

followed. These include wearing a tag, reporting to the police station daily or paying a sum of money.

S.38 PACE allows bail unless the person's home address cannot properly be attained, there may be a risk of harm to the police or the person or another if bail is given.

Bail can be given in indictable offences only in exceptional circumstances. For example Chris Jeffries was released on bail after he was suspected of Joanna Yates murder in 2011.

S.4 Bail Act says that bail can be given as long as certain conditions are complied with. These include surrendering a passport or wearing a tag.

~~The Act~~ An act that has now been abolished said that bail could be given for 96 hours. This was reversed in Westacott v Westacott. The Home Secretary ~~then~~ called this act a 'cause for concern.'

The Coroners Court Act s.115 also gives bail.

S.4 Bail act gives bail on the street, e.g. street scuffles. This

act is important because it is very quick and effective and frees up police officers for more important police matters.

The Legal Aid public sentencing Act 2012 also gives bail under certain circumstances. As does the bail act, but ~~the~~ the conditions of these are limited by schedule one.

When a person is refused bail they are often placed in a bail hostel. These bail hostels are often so overcrowded and ~~overcrowded~~ they are then placed in a prison. This interferes with the defendants Human Rights, Article 10. Bail hostels are also unwanted by the public as they are seen as ugly and dirty. This interference with the article right and the fact that there are not enough bail hostels might be another reason the police grant bail.

~~Not all bail is given by the police, some bail must only be given by the courts. This is usually the magistrates court.~~
Not all bail is given by the police, some bail must only be given by the courts. This is usually the magistrates court.

Bail is not usually given if someone has previously not complied with their previous bail conditions or has not managed to pay the sum

of money requested to make bail available.

Certain conditions also have to be complied with in order to make bail, these include surrendering their passport, wearing a tag, paying a sum of money or reporting to a police station daily.

4a) In *Connelly v Rice* Lord Parker talked about the right of the citizen and the fact that they can not be detained by the police short of arrest.

The Police and Criminal Evidence Act 1984 gives the police their powers to stop and search someone.

S. 1 Police and Criminal Evidence

ACT 1984 (PACE) allows the police the power to stop and search any one, vehicle or thing as long as it is not in a dwelling.

The reported case law does not say if PC PUNCH complied with S. 1 which says that the police officer must give their name, the police station name and the grounds for the arrest.

S. 2 PACE 1984 says that the police officer must have been told information to give him reasonable suspicion that someone has, is, or will commit an offence. This suspicion cannot be based on the ~~fact that the~~ person's age, race, or gender, or if they have a previous conviction. A high number of ethnic minorities are stopped and searched.

In Black v DPP the police were carrying out a search for illegal drugs, under the Misuse of Drugs Act in the defendant's flat. The defendant's brother arrived and is searched because he is 'visiting a well known drug dealer' and might be there to buy/sell illegal drugs. The Divisional Court ruled this unlawful and said that Black had a legitimate reason to be on the premises.

In Hough v Chief Constable of Staffordshire a passenger in a car was stopped and searched after it showed up on

The police computer that someone in the car could be armed with a firearm. Both members in the car were searched and nothing was found. It was a faulty entry on the police computer. However Hough was unsuccessful in his case as the police officer was seen to have held reasonable suspicion for the arrest.

So, PC Punch was not acting within his powers as he had no 'reasonable suspicion' and only searched Liam as he had watched a programme he was a part of and didn't like his views.

The reported case law does not state if PC Tumbour complied with S.3 PACE 1984 which states that the account of the search must be lodged as soon as is practicable. The person searched is entitled to a copy of the search.

The ~~asthma~~ asthma inhaler found in Liam's pocket could also not constitute for Liam's arrest. PC ~~Tumbour~~ told him it could do serious damage, however this is not reasonable grounds for arresting someone. → Punch

When arriving at the police station ~~the~~ the case law does not state if Liam was given his right to have a friend, relative or interested person.

Liam being refused legal advice was also not a power of the police or PC Pincus. If an arrested person does not have a lawyer or cannot afford one, one should be given to them. If they refuse a lawyer the reasons should be noted on the 'custody log'.

The custody officer is in charge of what goes on in the defendant's time in the police station and records it all in the 'custody' log.

Liam being kept in the cell for twenty-six hours before being charged was unlawful. After twenty-four hours he should have either been charged or released.

A review officer, who should be of a rank no lower than superintendent should have reviewed Liam after 6 hours then any time after that the review should take place every 9 hours.

7+1



This was false imprisonment and the police were not acting within their powers, as a result Liam could have sued for damages.

lacks legal authority

4b) Bail is the temporary release of someone who is awaiting trial.

S. 37 Police and Criminal Evidence (PACE) Act allows bail on the condition as long as certain conditions are

followed. These include wearing a tag, reporting to the police station daily or paying a sum of money.

S.38 PACE allows bail unless the person's home address cannot properly be attained, there may be a risk of harm to the police or another if bail is given.

Bail can be given in indictable offences only in exceptional circumstances. For example Chris Jeffries was released on bail after he was suspected of Joanna Yates murder in 2011.

S.4 Bail Act says that bail can be given as long as certain conditions are complied with. These include surrendering a passport or wearing a tag.

~~The Act~~ An act that has now been abolished said that bail could be given for 96 hours. This was reversed in Westacott v Westacott. The Home Secretary ~~then~~ called this act a 'cause for concern.'

The Coroners Court Act s.115 also gives bail.

S.4 Bail act gives bail on the street, e.g. street scuffles. This

act is important because it is very quick and effective and frees up police officers for more important police matters.

The Legal Aid Public Sentencing Act 2012 also gives bail under certain circumstances. As does the bail act, but ~~the~~ the conditions of these are limited by schedule one.

When a person is refused bail they are often placed in a bail hostel. These bail hostels are often too overcrowded and ~~they~~ they are then placed in a prison. This interferes with the defendants Human Rights, Article 10. Bail hostels are also unwanted by the public as they are seen as ugly and dirty. This interference with the article right and the fact that there are not enough bail hostels might be another reason the police grant bail.

police?
power?

~~Not all bail is given by the police,~~
Not all bail is given by the police, some bail must only be given by the courts. This is usually the magistrates court.

Bail is not usually given if someone has previously not complied with their previous bail conditions or has not managed to pay the sum

of money requested to make bail available.

Certain conditions also have to be complied with in order to make bail, these include surrendering their passport, wearing a tag, paying a sum of money or reporting to a police station daily.

6+1



15/25