Examiners’ report 2013

LA1031 Common law reasoning and institutions – Zone A

Introduction

2013 was the last year that the old syllabus will be examined (except for those who are resitting the examination in October 2013). In 2014 the CLRI examination will be in the new format. If you are sitting the CLRI examination in 2014 there will be parts of this report which will be of limited relevance to you and this is explained below.

The most relevant responses are to Questions 2, 4 and 8. Section A in 2014 will be completely different from the Section A discussed below and the equivalent of Question 8 will be a compulsory question in Part C of the examination. Part B of the examination will require you to answer a choice of two essays, but, as the syllabus has been redesigned it would be wrong to take the answers below as a good indication of the questions in the examination of 2014. You are directed to the subject guide at this point. It would be useful to refresh your memory on the precise form of the examination, as the present text offers only a perfunctory overview.

The points on essay writing technique below are relevant whether you are taking the old or the new examination and you are urged to take a good look at the student extracts and the comments on them. Essay writing technique is covered in Chapter 4 of the new subject guide.

Do not make use of model answers. As you will appreciate from reading Chapter 4, or even by thinking properly about what a ‘discussion question’ involves, it should be obvious that you have to respond directly to a question and build your argument. It follows that a memorised model answer will simply not work. The form of a ‘discussion question’ also means that you should not write out notes verbatim in the hope that some of it is relevant. Candidates obtain good marks if they engage with the question and produce a well-informed and coherent argument.

Questions 2, 4, 5 and 7 were the most popular. In general, candidates tended to do reasonably well on Question 2, but had clearly not revised the impact of the European Court of Human Rights (ECtHR) on precedent. Question 4 was answered by a large number of candidates as if it was about judicial appointments. This was presumably because they had learnt a model answer on this topic and just wrote it out. If you took this approach, you would have received a fail mark. Question 5 was reasonably well done, but many candidates received a low mark or a fail for not reading the question or simply repeating a ‘stock’ Woolf reforms answer. Questions 7 (a) and (b) were popular and 7(a) produced some good answers. A common mistake was failing to understand that this is a question about the Criminal Justice Act (CJA) 2003. Unless you are analysing this Act, you are dealing with irrelevant issues. Question 7(b) was not difficult. Low marks or a fail were secured by repeating a model answer or not reading the question. Question 3 was not popular, but produced some reasonable answers. Question 6 was less popular than the
‘legal aid’ question normally is; perhaps because it is focused upon very recent events. Those that did attempt it (with some exceptions) did badly because they were unable to talk about ‘the present government’. For some it seems that Tony Blair is still Prime Minister. Although Question 8 was not popular, those who did attempt it did well and got very good marks. This is a comprehension question. The best way that you can prepare for it is to read statutes throughout the year and work your way through the questions in the subject guide and in previous examinations. You need to apply the law to the facts. This question does not require an analysis of the literal rule/mischief rule/golden rule. Further guidance notes on how to approach it are provided below.

The spread of marks saw a large banding around thirds and fails. This reflects the ongoing reliance on model answers, and a general failure to understand what Section A requires. There were not enough good 2.2s and 2.1s, and very few firsts.

It is disappointing that general advice made in 2012 can be more or less repeated with reference to the 2013 examination. Part A answers were almost universally poor. See below for some tips as to how to approach this part of the examination. As far as Part B was concerned, the major problems were reliance on model answers (or badly adapted model answers) and poor essay writing technique.

It is worth reviewing the postings on the VLE, in particular the final posting before the examination.

Specific comments on questions

PART A

Question 1

Candidates must answer this COMPULSORY question.

1. (a) Answer all questions.

i. On which freely available website can you discover the stage a bill has reached in its passage through Parliament?

The UK Parliament site: www.parliament.uk.

ii. What is the name given to the type of citation given in this example: R v James [2006] EWCA Crim 14?

A neutral citation.

iii. What information will you find in the headnote of a case report?

‘The headnote is an accurate summary of the issues dealt with in the case, followed by the decision or opinion that was ultimately “held” and any important statements on the law made during the course of arguments or the judgment.’

iv. On which freely available website would you find Consultation Papers?

The Ministry of Justice website (now moved to: www.gov.uk); the Law Commission Website.
v. What does the abbreviation Q.B. stand for in this citation: *R v James* [2006] Q.B. 588?

Queen’s Bench Reports. (5 marks)

(b) Answer all questions.

i. On which of the six topics was the essay which you submitted via the VLE? Why did you chose that question and what was your initial understanding of what you had to do to produce a good piece of work? How did your understanding of the process develop?

A good answer would outline the candidate’s first response to the topic (the research question) and then go on to show how their thinking developed. Good marks were given for detailed discussion of how the research changed first impressions.

**Student extract**

I answered question 1 on the validity of declaratory theory. I chose this topic because I was particularly interested in judicial activism. I come from a jurisdiction with a continental legal system, so I was particularly interested in the common law idea that judicial law making can be legitimate. The title also interested me, as it suggested that one way of talking about common law intuitions (i.e. the declaratory theory) may have become inaccurate as the historical and political conditions in which the legal system operates have changed. In other words, a good piece of work would show how judgments become out of date, and have to be re-thought. In order to build my argument on this theme, I understood that I would have to show how ways of talking about law reflect opinions shared at a particular point in time, and that opinions change. My understanding of this basic insight developed as I appreciated that I needed to go into much more depth to persuade the reader that I had properly understood the material. This presented difficulties for how I organised my work: I had to make sure I could handle my thesis in the confines of the word limit. Rather than write about a hundred years or so of legal change, I had to use some ‘representative’ moments to illustrate and exemplify the arguments I wanted to put forward.

**Comment on extract**

In this extract the candidate traces the way in which their understanding has developed. The analysis is focused on the problems of writing about the declaratory theory in the confines of the essay. The candidate states their central thesis: declaratory theory ‘may have become inaccurate as the historical and political conditions in which the legal system operates have changed.’ This point is then linked to the difficulties of writing about the span of historical time that would allow the writer to make their point in a persuasive and well researched way. The analysis concludes with a statement of how this programme was resolved: ‘Rather than write about a hundred years or so of legal change, I had to use some “representative” moments to illustrate and exemplify the arguments I wanted to put forward.’ The reader gets a clear statement of how this candidate’s thinking has developed as they confronted the problems raised by writing on this topic.
ii. Explain how you found source material and what problems you encountered. Rank your five most important sources in terms of their authority and ease of understanding.

The marks in this question are for analysing the sources. To get good marks on this part of the question, a candidate needs to discuss the articles they used and precisely how the articles were illuminating or not.

Student extract

The essential source was Blackstone’s Commentaries on the Laws of England. I used this as it was cited in most journal articles and books, and is thus clearly an authoritative source. I suspected that it would provide a clear statement of the declaratory theory, and it did. However, using the book was quite laborious. The other problem was that (hardly surprisingly) Blackstone did not weigh up his own theory. I was trying to argue that Blackstone’s theory had to be understood in the constitutional context of its time. I thus had to look outside the Commentaries, to articles and books by legal and constitutional historians to make the most of this resource in the context of my essay.

Comment on extract

This candidate clearly deals with the points raised by the question. Note how they are assessing the usefulness of Blackstone within their own research project. As with the answer to (i) above, this response has the merits of dealing with a specific problem in detail. The candidate shows, given what they were trying to argue, just what the limits of the Commentaries were.

iii. Outline your conclusions and explain the extent that they derive from specific sources you have identified.

This part of the question is about relating conclusions to sources. Good marks were given for precision and detailed analysis. There has to be a clear sense of how conclusions and sources are linked.

Student extract

My main conclusion was that Blackstone’s declaratory theory, and those that drew on it, were describing a situation that no longer properly exists. It cannot be said that the declaratory theory describes the present reality of judicial law making. In the final analysis, I preferred the analysis of the American Realists, even though they were talking more about American common law, than that of the UK. Perhaps it is the case that a decision depends on what the judge had for dinner. More properly, I concluded that it would be more important to look at specific considerations within particular areas to understand why a judge might make law, and why he might not. I concluded that the declaratory theory was not that useful.

Comment on extract

Note how the writer shows how their conclusions were linked to criticisms of the declaratory theory and to how they therefore look to a different way of understanding judicial law making. In particular, note how the writer introduces the point about the American Realists. This candidate is engaging in detail with the material and the problems that they had in their research. Generalities are avoided, and specific problems dealt with in a focused way.
iv. Offer a self-critique of your essay: what is the strongest aspect and what is the weakest?

Most candidates approach this part of the question in a very mechanical way, repeating something about starting their research process in a more timely fashion or reading more material. To get good marks a candidate needs to be absolutely precise about the questions that remain open after they have finished their research, and how these questions might suggest a different way of thinking about the relevant area of research.

Student extract

One of the areas of my work that I would like to improve would be introducing some analysis of Ronald Dworkin’s re-working of the declaratory theory into more thinking about how judges decide cases. I simply did not have room to deal with this important theory in anything other than an outline. I think my work would have been improved by trying to show in detail how my realist argument showed Dworkin’s work to be too fixated on an abstract general theory of interpretation; in other words, I could have built the point that a proper assessment of judicial law making and it legitimacy depends on detailed study of specific cases and areas of law.

Comment on extract

Note the focused nature of this analysis of the problems encountered in the writing process and how the candidate offers a very precise description of how their work could be improved.

(20 marks)

PART B

Question 2

‘Far from being rigid and inflexible, the doctrine of precedent enables judges to develop legal principles and respond to broader historical and institutional developments in and outside the legal system.’

Discuss.

General remarks

A good answer will assert agreement with this statement. The point is that precedent is ‘reasonably flexible’. One might elaborate this statement by arguing that precedent structures judicial law making and makes it fairly stable and predictable. However, the doctrine of precedent also allows case law to be adaptable in somewhat limited circumstances. The starting point for this question is the 1966 Practice Statement. An intelligent answer might compare and contrast the Practice Statement with London Tramways and then show how it fed into cases such as Miliangos and the court’s argument for changing the sterling damages rule. Lord Denning’s campaign in the Court of Appeal is perhaps harder to bring within the terms of the question. An ingenious answer might relate it to changing perceptions of social justice. Perhaps more relevant is some consideration of the response of the domestic courts to Strasbourg in the wake of the Human Rights Act (HRA). Whereas the Supreme Court has affirmed the doctrine of precedent, the mirror principle and cases like Pinnock suggest that precedent is indeed being adapted to coordinate the common law courts with rulings of the ECtHR. It would also be possible to include material on Donoghue v Stephenson from Chapter 6 of the subject guide.

The background material for this answer is in Chapter 6 of the subject guide, but the primary material is in Chapter 3 of The politics of the common law.
Question 3

‘Fairness requires that, in all cases, judgments are pronounced publicly, and the resources open to either the prosecution and the defence or the claimant and the defendant are absolutely equal.’

Discuss with reference to Article 6 of the European Convention on Human Rights.

General remarks
This question concerns the doctrines of open justice and equality of arms, as covered in Chapter 10 of the subject guide and The politics of the common law (Chapter 11, but see also Chapters 13 and 15). Open justice and equality of arms have been developed by the ECtHR with reference to Article 6. The critical point is that one must disagree with the statement that forms the question. This is because it is untrue to say that all judgments must be pronounced in public. Article 6 itself specifies that there are legitimate instances when judgment does not need to be given in public. A good answer will consider the relevant case law, and be more precise about the limits to the principle of open justice. Key cases are Rowe and Davies, Fitt, Edwards (equality of arms); B and P v UK; Campbell and Fell v UK (open justice). A brilliant answer might mention closed material procedures (CMPs) and the Justice and Security Act 2013. As far as the doctrine of equality of arms is concerned, it is also inaccurate to say that it requires absolute equality; rather, the jurisprudence tends to articulate equality of arms in terms of reasonable equality. A good answer will start from this position, and go into the relevant cases which define more closely the terms of the doctrine.

Student extract
If we turn our attention to the doctrine of equality of arms, we can clearly see that it would be wrong to think that Article 6 requires the resources of the defence and the prosecution are ‘absolutely equal’. One of the main commentators on Article 6 jurisprudence has stressed that the Article requires something like approximate equality, and that neither party should be placed at a significant disadvantage. In order to develop our point, we will look at some major authorities in the area of criminal proceedings: Edwards and Rowe and Davies.

Comment on extract
This passage is taken from the middle section of the relevant essay. It is very clear what the candidate is arguing. They have returned to the issue raised by the question and shown that they disagree with the idea that Article 6 requires absolute equality. The candidate backs up their argument with an authoritative summary of the jurisprudence, and correctly identifies the key cases that this section of the essay will go on to discuss.

Question 4

‘The basic premise of the democratic idea is the guarantee of the basic values of liberty and justice for all and respect for human rights and fundamental freedoms. This is enshrined in the Human Rights Act 1998... The guarantor of those rights is and can only be an active but independent, neutral, and impartial judiciary.’

Discuss.

General remarks
This question requires discussion of the politics of the judiciary. The statement asserts that an active but independent, neutral and impartial judiciary are central to the defence of liberty, justice and human rights. This can be elaborated by
reference to the operation of the HRA; in particular the interpretative provisions and the declarations of incompatibility. A good answer will locate the HRA in the problems of an over-powerful Parliament, but stress that the Act does not bring Parliamentary sovereignty to an end. Most importantly, perhaps, it is necessary to link these structural reforms to the senior judiciary's perception of their role; perhaps making reference to the idea of a dialogue between judges and Parliament. *The politics of the common law* contains discussion of these themes; as does the last chapter of the subject guide. A well-informed answer will make reference to *Jackson* and the associated cases, and stress that senior judges have questioned the idea of deference to Parliament. Some reference to the *Belmarsh* case would also be relevant. However, despite extra-judicial writings and *obiter* statements, the judges are not stating that they have become overtly political. Well-informed students will make reference to the ideas of Owen Fiss, which square judicial deference and neutrality with rights adjudication and the part that judges play in defining the terms of our ‘social life’. One could also make reference to judicial appointments. Whilst this theme could be considered in passing, an answer that sticks simply to this theme risks not answering the question.

Materials relevant to this question are in Chapter 9 of the subject guide and Chapter 5 of *The politics of the common law*.

**Student extract**

Democracy does depend on the values outlined by the question: in particular human rights, liberty and justice. These are obviously very general ideas, and it is therefore important that the Law Lords share a vision of the rule of law underpinned by these values; values that inform that Human Rights Act of 1998. This essay will examine the role of the judges in upholding the values of the HRA, and assess the extent to which a neutral but activist judiciary is able to uphold them. Its main argument will be that certain flashpoints show that the judges have proved more willing to uphold human rights than Parliament; a troubling fact that suggests that new ideas of democracy are emerging in the interpretation of the HRA by activist judges committed to human rights. After reviewing the ‘theory’ of the judge’s role in upholding democracy, this essay will go on to consider certain key, recent cases such as the Belmarsh case, the Abu Qatada judgment and the prisoner’s rights case.

**Comment on extract**

This introduction has the merits of a direct answer to the question posed. The candidate is offering the Examiners a very clear statement of the ideas that will inform the essay and how it will develop. Note how this candidate’s main thesis is outlined: ‘certain flashpoints show that the judges have proved more willing to uphold human rights than Parliament; a troubling fact that suggests that new ideas of democracy are emerging in the interpretation of the HRA by activist judges committed to human rights.’

**Question 5**

‘It appears extremely difficult, perhaps impossible, to make the civil justice system responsive to the needs of citizens. Consequently, the move for a rather different approach to reform - a state-sponsored retreat from court-based dispute resolution - is understandable but this carries its own risks for achieving justice.’

Discuss.
General remarks
A good answer to this question will engage directly with the key issue: how the civil justice system is made responsive to the needs of citizens. Note that this is linked to the claim that there has been a ‘retreat’ from ‘court-based dispute resolution’ to (impliedly) alternative dispute resolution (ADR) and that this may mean that justice is not achieved. The best way of approaching this claim is to examine what might be meant by the claim that justice relates to making dispute resolution responsive to the needs of citizens. Do citizens know what they need in the context of civil justice? Is this simply a question of empirical research to establish ‘needs’ or a question of first principles? An intelligent answer will think these questions through with reference to Woolf’s Overriding Objectives, and the discussion of the values of fairness in civil procedure in *The politics of the common law* (for instance, r.1.1 of the Civil Procedure Rules, which states: ‘(1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly’). The critical question: is justice simply cost effectiveness, or are there other important values in play (access to the courts, for instance)? In other words, given the difficulty of obtaining any concrete evidence on perception of need, it might be that this is a question of first principles. How might this position help determine the correct balance between ADR and the courts? To take just one point: access to the courts. If one requires ADR on the basis of costs, then it might be that cases that can only be dealt with formally in court are resolved inappropriately. The key to this question, then, is avoiding mechanical repetition of the standard points about Woolf’s reforms, and thinking about the precise issues that the question is raising.

Materials relevant to this question are in Chapter 11 of the subject guide and Chapters 12 and 13 of *The politics of the common law*.

Question 6
‘The present Government’s austerity politics mean that the era of legal aid is over: the courts are for the rich, the poor have to suffer injustice.’

Discuss

General remarks
A good answer to this question must confront head on the assumptions of the quote and have an opinion. Is the era of legal aid – what does that mean in any event? – really over? Knowledge of some detail of the ‘reforms’ is also required. A good answer would look into the relationships between the rule of law, legal aid and access to justice. If the rule of law is about limited and accountable government, then access to justice allows citizens reasonable opportunity to use the courts and legal services to defend their rights etc. Whilst there is no absolute right to legal aid, the argument could be made that Coalition reforms and the Legal Aid Sentencing and Punishment of Offenders Act have so limited eligibility as to seriously compromise these principles. Of course, it would also be possible to take a different approach; but, for good marks a candidate must show facility with the definition of the key terms and a focused argument supported with evidence.

Material relevant to this question is contained in Chapter 12 of the subject guide and Chapter 16 of *The politics of the common law*. See also recent postings on the VLE.

Student extract
This essay will argue that whilst it is something of an exaggeration to say that the ‘era of legal aid is over’, it would be fair to say that the policies of the Coalition government have placed significant limits on the availability of legal aid. Although it is contentious judgement, it would be possible to argue that these limitations on legal aid are part of a consistent re-design of the British
state to allow markets to provide the services that were once part of state provision. To deal with the other issues raised by the question: terms like ‘rich’ and ‘poor’ are not clear, and will not be used in this essay. However, the following position will be outlined. Whilst this might not bother those with resources to fund their own legal actions, it will clearly impact significantly upon the ability of those with fewer resources to access the courts and assert their rights. It could also be argued that this will lead to injustice. This essay will deal first of all with the idea of an ‘era of legal aid’ before focusing on Coalition reforms and assessing their impact on access to justice for all citizens.

Comment on extract
In this introductory passage the candidate has confronted the question head on. It is clear what the candidate thinks, and what they will argue. They have refined the terms of the argument and commented critically on the terms of the statement about legal aid. They point out that it is not so much that the era of legal aid is ‘over’ but that provision of legal aid is being dramatically limited. Note also how the candidate takes issue with terms like ‘rich’ and ‘poor’ without losing sight of what the essay wants to argue. After outlining their response to the question, the candidate then tells the reader how the essay will develop.

Question 7
EITHER
a) ‘Since the enactment of the Criminal Justice Act 2003, it has been effectively shown that right to a jury can be limited even in the most serious cases without compromising the integrity of the criminal trial.’
Discuss.

General remarks
The focus of this question is on The Criminal Justice Act 2003. A good answer will explain the terms of the Act. It made provision for applications by the prosecution for certain fraud cases to be conducted without a jury (s.43) and also some cases where there is danger of jury tampering (s.44). Under s.43, in cases of serious or complex fraud, the prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury. If the judge is satisfied that the complexity or length of the trial (or both) are likely to make the trial too burdensome to the members of a jury, he or she may decide that, in the interests of justice, the trial should be conducted without a jury. In deciding this, the judge should take into account any steps that could reduce the complexity or length of the trial. If he or she does so decide, then the Lord Chief Justice or such judge nominated by him must approve the decision. In the case of jury tampering, there would have to be a substantial likelihood of tampering taking place to make it necessary in the interests of justice for the trial to be conducted without a jury. A well-informed answer will also consider the recent case law on these sections: KS v R [2010] EWCA Crim 1756 (23 July 2010) and J, S, M v R [2010] EWCA Crim 1755. In J, S, M v R, the court stressed that the arrangements for juryless trials ‘remain[s] and must remain the decision of last resort’ and should only be used in ‘extreme cases’. Note also the guidelines issued in KS v R: ‘the link between the nature of the threat and danger of jury contamination, and the steps reasonably available to be taken to reduce the risk to manageable proportions and caution against any unduly alarmist proposals, alarmist, both in the sense of the likely adverse impact on the members of the jury themselves, and on the drains on precious police resources of providing them.’ The two cases suggest that the judiciary take juryless trials very seriously, and that, in very limited circumstances, they might be justified.
b) ‘Miscarriages of justice in criminal justice stem from not observing the rights of the accused.’

Discuss.

General remarks
A good answer should go through the causes of miscarriages of justice from police investigation to the Criminal Cases Review Commission (CCRC). One can agree or disagree with the quote.

Material relevant to this question is contained in Chapters 8 and 10 of the subject guide and Chapters 14 and 15 of *The politics of the common law*. There is also relevant material on the VLE including a speech by Graeme Zellick who went through the various stages and implied that the one cause you cannot remedy is incompetent defence lawyers!

Question 8

Please read the Act on pages 5 and 6 and advise on these situations.

a) Superintendent Alan wants to issue a DVPN. Explain to him the matters he must take into account under s.24 of the Crime and Security Act 2010.

General remarks
Superintendent Alan may issue a DVPN against someone over 18 if he has reasonable grounds for believing that the person against whom he seeks a DVPN has either been violent or threatened violence towards another person, and the DVPN is necessary to protect the victim from violence or the threat of violence. Furthermore, Alan must consider the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN and the opinion of the person for whose protection the DVPN would be issued. To get all five marks, the candidate must cover all these points and explain to Alan how he could understand terms like ‘reasonable grounds’ and ‘welfare.’

b) Superintendent Beth is considering issuing a DVPN in the following circumstances. Guy was beaten up by his partner Butch six months ago. Butch has been released from prison and Guy – although he fears that he will be attacked again – has invited him back to live in the house they share. Guy’s social worker fears for his well being and physical safety if Butch returns. Butch has started to send Guy threatening text messages which threaten violence against him. Advise Beth whether a DVPN can be issued under s.25, and, if so, the terms of the DVPN.

General remarks
The focus of this question is s.25(1). Beth can consider making a DVPN even though Guy does not appear to want one against Butch. Beth must consider the issues of welfare under s.25(2). Even though Beth can include in the order terms banning Butch from either molesting Guy or entering the house they used to share, to ban Butch from the premises she must also consider Butch’s welfare under s.25(4). To make an order against Butch, Beth must also consider the requirements of s.24. She must be sure that Butch is over 18, and must have reasonable grounds for believing that violence has been used or threatened against Guy. The evidence
in the question suggests that it has. Whilst Beth must take into account the welfare and interests of Guy, s.25(1) would allow her to override Guy's desire not to have a DVPN issued. The evidence from Guy's social worker suggests that a DVPN may protect Guy's welfare.

c) Superintendent Christine has been advised that Danny and Sandy are members of a group of youths who congregate in a shopping precinct in the centre of Fulchester. Superintendent Christine has evidence from the manager of the shopping precinct that the youths with whom Danny and Sandy associate shout abuse at passers by and prevent people from entering and leaving the shops. Danny and Sandy, as well as the other youths, wear distinctive jackets with the slogan “T-Birds” on the back. Advise Christine if she can apply for an injunction against Danny, Sandy and the others under s.26.

(10 marks)

General remarks
The focus of this question is on s.26 and gang-related violence. In order to make an injunction on the grounds of gang related violence, Christine would have to be satisfied on the balance of probabilities that Danny and Sandy have engaged in or encouraged violence. She also has to persuade the court that an injunction is necessary to prevent them from engaging in gang-related violence, and/or to protect them from the same. Christine must also be aware that the definition of 'gang-related violence' relates to violence or a threat of violence which uses a gang name or distinctive symbol and is associated with a particular place or area. On the facts, the injunction might be awarded to prevent Danny and Sandy engaging in or encouraging violence. The evidence from the manager of the shopping centre does suggest on the balance of probabilities that they are engaging in violence to the extent they prevent people entering or leaving shops, although the evidence here is a little ambiguous. Shouting at passers by may not constitute violence. Christine would probably be able to show that on the facts the violence is gang-related, because of the distinctive 'T-Birds' slogan on the jackets, and the fact that the violence is associated with the shopping centre.

The Crime and Community Security Act 2010 (a fictitious Act) includes the following provisions:

s.24

(1) A police superintendent (“the authorising officer”) may issue a domestic violence protection notice (“a DVPN”) under this section.

(2) A DVPN may be issued to a person (“P”) aged 18 years or over if the authorising officer has reasonable grounds for believing that—

(a) P has been violent towards, or has threatened violence towards, an associated person, and

(b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.

(3) Before issuing a DVPN, the authorising officer must, in particular, consider—

(a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN.

(b) the opinion of the person for whose protection the DVPN would be issued as to the issuing of the DVPN.
s.25
(1) The authorising officer may issue a DVPN in circumstances where the person for whose protection it is issued does not consent to the issuing of the DVPN.

(2) Before issuing a DVPN under subsection (1) the authorising officer must consider the welfare of both the person who will be protected by the DVPN as well as the person who will be subject to the DVPN.

(3) A DVPN must contain a provision to prohibit P from molesting the person for whose protection it is issued.

(4) If P lives in premises which are also lived in by a person for whose protection the DVPN is issued, the DVPN may also contain a provision to prohibit P from coming within such distance of the premises as may be specified in the DVPN.

(5) Before issuing a DVPN under subsection (4), the authorising officer must consider the welfare of the person subject to the order.

s.26
26 Injunctions to prevent gang-related violence
(1) A court may grant an injunction upon application from a police superintendent under this section if two conditions are met.

(2) The first condition is that the court is satisfied on the balance of probabilities that the respondent has engaged in, or has encouraged, gang-related violence.

(3) The second condition is that the court thinks it is necessary to grant the injunction for either or both of the following purposes—
   (a) to prevent the respondent from engaging in, or encouraging, gang-related violence;
   (b) to protect the respondent from gang-related violence.

(4) In this section “gang-related violence” means violence or a threat of violence which
   (a) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group, and
   (b) is associated with a particular area.