

Mark Scheme for June 2011

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by Examiners. It does not indicate the details of the discussions which took place at an Examiners' meeting before marking commenced.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the Report on the Examination.

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This mark scheme must be used in conjunction with the Advanced Subsidiary GCE Law Assessment Grid.

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant.

Candidates can score in the top bands without citing all the points suggested in the scheme. Answers, which contain no relevant material at all, will receive no marks.

For part questions **(a)** and **(c)(ii)** AO3 marks should be awarded as follows:

If 1-4 marks awarded for AO1/AO2 = give 1 AO3 mark

If 5-8 marks awarded for AO1/AO2 = give 2 AO3 marks

If 9-12 marks awarded for AO1/AO2 = give 3 AO3 marks

Exercise on Legislation and Delegated Legislation

- 1 (a)* Describe how an Act of Parliament is made with reference to Source A and your knowledge of legislation. [15]

Mark Levels	AO1
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding [12]

Describe the stages involved:

- Green Paper – a consultation document
 - White Paper – a firm proposal
 - First Reading – laid before the House
 - Second Reading – the first major debate
 - Committee Stage – a clause by clause consideration of the bill
 - Report Stage – the committees amendments are reported
 - Third Reading – the final debate on the bill
 - Switch House and repeat – moves from the House of Commons to the House of Lords or *vice versa*
 - Royal Assent – a formality when the Bill is signed on behalf of the Monarch.
- Make relevant reference to the source.

Candidates will be unlikely to achieve Level 4 without linking to the source, accurate reference to each stage with **good** supporting detail. Responses which do not include pre-legislative process will be unable to achieve above 10 marks unless the detail is exceptionally good.

Candidates will be unlikely to achieve Level 3 without all/most of the stages with **some** explanation.

Candidates will be unlikely to achieve Level 2 without some stages with some explanation. A bare list will be unable to achieve above 6 marks.

Assessment Objective 3 – Communication and presentation [3]

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- (b) Each of the following interviews was conducted by police officers and took place at a police station covered by Statutory Instrument 1991/2687 (Source B), but none of the interviews was tape-recorded.

Explain the lawfulness of each of the following interviews:

- (i) On the 1st November 1991 Gemma was arrested for a summary offence (not serious) and was interviewed. [5]
- (ii) Carl was suspected of an indictable offence (serious) and was interviewed on 1st November 2000. [5]
- (iii) Hank was detained under section 14(1)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989 and was interviewed in March 2000. [5]

Mark Levels	AO2
(For each of i, ii, iii)	
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 2 – Analysis, evaluation and application

In the case of **(i)** recognise that the interview need not be tape recorded (**CP**). Discuss the reasons why there was no need to tape record the interviews as firstly the statutory instrument applies only to indictable offences and secondly that the statutory instrument has not come into force. Credit reference to the source.

In the case of **(ii)** recognise that the interview should have been tape recorded (CP). Explain that it complies with the statutory instrument. The offence is an indictable offence and the commencement date has passed. Credit reference to the source.

In the case of **(iii)** recognise that the interview need not have been tape recorded (**CP**). Explain that although the offence is an indictable offence under section 3(2)(a) there is an exception for terrorist offences. Credit reference to the source.

Candidates will be unlikely to achieve Level 4 without identifying the Critical Point (CP) and two other relevant factors, an explanation and without linking to the source.

Candidates will be unlikely to achieve Level 3 without identifying the CP and one other relevant factor, an explanation and without linking to the source.

Candidates will be unlikely to achieve Level 2 without identifying the CP.

(c) With reference to **Sources A** and **B** and using your knowledge of delegated legislation:

(i) describe the three different types of delegated legislation.

[15]

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

Describe the character of a statutory instrument:

- they are generally introduced by Ministers of Government Departments under powers given in enabling Acts
- they are introduced by either an 'affirmative, negative or super affirmative resolution' procedure
- over 3000 are brought into force each year, give any examples eg Access to Justice Act 1999.

Describe the character of a bylaw:

- they are made by local authorities to cover local issues or by public corporations
- they are mostly created under the Local Government Miscellaneous Provisions Act 1982.

Use relevant examples of a bylaw eg dog fouling or London Underground banning smoking on the underground.

Describe the character of an Order in Council:

- they are drafted by government departments and approved by the Queen and Privy Council
- power is granted by the Emergency Powers Act 1920 and is generally used in times of emergency, particularly war and when Parliament is not sitting
- they are used to implement some EU law under the European Communities Act 1972.

Give any example of an Order in Council.

Make relevant reference to the sources.

Candidates will be unable to achieve Level 4 without covering all three types of delegated legislation and without linking to the source. Candidates will be unlikely to achieve Level 4 without a good description.

Candidates will be unlikely to achieve Level 3 without an adequate description.

Candidates will be unlikely to achieve Level 2 without a limited description.

(ii)* discuss the advantages and disadvantages of delegated legislation.

[15]

Mark Levels	AO2
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Potential answers **MAY**:

Assessment Objective 2 – Analysis, evaluation and application

[12]

Advantages:

- Discuss that delegated legislation saves Parliamentary time
- Discuss how delegated legislation can utilise technical or specialist expertise
- Discuss how delegated legislation benefits from local knowledge
- Discuss how delegated legislation can be passed quickly
- Discuss how delegated legislation is more flexible allowing Parliament to amend or revoke delegated legislation more easily than an Act of Parliament.

Disadvantages:

- Recognise that delegated legislation is based on an undemocratic procedure – a necessary evil?
- Recognise that there is a lack of debate and lack of publicity
- Show awareness that Parliamentary scrutiny of delegated legislation is limited
- Discuss the problem of sub-delegation
- Discuss the limitations of judicial review
- Discuss the problems of volume – 3,000 SI's alone.

Make relevant reference to the sources.

Candidates will be unlikely to achieve Level 4 without at least four well developed points (WDPs) or three WDPs plus other detail, without covering both sides and without linking to the source.

Candidates will be unlikely to achieve Level 3 without three WDPS or four points with explanation and without a two-sided discussion (there should be at least one advantage or disadvantage).

Candidates will be unlikely to achieve Level 2 without a range of limited points. A list with little supporting commentary will be unable to achieve above 6 marks.

Assessment Objective 3 – Communication and presentation

[3]

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

Exercise on Judicial Precedent

- 2 (a)* Describe original precedent and overruling using the Source and other cases to illustrate your answer.

[15]

Mark Levels	AO1
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

[12]

Original Precedent:

- Describe original precedent – when a point of law within a case is unique and has not been considered before
- Describe that original precedent is made due to changes in technology or modern developments
- Describe how in cases of original precedent judges will try to reason by analogy
- Describe how original precedent can be said to go beyond the role of the judiciary
- Use cases to illustrate original precedent – *Hunter and others v Canary Wharf*, *Re S*, *Rylands v Fletcher*.

Overruling:

- Describe the concept of overruling – a decision which states that a legal rule in an earlier case is wrong
- Describe how overruling normally has a retrospective effect
- Describe how overruling applies through the court hierarchy
- Describe how the Practice Statement allows the House of Lords to overrule its own previous decisions
- Describe how the exceptions in *Young v Bristol Aeroplane* allow the Court of Appeal to overrule its own previous decisions in limited circumstances
- Use cases to illustrate the concept of overruling eg *BRB v Herrington*, *Pepper v Hart*, *R v G&R*, *Miliangos v George Frank Textiles*.

Make relevant reference to the source.

Candidates will be unable to achieve Level 4 without covering both original precedent and overruling and without linking to the source. Candidates will be unlikely to achieve Level 4 without a definition and/or features, three cases* and the use of (cases must be 2 & 1.) Use of cases at Level 4 should include the ratio.

*does not include the case provided in the source.

Candidates will be unable to achieve Level 3 without a definition, one case each to illustrate and without description of both.

Candidates will be unable to achieve Level 2 without basic points eg definition/bald case/bald source use, and without description of both.

Assessment Objective 3 – Communication and presentation [3]

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

- (b) Discuss the most appropriate method of avoiding precedent in each of the following situations:
- (i) The judge in a case believes a potentially binding precedent has been made in error because it ignored a relevant Act of Parliament. [5]
- (ii) The case is being heard on appeal. The appellate court judges believe the first instance judge decided the case incorrectly. [5]
- (iii) The judge in a case believes that the material facts of the current case are different to a previous binding precedent. [5]

Mark Levels	AO2
(For each of i, ii, iii)	
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 2 – Analysis, evaluation and application

In the case of **(i)** recognise that the most appropriate method would be *per incuriam* (CP). Discuss the reasons why – because the decision has been made in error. Use a case to support the reasoning eg *Rickards v Rickards*. Credit reference to the source.

In the case of **(ii)** recognise that the most appropriate method would be reversing (CP). Discuss the reasons why – because this scenario involves a case on an appeal from a lower court. Use a case to support the reasoning eg *Davis v Johnson*. Credit reference to the source.

In the case of **(iii)** recognise that the most appropriate method would be distinguishing (CP). Discuss the reasons why – because the judge believes the case facts are different. Use a case to support the reasoning eg *Balfour v Balfour*, *Merritt v Merritt*. Credit reference to the source.

Candidates will be unlikely to achieve Level 4 without identifying the Critical Point (CP) and two other relevant points (why, case, LTS etc).

Candidates will be unlikely to achieve Level 3 without identifying the CP and one other relevant points (why, case, LTS etc).

Candidates will be unlikely to achieve Level 2 without identifying the CP.

- (c) (i) Using the Source and other cases to illustrate your answer:
describe persuasive precedent.

[15]

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 1 – Knowledge and understanding

- Describe persuasive precedent eg not binding, but courts can decide to follow it.
- Describe the different types of persuasive precedent:
 - 1 Obiter dicta eg *Central London Property Trust Ltd v High Trees House Ltd* (1947), *R v Howe* (1987) and *R v Gotts* (1992)
 - 2 Decision of the Privy Council eg *R v Holley* (2005) and *R v James and Karimi* (2006), *Wagon Mound*
 - 3 Dissenting judgements eg *Crandler v Crane Christmas & Co* (1951) followed in *Hedley Byrne v Heller & Partners* (1964)
 - 4 Decisions of courts in other countries eg *Re A* (2000)
 - 5 Judgments made by courts lower in the hierarchy eg *R v R* (1991).

Any other relevant case can be used to illustrate the above points.
Make relevant reference to the source.

Candidates will be unlikely to achieve Level 4 without definition of persuasive precedent plus at least three examples with three supporting cases (one for each type), without linking to the source and without a case which illustrates the persuasive precedent/ratio.

Candidates will be unlikely to achieve Level 3 without definition of persuasive precedent plus at least two examples with two supporting cases (one for each type).

Candidates will be unlikely to achieve Level 2 without basic points eg definition/features/bald case/bald source use. Where no cases are used candidates will be unable to achieve above eight marks.

- (c) (ii)* discuss the advantages and disadvantages of the doctrine of precedent. [15]

Mark Levels	AO1
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Potential answers **MAY**:

Assessment Objective 2 – Analysis, evaluation and application [12]

A discussion of the following advantages:

- Discuss how the system provides certainty, lawyers can give more accurate advice and clients can make more informed decisions about starting a claim
- Discuss how there are elements of flexibility through the methods of avoiding precedent
- Discuss how the system is time saving
- Discuss how the system provides consistency and fairness as all cases are treated the same.

A discussion of the following disadvantages:

- Discuss how the system is rigid, there are only limited methods of avoiding precedent
- Discuss the complexity of the system
- Discuss how the law is slow to develop as the doctrine discourages people from challenging decisions
- Discuss the problems of illogical decisions.

Make relevant reference to the source.

Candidates will be unlikely to achieve Level 4 without at least four well developed points (WDPs) or 3 WDPs plus other detail, without covering both sides and without linking to the source.

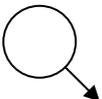
Candidates will be unlikely to achieve Level 3 without three WDPS or four points with explanation and without a two-sided discussion (must have at least one advantage or disadvantage).

Candidates will be unlikely to achieve Level 2 without a range of limited points. A list with little supporting commentary will be unable to achieve above 6 marks.

Assessment Objective 3 – Communication and presentation [3]

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.

Annotations

}	irrelevant
<	better than
<	less than
R	repetition
V	vague
CP	Critical Point
BC	basic case
C	case
C+	developed/explained case
F	feature
BP	bald point
P	point
DP	developed point
WDP	well developed point
LTS	link to the source
xLTS	no link to the source
so	sort of
L1	level 1
L2	level 2
L3	level 3
L4	level 4
+	advantages/positives
-	disadvantages/negatives
	tracking a point
1, 2, 3, 4 etc	Points of evidence or examples or statutes etc
W	'why' (for use in questions 2(b)(i), (ii) and (iii))
NC	Not committed/hedging

AS GCE Law Levels of Assessment

There are **four** levels of assessment of AOs 1 and 2 in the AS units. Level 4 is the highest level that can reasonably be expected from a candidate at the end of the first year of study of an Advanced GCE course. Similarly, there are **three** levels of assessment of AO3 in the AS units.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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