

Mark Schemes for the Units

January 2009

H134/MS/R/09J

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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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Advanced Subsidiary GCE Law (H134)

MARK SCHEMES FOR THE UNITS

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Marking Instructions

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

When using the mark scheme the points made are merely those which 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.

G151 English Legal System

- 1 (a) Describe both publicly funded legal representation in civil cases and conditional fee agreements.

[18]

| Mark Levels | AO1 |
|-------------|-------|
| Level 4 | 15–18 |
| Level 3 | 11–14 |
| Level 2 | 6–10 |
| Level 1 | 1–5 |

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of the Access to Justice Act 1999.

Describe publicly funded representation in civil cases:

- Means tested on disposable capital and disposable income;
- Merits test based on likelihood of success and amount of damages likely to be awarded and the conduct of the parties;
- Priorities for funding as there is a finite fund;
- Some matters excluded, eg personal injury, wills, boundary disputes and defamation;
- Not available for cases involving less than £5,000;
- Not available for tribunals except mental health.

Credit reference to the Community Legal Service or the Legal Services Commission.

Describe conditional fee agreement:

- Developed to help people to deal with the risk of taking a case to court as costs are uncertain and there is always a risk of losing the case;
- Solicitor and client agree on a fee which would normally be charged for a particular case;
- Success fee is agreed up to 100% of normal fee added to fee if case is won but cannot exceed 25% of damages;
- If case is lost solicitor gets nothing;
- Success fee may be ordered to be paid by losing party;
- Insurance is taken out to protect against paying costs of other side if case is lost; This premium can also be claimed off the losing party;

Credit should be given for details of any of these points.

- (b) Discuss the problems of providing access to justice to all those who need a remedy in civil cases. [12]

| Mark Levels | AO2 | AO3 |
|-------------|-----|-----|
| Level 4 | 8–9 | - |
| Level 3 | 6–7 | 3 |
| Level 2 | 4–5 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 2

Discuss the problems of providing access to justice;
For publicly funded cases:

- Finite fund - where there is a limited budget it has to be rationed;
- Eligibility levels for legal funding are very low so that only the poorest have access to justice, those of even a moderate income or homeowners do not have such access;
- There are not enough providers of publicly funded services in certain parts of the country leading to advice deserts. This limits access to those who can travel or live in the right area.

For conditional fee agreements:

- Many areas of civil law are removed from legal funding and have to rely on conditional fee agreements with their problems;
- Some large firms dealing with conditional fee agreements have gone into liquidation, showing the difficulty of making a profit unless cases are carefully screened before taking them on. Levels of compensation agreed by large firms thought to be lower than those negotiated by independent solicitors;
- Difficult to find solicitors to deal with risky cases;
- Difficult for lawyers to estimate costs in complicated cases so some cases make a loss even with 100% uplift fee;
- Clients may be forced to settle early at a lower level of compensation.

Credit any other relevant points, eg problems finding advice.

Assessment Objective 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.

[Total marks 30]

- 2 (a) Describe both the training of barristers and how complaints about barristers are made and dealt with. [18]

| Mark Levels | AO1 |
|-------------|-------|
| Level 4 | 15–18 |
| Level 3 | 11–14 |
| Level 2 | 6–10 |
| Level 1 | 1–5 |

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of training of barristers:

- Academic: law degree (7 core subjects) or other degree plus Common Profession Examination / Post Graduate Diploma in Law after one year's extra training on core subjects;
- Vocational: join Inn of Court and dine 12 times or attend residential training courses during Bar Vocational course - practical training with emphasis on advocacy and drafting opinions and statements of case, called to the Bar;
- Practical: pupillage of two six-month periods with a pupil master, tenancy.

Describe how complaints about barristers are made and dealt with:

- Initially complaints dealt with by the barrister concerned or their chambers;
 - Complaints dealt with by the Bar Standards Board supervised by the Complaints Commissioner and can order a barrister to apologise, repay fees and compensate a client;
 - Barristers can be disciplined by the Senate of the Inns of Court;
 - Bar Council can pay compensation to the client for poor service;
 - Legal Services Ombudsman;
 - Cannot be sued for breach of contract as no contract with the client, except where there is direct access;
 - Can be sued for negligence for work outside court eg *Saif Ali*;
 - Can also be liable in negligence for advocacy in court eg *Hall v Simmons*;
- Credit detail and any reference to the Legal Services Act and the Legal Services Commissioner.

- (b) Discuss the advantages and disadvantages of the current system of training barristers. [12]

| Mark Levels | A02 | A03 |
|-------------|-----|-----|
| Level 4 | 8–9 | - |
| Level 3 | 6–7 | 3 |
| Level 2 | 4–5 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 2

Discuss the advantages and disadvantages of the current system of training:

- CPE/PGDL may be seen as not a sufficient grounding in law for non law graduates, but is an opportunity for those able candidates who decide late to keep the training more affordable and less time consuming;
- Bar Vocational Course provides training in advocacy;
- Pupillages do give practical on-the-job training but can be of variable quality;
- Choice to become a barrister or solicitor has to be made early;
- Difficulty in finding a pupillage prevents many from completing their training;
- Costs put off many able candidates especially with the scarcity of pupillages etc as large debts accrued with no guarantee of being able to complete the training;
- There are now some bursaries available to help with costs of training and some pupillages are now paid;
- Many newly qualified lawyers have accrued large debts and, unlike solicitors, there is no ILEX route for barristers, which can overcome this problem;
- Difficulties lead to only those with financial backing being able to qualify, not necessarily the best people;

Credit any suggestions for reform, eg more joint training, better funding, more opportunities to do qualifying work in a legal environment whilst studying.

Assessment Objective 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.

[Total marks 30]

- 3 (a) Describe the different methods of Alternative Dispute Resolution (ADR) available to deal with civil cases. [18]

| Mark Levels | AO1 |
|-------------|-------|
| Level 4 | 15–18 |
| Level 3 | 11–14 |
| Level 2 | 6–10 |
| Level 1 | 1–5 |

Potential answers **MAY**:

Assessment Objective 1

Describe each of the different methods of ADR.

- Mediation - neutral person helps parties reach a compromise solution. Mediator does not offer an opinion;
- Conciliation - conciliator goes beyond mediation in that they have the power to suggest grounds for compromise or a settlement;
- Mediation and conciliation both allow the parties to have control over the resolution process as they can withdraw at any time and a resolution to the dispute cannot be imposed on them as they must agree to it;
- Arbitration – both parties voluntarily agree to let their dispute be left to the judgment of an arbitrator or a panel of arbitrators who are neutral. Agreements to arbitrate are governed by the Arbitration Act 1996 and are usually in writing. Agreement to go to arbitration can be made before a dispute arises [usually by a *Scott v Avery* clause in a contract]. Agreement will either name an arbitrator or provide a method for choosing one. A court may also appoint an arbitrator. The parties agree the procedure for hearings and this ranges from a ‘paper’ arbitration to a formal court style hearing. Arbitration decisions are binding on the parties and can be enforced by the courts if necessary. An award by an arbitrator can be challenged in the courts for serious irregularity in the proceedings or on a point of law.

Credit Negotiation – parties reach agreement themselves with no third party. May use solicitors. But it is not required for full marks.

Credit mention of the Centre for Dispute Resolution or any other service available for mediation or conciliation eg ACAS.

Credit will be given for any other details.

- (b) Discuss the advantages and disadvantages of using mediation and conciliation rather than using the courts.

[12]

| Mark Levels | A02 | A03 |
|-------------|-----|-----|
| Level 4 | 8–9 | - |
| Level 3 | 6–7 | 3 |
| Level 2 | 4–5 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 2

Discuss the advantages of using mediation and conciliation:

- Less formal and does not have to follow the strict letter of the law;
- Encourages co-operation;
- Avoids the adversarial process of court and maintains working relationships and it can include decisions about future dealings;
- Both parties maintain a sense of control and can choose the method of mediation;
- Agreements are more likely to last as they are a compromise and in a sense 'everyone wins';
- Highly successful - 80% resolved (Centre for Dispute Resolution);
- Often reduces costs;

Discuss the disadvantages of using mediation and conciliation:

- No guarantee that the dispute will be resolved;
- Will not work unless both parties are willing to co-operate and reach a compromise;
- Settlements are often considerably lower than those awarded by the courts;
- Agreements cannot be enforced, so there is no pressure to stick to it;
- Could go on for a long time without a settlement;
- Unless the mediator has the necessary qualities, mediation can turn in to a bullying exercise;
- Weaker parties may not stand up for their own rights.

Assessment Objective 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.

[Total marks 30]

- 4 (a) Describe both the qualifications required for jurors and the procedure for selecting a jury. [18]

| Mark Levels | AO1 |
|-------------|-------|
| Level 4 | 15–18 |
| Level 3 | 11–14 |
| Level 2 | 6–10 |
| Level 1 | 1–5 |

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of qualifications:

- Chosen at random from the electoral registers for a court area by computer at central office. Summonses sent out each fortnight;
- Only those aged between 18 and 70, on the electoral register, and resident in UK for 5 years since age 13 can sit;
- Must sit unless disqualified or excused.

Demonstrate knowledge of those who cannot or need not sit:

- Cannot sit if disqualified: for life if convicted of a serious offence and sentenced to 5 years or more imprisonment, for 10 years if served any sentence of imprisonment or been given a suspended sentence or a community order in the last 10 years: or whilst on bail;
- Cannot sit if ineligible: mental disorder;
- Can be excused if serving in the armed forces and commanding officer certifies needed;
- Can be excused or have service deferred for "good reason" - application has to be made to Jury Central Summoning Bureau.

Demonstrate knowledge of selection once at Crown Court:

- 15 chosen at random from the jury pool to go into the court room;
- 12 chosen at random in court by the clerk.

Demonstrate knowledge of challenges.

- Challenge to the array, by prosecution or defence on way jury selected;
- Challenge for cause, by prosecution or defence, because of connection with case or incapacity;
- Right of stand by, by prosecution, usually following vetting.

Credit any reference to the deaf, or those being unable to speak English effectively being unable to sit as jurors.

(b) Discuss the arguments for retaining juries.

[12]

| Mark Levels | AO2 | AO3 |
|-------------|-----|-----|
| Level 4 | 8–9 | - |
| Level 3 | 6–7 | 3 |
| Level 2 | 4–5 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:**Assessment Objective 2**

Discuss the arguments for retaining juries.

- Public confidence in the system – regarded as one of the fundamental indicators of a democratic system "the lamp that shows that freedom lives";
- Traditionally seen as fair as having many people on a jury cancels out any individual prejudices;
- Jury equity – can disagree with a particular law and apply their own idea of fairness even if they do not follow that law as they do not need to give reasons for decisions eg *Ponting*, *Owen*, *Kronlid*, but this can be seen as a problem as the law is not being followed;
- Allows the ordinary person to take part in the administration of justice, but as they are forced to take part there may be problems with this;
- Juries are likely to be impartial as they are not connected with anyone involved in the case and they are randomly selected;
- Lawyers have to explain matters simply and clearly for the jury so the defendant is better able to follow the proceedings and they become more accessible to the public but juries still do have difficulty understanding some aspects of criminal law.

Assessment Objective 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.

[Total marks 30]

- 5 (a) Describe the powers of the police to arrest a person on the street. [18]

| Mark Levels | AO1 |
|-------------|-------|
| Level 4 | 15–18 |
| Level 3 | 11–14 |
| Level 2 | 6–10 |
| Level 1 | 1–5 |

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of powers set out under the Police and Criminal Evidence Act 1984 as amended by the Serious Organised Crime and Police Act 2005 and the Criminal Justice Act 2003 and the Codes of Practice (Code G) Arrest:

- Section 24 PACE as amended by SOCP A 2005 - sets out the power to arrest without warrant. If a person has committed an offence or is in the act of committing an offence or is about to commit an offence or there are reasonable grounds for suspecting one of these occurrences (even if no offence is actually committed);
- There is a necessity test and this power of arrest can only occur for one of the following reasons: to enable the name and address of suspect to be ascertained, to prevent physical injury, loss or damage to property, causing an offence against public decency, obstruction of the highway, to allow effective investigation of the offence, protect a vulnerable person or prevent any prosecution being hindered by the disappearance of the person in question;
- Police must tell a person they are under arrest, the reason for arrest, why the arrest is necessary and give a caution. They also have to identify themselves if not in uniform to make the arrest lawful;
- Reasonable force may be used;
- Arrest for breach of the peace (common law power);
- Arrest for breaching bail conditions;
- Any other power of arrest, eg aggravated trespass under the Criminal Justice and Public Order Act 1994;
- Arrest with a warrant.

Credit the fact that the arrested person may be searched for anything that may help them escape.

Some statutory reference is required for full marks.

- (b) Discuss the extent to which the rights of the individual are adequately protected during arrest on the street. [12]

| Mark Levels | A02 | A03 |
|-------------|-----|-----|
| Level 4 | 8–9 | - |
| Level 3 | 6–7 | 3 |
| Level 2 | 4–5 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 2

Discuss how the rights of the individual are adequately protected during arrest:

- New arrest powers make all offences arrestable, but the necessity requirement does give some protection for the individual as all arrests have to be justified;
- Only reasonable force may be used, which does protect the individual up to a point although deadly force may be seen as reasonable in certain situations;
- Research has shown that ethnic minorities are less likely to be charged after arrest than others which implies that many of these arrests should not have taken place but ethnic monitoring now takes place which should prevent this happening to such an extent;
- The requirements to tell the suspect why they are being arrested, to take them to the police station as soon as practicable and the need for a caution protect the individual to some extent.

Credit should be given for any other comments or statistics to support arguments.

Assessment Objective 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.

[Total marks 30]

- 6 (a) Describe how it is decided whether or not to grant bail to a person awaiting trial. [18]

| Mark Levels | AO1 |
|-------------|-------|
| Level 4 | 15–18 |
| Level 3 | 11–14 |
| Level 2 | 6–10 |
| Level 1 | 1–5 |

Potential answers **MAY**:

Assessment Objective 1

Demonstrate a clear understanding of the Bail Act 1976 and subsequent amendments in the Bail (Amendment) Act 1993, the Crime and Disorder Act 1998 and the Criminal Justice Act 2003:

- Identify that bail enables a defendant to remain at liberty until the next stage of their case;
- General right to bail;
- Show a clear understanding that both police and magistrates can grant bail and the powers of the Magistrates' court;
- Reasons for refusing bail, eg failure to surrender to custody, likely to commit further offences or interfere with witnesses/the course of justice;
- Factors to be taken into account including: nature and seriousness of offence, antecedents of defendant, previous bail record, strength of evidence against defendant;
- Demonstrate a clear understanding of unconditional and conditional bail, and the types of conditions that may be imposed on a defendant including sureties;
- Bail only granted in exceptional circumstances for murder, attempted murder, manslaughter, rape or attempted rape if the defendant has already served a custodial sentence for such a crime;
- Bail is restricted for adult drug users under the Criminal Justice Act 2003 in certain circumstances.

Candidates may also mention the process involved in making renewed applications and an appeal against a rejected bail application by the defendant, or the prosecution's right to appeal against the granting of bail, but it is not necessary for full marks.

- (b) Damien is charged with the serious offence of robbery. He is alleged to have used a knife. He has two previous convictions for theft. He has kept to previous bail conditions. He lives locally with his wife and two children.

Explain which factors and conditions are likely to be considered when making a decision whether or not to grant bail to Damien. [12]

| Mark Levels | AO2 | AO3 |
|-------------|-----|-----|
| Level 4 | 8–9 | - |
| Level 3 | 6–7 | 3 |
| Level 2 | 4–5 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 2

Identify that even for serious offences such as robbery there is a presumption in favour of bail. The factors taken into account under the Bail Act would all need to be considered with particular reference to:

- As Damien has a previous record for theft he is likely to face a more serious sentence, probably custodial as he used a weapon, and is therefore less likely to surrender to bail;
- The likelihood of him re-offending while on bail will need to be considered especially as his offence is more serious but comment on the fact that he has kept to previous bail conditions;
- The strength of the evidence against him;
- The fact that he has ties to the area would mean that he is less likely to abscond before the trial although this would need to be considered as the penalty for robbery is much more severe than for theft;
- Conditions could be attached to his bail to enable bail to be granted, for example a curfew, surrender of his passport, condition of residence and/or reporting to the police station.

Credit will be given for the mention of any other relevant factors or conditions.

Credit will be given for a reasoned conclusion.

Assessment Objective 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.

[Total marks 30]

- 7 (a) Describe **both** the aims of sentencing **and** the factors which are taken into account when sentencing an individual. [18]

| Mark Levels | AO1 |
|-------------|-------|
| Level 4 | 15–18 |
| Level 3 | 11–14 |
| Level 2 | 6–10 |
| Level 1 | 1–5 |

Potential answers **MAY**:

Assessment Objective 1

Explain the main aims of sentencing as set out in the Criminal Justice Act 2003;

- Punishment - retribution for wrongdoing, society's revenge for the offence. 'Let the punishment fit the crime'. Based on proportionality or 'just desserts' it contains an element of denunciation - society's outrage at the offence committed;
- Reduction of crime- this includes both deterrence and rehabilitation:
 - ◇ Deterrence has two types - individual and general individual - aimed at a particular offender to put them off reoffending by either a very severe sentence, eg custodial sentences or a fine, or by the threat of imprisonment, eg a suspended sentence or conditional discharge;
 - ◇ General - put society off committing crimes by exemplary sentences or minimum sentences not concerned with fairness. May be harsher than the usual tariff for the offence, so can lead to injustice in particular case, eg very severe sentences for the theft of mobile phones on the street;
- Rehabilitation - aims to reform the offender to stop them re-offending. It is focussed on the longer term, looking at the potential of the offender to reform. It is now accepted that custodial sentences only have very limited rehabilitative effect;
- Protection of the public by preventing the offender from re-offending;
- Reparation - considers the victim when sentencing the offender. Compensation orders used to make offender make amends to the victim.

Other factors that would be taken into account include:

- the seriousness of the crime;
- antecedents of the offender including any reports on them;
- motive;
- early guilty plea (this reduces the sentence by up to a third);
- sentencing guidelines/tariff.

- (b) Bethan (aged 16) has been convicted of the serious offence of robbery. She has several convictions for theft and has previously been given a Supervision Order and an Attendance Centre Order.

Explain which would be the main aims and factors likely to be used when deciding the appropriate sentence for Bethan. [12]

| Mark Levels | AO2 | AO3 |
|-------------|-----|-----|
| Level 4 | 8–9 | - |
| Level 3 | 6–7 | 3 |
| Level 2 | 4–5 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 2

Explain the criteria that would be most important in deciding the sentence for Bethan:

- Because Bethan is a young offender, rehabilitation is likely to be the main aim in sentencing Bethan. As she is a repeat offender, deterrence and rehabilitation may not be regarded as likely to work if previous sentences involved either aim;
- However, punishment may be a factor in the sentencing of Bethan as it is a serious offence. Protection of the public will be important as an aim as Bethan's crime is seen as a violent crime which the public need protection from;
- Her previous sentences would need to be considered as her offending has become more serious. Reparation could be considered as an aim depending on the circumstances of the crime;
- Her background and the reason for committing the crime would be taken into account and a social enquiry report would need to be prepared by the Probation Service;

Likely options that would be considered in sentencing Bethan would be a Community Order or a Detention and Training Order.

Assessment Objective 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.

[Total marks 30]

Advanced Subsidiary 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 of 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. |

G152 Sources of Law

Exercise on Statutory Interpretation

- 1 (a) The Source at lines 9 – 17 refers to Hansard.

Describe the court's use of Hansard, using the Source and other cases to illustrate your answer.

[15]

| Mark Levels | AO1 | AO3 |
|-------------|-------|-----|
| Level 4 | 10–12 | - |
| Level 3 | 7–9 | 3 |
| Level 2 | 4–6 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 1

- Describe Hansard – the official report of what is said in Parliament when the Act was debated;
- Describe Hansard as an external aid;
- Describe the traditional problems of using Hansard – *Davis v Johnson*;
- Describe how the ban in Hansard was lifted in *Pepper v Hart*;
- Describe the conditions laid down in *Pepper v Hart* – it may only be considered if the words of the Act are ambiguous, the statements relied on of the Minister or promoter are clear;
- Use any relevant case – *Jackson & others v Her Majesty's Attorney General, Three Rivers DC*;
- Credit reference to the source.

Assessment Objective 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) Explain whether or not the following defendants would be guilty of an offence under section 139 Criminal Justice Act 1988 of having a 'bladed article in a public place', using the Source and your knowledge of statutory interpretation.
- (i) Mark, a trainee chef, is carrying kitchen knives on his way to work. [5]
- (ii) Shadap is going on a camping trip and has a folding pocket knife which could be locked in the open position. [5]
- (iii) Marcus is taking a box to a charity shop. He is not aware that the box contains a number of bladed articles. [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

In the case of **(i)** recognise that in the application of the literal rule Mark would be guilty under section 139 of having a bladed article in a public place;
 Discuss whether it was the intention of Parliament to find this type of individual guilty;
 Discuss the possibility of alternative rules resulting in a different conclusion;
 Candidates may argue the judges may refer to Hansard.

In the case of **(ii)** recognise that the facts are similar to *R v Deegan*;
 Explain that the precedent of *R v Deegan* should be followed;
 Explain that if the courts adopted a literal approach the defendant would be found not guilty.

In the case of **(iii)** recognise that Marcus would be guilty under the literal rule as he has a number of bladed articles in a public place;
 Discuss how this would be an absurd outcome;
 Recognise that the application of other rules will result in different applications;
 Candidates may argue the lack of *mens rea*.

- (c) (i) The Source at line 10 refers to the purposive approach.

Describe the purposive approach using the Source and decided cases to illustrate your answer. [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

- Identify that the purposive approach takes a broader approach than the mischief rule, in that the court is not just looking to see what the gap was in the old law; the judges are deciding what they believe Parliament is trying to achieve – what is the purpose of the Act?;
- Explain that judges are required to consider the context in which the law was created – what were the concerns of government and Parliament at the time the Act was created?;
- Recognise the essential link with external aids;
- Recognise link with EU;
- Credit reference to mischief rule as part of a discussion of purposive approach;
- Use any relevant cases to illustrate its use – *Coltman v Bibby Tankers* (1987), *Fitzpatrick v Sterling Housing Association* (1999), *R v Registrar General ex p Smith* (1990), *Jones v Tower Boot Co.* (1997).

- (c) (ii) The Source at line 14 refers to the courts trying to find the intention of Parliament.

Discuss, with reference to the Source, the difficulties associated with finding Parliament's intention when interpreting an Act. [15]

| Mark Levels | AO2 | AO3 |
|-------------|-------|-----|
| Level 4 | 10–12 | - |
| Level 3 | 7–9 | 3 |
| Level 2 | 4–6 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 2

- Discuss how trying to find the intention relies on extrinsic aids, in particular Hansard, and that this can cause delays and add to the case's costs;
- Discuss the difficulties of finding the intent of Parliament;
- Discuss how finding the intent of Parliament prevents cases ending in absurdity or injustice;
- Discuss the different judicial attitudes of trying to find Parliamentary intent – Lord Denning versus Lord Scarman;
- Discuss whether there is an actual Parliamentary intent;
- Discuss how trying to find intention allows a judge too much power;
- Discuss issues such as broad terms, ambiguity, changes in the use of language and mistakes by parliamentary draftsmen as potential sources of difficulties in interpreting Parliament's intention.

Assessment Objective 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.

[Total marks 60]

Exercise on Delegated Legislation and Law Reform

2 (a) **Source A** at lines 7 – 8 refers to the Law Commission.

Describe the role of the Law Commission.

[15]

| Mark Levels | AO1 | AO3 |
|-------------|-------|-----|
| Level 4 | 10–12 | - |
| Level 3 | 7–9 | 3 |
| Level 2 | 4–6 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 1

Identify the Law Commission as being created by the Law Commissions Act 1965;
Describe the main roles of the Commission:

- To systematically keep all English law under review;
- To codify and consolidate areas of law;
- To receive and consider proposals for law reform and consult relevant parties;
- To put forward proposals for reform.

Describe 'how' the Commission performs its role.

Describe any relevant success of the Law Commission.

Assessment Objective 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) Explain in the following situations if there would be a successful judicial review.
- (i) A government minister wishes to repeal an old law. He has not consulted relevant bodies, which are affected by the proposals, before introducing new regulations. [5]
- (ii) A government minister is given power to make regulations concerning legal funding. He has now introduced a regulation on immigration. [5]
- (iii) A government minister has made regulations which are argued to be unreasonable. [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

In the case of (i) note that judicial review is likely to be successful. Make reference to section 13 LRA which makes clear that the minister is under a duty to consult the relevant parties. Credit candidates who make reference to procedural ultra vires and *Aylesbury Mushroom*.

In the case of (ii) discuss that the minister has acted beyond his power and is ultra vires. Identify that the minister is substantively ultra vires – *R v Secretary of State for Social Security ex parte Joint Council for the Welfare of Immigrants* (1996) or *FBU*. Conclude that it is possible to bring a case for judicial review.

In the case of (iii) discuss that ministers making unreasonable regulations are acting ultra vires – *Strickland v Hayes Borough*. Conclude that an application for judicial review is possible.

- (c) (i) **Source A** at lines 3 – 4 refers to statutory instruments.

Describe statutory instruments and two other types of delegated legislation, using the **Source** and other examples.

[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

Describe the character of a statutory instrument:

- They are generally introduced by ministers of Government departments under powers given in Enabling Acts, eg Access to Justice Act 1999;
- They are introduced by an either 'affirmative or negative resolution' procedure;
- Over 3,000 are brought into force each year;

Give any examples, eg Lord Chancellor's powers regarding legal aid schemes under the Access to Justice Act 1999;

Credit any reference to the Source – LRA 2006.

Describe the character of a bylaw:

- They are made by local authorities to cover local issues or by public corporations;

Use relevant examples of a bylaw, eg London Underground banning smoking.

Describe the character of an Order in Council:

- They are drafted by the government department and approved by the Queen and Privy Council;
- The power is granted by the Emergency Powers Act 1920 and is generally used in times of emergency, particularly where and when Parliament is not sitting;

Give any example of an Order in Council.

- (c) (ii) Source A and Source B refer to a number of controls.

Discuss the effectiveness of Parliamentary and judicial controls over delegated legislation. [15]

| Mark Levels | AO2 | AO3 |
|-------------|-------|-----|
| Level 4 | 10–12 | - |
| Level 3 | 7–9 | 3 |
| Level 2 | 4–6 | 2 |
| Level 1 | 1–3 | 1 |

Potential answers **MAY**:

Assessment Objective 2

- Discuss the fact that Parliamentary powers are limited;
- Discuss how Parliamentary controls are affected by the parameters set by the Enabling Act;
- Recognise that, under affirmative resolution procedures, Parliament can only approve, annul or withdraw;
- Discuss the fact that the Scrutiny Committee has no power to alter the statutory instrument; it can only refer it back to Parliament on certain technical matters;
- Explain that judicial review relies on an individual starting a claim. This can be affected by a lack of knowledge due to volume or limited finances;
- Discuss the fact that the potential for ultra vires is limited due to the breadth of most Enabling Acts;
- Credit references to the Sources.

Assessment Objective 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.

[Total marks 60]

Advanced Subsidiary 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 of 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. |

Grade Thresholds

Advanced GCE Law H134
January 2009 Examination Series

Unit Threshold Marks

| Unit | | Maximum Mark | A | B | C | D | E | U |
|------|-----|--------------|----|----|----|----|----|---|
| G151 | Raw | 120 | 96 | 86 | 76 | 66 | 56 | 0 |
| | UMS | 120 | 96 | 84 | 72 | 60 | 48 | 0 |
| G152 | Raw | 60 | 44 | 38 | 33 | 28 | 23 | 0 |
| | UMS | 80 | 64 | 56 | 48 | 40 | 32 | 0 |

Specification Aggregation Results

First opportunity to aggregate AS will be June 2009.

For a description of how UMS marks are calculated see:

http://www.ocr.org.uk/learners/ums_results.html

Statistics are correct at the time of publication.

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