

Mark Schemes for the Units

June 2009

H134/MS/R/09

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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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G151 English Legal System

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.

- 1 (a) Describe and explain the various types of publicly funded advice and representation available in criminal 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

Demonstrate knowledge of the Legal Services Commission and the Criminal Defence Service.

Demonstrate knowledge of the Duty Solicitor scheme at the police station:

- Run by local contracted solicitors with relevant qualification (Police Station qualification);
- Available to anyone questioned at the police station but may only be by telephone for many cases;
- Covers advice and attending interviews;
- Free to all – no means or merits testing.

Demonstrate knowledge of Duty Solicitor scheme at the Magistrates' Court:

- Contracted solicitor with relevant qualification (Magistrates' Court qualification);
- Under Advocacy Assistance it is free;
- Covers representation in some cases: bail, fine defaulters where risk of going to prison.

Demonstrate knowledge of Advice and Assistance:

- Franchised solicitor;
- Covers advice and some preparatory work for someone charged with an offence and help with their application for Legal Representation;
- Means tested with abrupt cut off point – assessed by solicitor.

Demonstrate knowledge of Legal Representation:

- Franchised solicitor or independent barrister;
- Covers representation and all steps in preparation of a case;
- Merits tested (interests of justice) and means tested by legal advisor at Magistrates' Court to assess level of contributions;
- Convicted defendant may be ordered to pay costs at end of case in Crown Court;
- Public defender service used in some areas.

- (b) Discuss the problems of publicly funded advice and representation in criminal 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 disadvantages of publicly funded advice and representation:

- Means testing for criminal legal funding for representation has been re-introduced and granting of legal funding has been tightened up to save money. This could disadvantage some defendants;
- Demand led – a significant drain on the public purse but it ensures representation for those that need it;
- Attendance at the police station now limited to situations which “materially progress the case” most advice now by phone. Seen as a defect with the scheme in the past but to save money phone advice is now more common;
- Limited advice and assistance in Magistrates’ Courts – now need a representation order for trials in this court but this leads to more cases being adjourned incurring added costs and delay;
- Introduction of Public Defender Service – aim to cut costs but early indications are that costs per case have been increased so far. Choice of representation now more limited.

Discuss whether there should be a finite funding for Criminal legal funding or whether it should remain demand led.

Discuss whether means testing should have been reintroduced.

Assessment Objective 3

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

[Total marks 30]

- 2 (a) Describe both the training of solicitors and how complaints about solicitors 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 the training of solicitors:

- Academic: law degree or non-law degree with Post Graduate Diploma in Law or CPE (7 core subjects required) or qualified as a Fellow of the Institute of Legal Executives;
- Vocational: Legal practice Course – 1 year training in practical aspects;
- Practical: Training Contract supervised work and shadowing in the workplace for 2 years;
- Professional Skills course;
- Admitted to the Roll of solicitors;
- Continuing professional development.

Describe the ways in which clients can make a complaint against their solicitor:

- Can complain directly to the solicitor's office;
- Can complain to the Legal Complaints Service;
- Legal Services Ombudsman – can order solicitor or Law society to pay compensation to client;
- Legal Services Complaints Commissioner – investigates the handling of complaints;
- The Legal Services Act 2007 provides for the creation of the Office for Legal Complaints;
- Can sue for breach of contract;
- Can sue for negligence for work done out of court – *Griffiths v Dawson*;
- Can sue for negligence for work done in court – *Hall v Simmons*.

- (b) Discuss the extent to which recent developments have lessened the differences between barristers and solicitors. [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 extent to which recent developments have lessened the differences between barristers and solicitors:

- The different vocational courses demonstrate that training is still very separate;
- Few solicitors have Higher Rights of Advocacy certificates so the work is still fairly separate but the rights of audience practicing certificate is now incorporated in solicitor's training allowing solicitors to take a case right through the courts;
- Barristers allowed direct access to clients in civil cases since 2004 which removes the need for a client to go through a solicitor but there are some limitations on this;
- This gives both professions the ability to take cases from start to finish removing the separate roles;
- Under the Legal Services Act 2007 solicitors and barristers will be able to work together in the same practice promoting closer working relationships and a further overlap of work;
- The complaints procedure has been amalgamated at certain levels – Legal Services Ombudsman and Office for Legal Complaints to be created under the Legal Services Act 2007 which also illustrates a fusing of the professions;
- Both barristers and solicitors can now be appointed as senior judges.

Assessment Objective 3

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

[Total marks 30]

- 3 (a) Describe both the selection and the training of lay magistrates. [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 selection:

- Application;
- Two interviews, one to assess attitudes and one practical based on sentencing;
- Committee will look for qualities of good character, communication skills, sound judgment, social awareness and commitment;
- Advisory Committee actively try to achieve a good cross section;
- Names put forward to the Ministry of Justice which appoints. Will not be chosen if have serious conviction, have a conflict of interests (eg police officer, traffic warden or have a relative on the bench) or a condition which would interfere with their duties;
- They are then sworn in at a local crown court.

Credit that they must be between 18 and 65 and live or work in or near the local justice area in which they sit.

Demonstrate knowledge of training:

- The Magistrates' New Training Initiative (MNTI 2);
- Reading and distance learning including the personal development log re role and responsibilities;
- Induction before sitting in court plus three court observations;
- Visits to prisons, young offenders institution and probation service;
- Six sittings with mentor;
- Consolidation training (12 hours) after 2 years;
- Covers procedure and development of skills such as decision making, communication and social awareness;
- Appraisal after 1 year;
- Extra training for chair person and for youth and family courts available after 3 years service.

- (b) Discuss the disadvantages of using lay magistrates to deal with criminal 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 some of the disadvantages of using lay magistrates:

- Middle aged middle class – True but still wider background than judges;
- There is potential for bias as they get to know some of the prosecutors and police officers as they see them regularly giving a lower acquittal rate than Crown Court but part of training is aimed at eliminating bias;
- They do not need to have any knowledge of the law and tend to rely heavily on the Clerk but they have local knowledge and common sense which keeps the law grounded;
- Inconsistency in sentencing. Criminal statistics in 2001 showed this to be true over different areas of the country. But it is improving due to better training.

Credit reference to lay magistrates being part-time.

Assessment Objective 3

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

[Total marks 30]

- 4 (a) Describe both the training of judges and their role in the criminal courts, including first trial and appeal courts. [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 training of judges. Conducted by the Judicial Studies Board:

- For superior judges – training is voluntary;
- For an inferior judge training is compulsory mainly for newly appointed assistant recorders and consists of a one week course which deals with sentencing, running a criminal court and human awareness;
- Inferior judges also have to spend a week shadowing an experienced judge before sitting themselves;
- One day courses are run from time to time to update judges on major changes in the law some of which are compulsory eg Human Rights Act 1998.

Demonstrate knowledge of the role of judges in criminal cases.

At first instance:

- To ensure the hearing is carried out fairly and preside over the court;
- To decide questions of law;
- District Judges in the Magistrates' Court – decide both verdict and sentence and preliminary matters eg bail;
- Crown Court – sum up for jury, sentence if appropriate.

On appeal:

- Review the hearing at first instance, decide whether the law was correctly decided and whether hearing carried out properly and if necessary, change the decision, order a retrial or revise the sentence;
- Can decide issues of law in important cases (House of Lords and Court of Appeal usually);
- Can clarify or amend the law where appropriate (*R v G&R*).

- (b) Discuss the extent to which the training of judges adequately prepares them for the work they undertake. [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 whether the training prepares judges for the work they undertake:

- Training very short – too short to really prepare judges if they have not already had experience of work in the criminal courts but for those with criminal experience it is adequate;
- Most recorders have to do criminal cases – with such a short training it makes the job very daunting for newly appointed judges without criminal experience;
- There is no real training other than experience for judges working in the appeal courts as training is focussed on judges at the lower end of the judicial scale and it is not compulsory for those appointed in the High court or above but promotion from the lower ranks is the usual route now so they have had previous training;
- Human awareness training has helped judges to avoid unwittingly offending people;
- Comment on the fact that training seems to be valued in almost all walks of life but until recently was seen as insulting for judges although the job is very different from that of barrister or solicitor that they were trained for.

Assessment Objective 3

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

[Total marks 30]

- 5 (a) Describe the custodial, community and other sentences available for young offenders. [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 sentences available to the courts.

Custodial sentences:

- Detention at Her Majesty's pleasure – for murder 10-17 years;
- Detention for serious crimes up to the maximum adult sentence for the offence only if maximum sentence is 14-years or over or offence is specified in statute;
- Young Offenders' Institutions – 18-21 years, 21 days – maximum for the offence;
- Detention and training orders – 12-21 years usually (younger offenders if no other sentence will protect the public). Specified periods 4-24 months.

Community sentences:

- Generic "community order" under Criminal Justice Act 2003 which can include a range of requirements for offenders over the age of 16;
- Unpaid work requirement – unpaid work in the community (40-300 hours);
- Supervision requirement – the offender is put under the supervision of a probation officer;
- Drug treatment and testing requirement;
- Curfew requirement – for a certain number of hours a day the offender has to be in a specific place. (May include electronic tagging).

Special community orders for young offenders include:

- Attendance centre orders – 10-24 year olds;
- Action Plan orders – 10-17 year olds;
- Supervision order 10-17 years (supervision by local social services, a probation officer or a member of the youth offending team);
- Reparation order up to age 18 years – Max 24 hours work in reparation to victim or the community.

Other sentences

- Fines – will depend upon the defendant's age 10-13 years max £250, 14-17 years max £1 000 over 18 years same as adult;
- A.S.B.O.;
- Discharges, Reprimands and warnings.

Mention of parental responsibility and youth offending teams will also be credited.

- (b) Discuss which sentences are most likely to prevent a young offender from further offending. [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 aim of preventing re-offending incorporating rehabilitation and deterrence rather than punishment and apply sentences to these aims:

- Reprimands and warnings appears to be very successful on a first offence but lose their impact after that;
- Supervision orders, action plan orders and attendance centre orders are aimed at reforming the young offender but reoffending rates are high;
- Custody is not usually seen as an appropriate sentence for young offenders as re-offending is very high and it is argued that young people need help not punishment but it may be the only option;
- Community orders that keep the young person in society are seen as better and more likely to prevent further crime but supervision is often underfunded and not very effective;
- Fines are unlikely to have much of an impact as many are paid by the parents but it may encourage parents to take charge;
- Anti-social behaviour orders are often used for young offenders but are often seen as a “badge-of-honour” in some sections of society so do not seem to prevent further offending in those cases.

Credit should be given for any other comments and a reasoned conclusion.

Assessment Objective 3

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

[Total marks 30]

- 6 (a) Describe the rights during detention at a police station of an individual suspected of a serious offence. [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 rights 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:

- The right to have someone informed of the detention;
- To have a custody officer monitor detention and keep a custody record to ensure the codes of practice are adhered to;
- To be detained no longer than 24 hours normally but that can be extended to 36 hours with permission of a police officer of the rank of superintendent or above and up to 96 hours for an indictable offence if authorised by magistrates;
- When interviewed the interview must be recorded and a caution given;
- The interview room must be adequately lit, heated and ventilated with adequate breaks given;
- The right to consult a solicitor (which is free) to ensure access to legal advice regardless of means although this is usually limited to telephone advice;
- To have access to an appropriate adult during interview if under 17 years old or suffering any mental illness or retardation;
- To have access to medical treatment or an interpreter if necessary;
- Show knowledge that searches can only be done in certain circumstances – there is no automatic right to search after the initial checking in search – there must be reasonable suspicion that something will be found;
- Strip search in private with same sex officer and only half clothing removed at any one time;
- Intimate search only if authorised by a high ranking officer in order to search for drugs or weapons and must be carried out by a doctor or nurse;
- Intimate samples may only be taken with permission.

Credit mention of detention times for suspected terrorists.

Credit mention of limitations on rights to have someone informed and access to legal advice.

- (b) Hamish (aged 25) has been arrested and taken to the police station on suspicion of taking part in a bank robbery. He has been given the usual rights during interviews and searches.

Discuss whether these rights are adequate to protect Hamish.

[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 how Hamish is protected by the rules and whether the rules adequately protect him:

- Hamish is protected from undue influence by taping the interview and the right to silence but this has its limitations;
- Hamish has some access to a solicitor (and that is free) to ensure everyone has access to legal advice but this can be withheld for up to 36 hours in certain circumstances as Hamish is suspected of a serious offence. Comment on quality of advice and availability of an appropriate adult if necessary;
- The role of the custody officer is to ensure the suspect's rights are protected. Comment on the independence of the custody officer and whether this adequately protects Hamish;
- Comment on how Hamish is protected by the strict rules on searching only when necessary and with as much privacy as possible;
- Comment on the fact that intimate samples may only be taken with consent but non-intimate samples can be taken without consent so the police do have access to DNA evidence;
- Point out that breach of codes of practice may lead to evidence being excluded from court.

Comment on whether these rights are adequate to protect Hamish during detention or whether any changes to the codes of practice should be made.

Assessment Objective 3

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

[Total marks 30]

- 7 (a) Describe the process of deciding in which court a criminal trial will be heard. Include all categories of offence. [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 the categories of offence:

- Summary offences – less serious offences always tried in the Magistrates' Court eg driving offences and common assault;
- Triable either way offences – middle range offences which can vary in the degree of harm caused. Can be tried either in the Magistrates' Court or in the Crown Court eg theft and assault occasioning actual bodily harm;
- Indictable offences – more serious crimes which must be tried in the Crown Court eg murder, manslaughter and rape.

Describe the process of deciding which court a triable either way offence will be heard in:

- Plea before venue – the defendant is asked whether he pleads guilty or not guilty to the offence. If guilty the case is automatically heard by the Magistrates' Court but they retain the option of sending the defendant to the Crown Court if necessary;
- If the defendant pleads not guilty a mode of trial procedure must take place;
- The magistrates first consider whether they think the case is suitable for trial in the Magistrates' Court. If they feel it is not they will transfer it to the Crown Court for trial;
- If the magistrates feel prepared to accept jurisdiction of the case the defendant is given the choice of which court he wishes to be tried in.

Credit reference to Youth Courts but it is not necessary for full marks.

- (b) Tim has been charged with criminal damage to the value of £10,000 at a children's playground.

Identify in which courts Tim could be tried and discuss the advantages and disadvantages there are to him to be tried in each court. [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 Tim's crime as a triable either way offence, so he could be tried in either the Crown Court or the Magistrates' Court.

Comment on the advantages to Tim of choosing to be tried in the Magistrates' Court or trial by jury.

Magistrates' Court trial:

- Tim would probably be dealt with faster but there is a higher conviction rate than in the Crown Court;
- Lower possible penalties but Tim can be sent to Crown Court for sentencing where higher penalties can be imposed;
- Less publicity and the Magistrates Court may be less daunting than Crown Court. but Tim is less likely to get legal funding so may need to represent himself.

Crown Court trial:

- Lower conviction rate; as juries less case hardened and more likely to believe Tim's story;
- More likely to get legal funding; and there may be better advocates but there are higher possible penalties and if on remand Tim may spend longer awaiting trial than eventual sentence;
- Slower; but time on remand will be taken into account on conviction and remand time is not as harsh as for convicted offenders.

Assessment Objective 3

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

[Total marks 30]

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.

G152 Sources of Law

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

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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.

This mark scheme contains indicative content but it is not exhaustive or prescriptive. It should be used alongside the matrix of levels of assessment and live exemplar standardisation scripts (which cover a range of responses identifying where within a level of assessment a particular response lies). Examiners are required to use the indicative content of the mark schemes only in conjunction with the matrix of levels of assessment as informed by actual responses in the standardisation scripts. Examiners should not be drawn prescriptively and quantitatively to the content of the mark scheme when marking candidates' responses and should follow the specific guidance provided by the Principal Examiner in terms of breadth and depth of responses. Appropriate credit will be given for non-standard answers.

Exercise on European Union (EU) Law

1 (a) Source A refers to directives.

Describe how directives become law in Member States.

[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**

- Explain that Article 249 of the Treaty of Rome gives the EU the power to issue directives;
- Explain that directives are binding on Member States but it is left to the Member State to use their own laws to implement the directives and that such laws have to be implemented within a set time limit set by the European Commission;
- Explain that the usual method for implementing directives in the UK is through delegated legislation;
- Explain direct effect;
- Give examples of implementation of directives;
- 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) Consider whether any of the following individuals could succeed in an action against their employers for failure to comply with an unimplemented directive.
- (i) Carlos, an employee of a privatised (former state owned) gas company. [5]
- (ii) Wu, an employee of a Hospital. [5]
- (iii) Kelvin, an employee of a car manufacturer. [5]

Mark Levels (for each of i,ii,iii)	AO2
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 a privatised company may be regarded as an emanation of the state. Apply the principles of *Foster v British Gas* or any other relevant case. Candidates who correctly apply the principles appropriate to private bodies should be given full credit.

In the case of (ii) recognise that a hospital is likely to be regarded as an arm of the state and as such it would be possible to use the concept of vertical direct effect. Use any case in illustration, eg *Marshall*.

In the case of (iii) recognise that a car manufacturer is a private company and that unimplemented directives do not have horizontal direct effect; Recognise the possibility of suing the member state for compensation; Use any relevant case in illustration.

(c) With reference to Source B and your knowledge of European Union Law.

(i) Describe and illustrate the role of both the European Commission and the European Court of Justice (ECJ). [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

Commission:

- Describe the Commission's role in proposing legislation;
- Describe how the Commission acts as the 'guardian of the treaties';
- Describe how the Commission negotiates of the EU's behalf with other nations;
- Describe its role with the EU budget;
- Describe how the Commission is organised – 27 Commissioners responsible for areas of EU policy etc; Use any relevant case example – Re *Tachographs*.

ECJ:

- Describe the role of the ECJ – ensuring the uniform application of EU law throughout the Union – Article 220;
- Describe the two roles hearing direct actions against member states and other institutions and also references under Article 234;
- Describe how actions against Member States are normally brought by the Commission eg Commission of the European Communities v UK: Re *Tachographs* (1979);
- Describe how the ECJ operates referrals from Member State courts;
- Describe how the ECJ are not bound by their own past decisions;
- Describe how the ECJ tend to adopt a purposive approach in interpreting legislation.

- (ii) Discuss the effect of the decisions of the European Court of Justice on the enforcement of EU legal rights. [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 role of the court regarding supremacy;
- Discuss how the court has supported the concept of direct applicability; conferring rights on individuals;
- Discuss how the court has developed the concept of horizontal and vertical direct effect;
- Discuss the effect of the Francovich principles;
- Discuss the importance of the state being liable for compensation for breaches of Community law;
- 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.

[Total marks 60]

Exercise on Judicial Precedent and Law Reform

2 (a) Source B 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

Assessment Objective 1

Identify the Law Commission as being created by the Law Commissions Act 1965.

Describe the nature of the Commission – the only full time law reform body with 5 Commissioners assisted by research staff and Parliamentary draftsmen.

Describe the main roles of the Commission:

- To systematically keep all English law under review;
- To codify and consolidate areas of law. Use relevant examples eg Section 3 Law Commissions Act 1965 and the draft Criminal Code, Powers of Criminal Courts (Sentencing Act 2000);
- To repeal old statutes;
- 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 the power of the House of Lords in the following situations.
- (i) A case similar to *R v R and G* comes before the House of Lords. [5]
- (ii) The House of Lords is hearing an appeal from the Court of Appeal. The Court of Appeal refused to follow the House of Lords precedent. [5]
- (iii) A case comes before the House of Lords. There is a previous House of Lords decision but it conflicts with a decision of the European Court of Justice. [5]

Mark Levels (for each of i,ii,iii)	AO2
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 the House of Lords has the power of the practice statement. Discuss that this power means that they can depart from the previous decision if they feel it is right to do. Discuss how the House of Lords are reluctant to use this power. Credit reference to any appropriate case eg *Pepper v Hart*.

In the case of **(ii)** recognise that the House of Lords is not bound by the decisions of the Court of Appeal which is lower in the hierarchy. Recognise that the House of Lords has two options to affirm the decision of the Court of Appeal, or reverse the decision of the Court of Appeal. Credit reference to cases and issues involving Lord Denning.

In the case of **(iii)** recognise that the House of Lords must overrule its previous decision as the case conflicts with the decision of a higher court, the ECJ. Use any relevant case in illustration.

(c) **Source A and Source B** both refer to the Practice Statement.

(i) Describe the use of the Practice Statement using the Sources and other cases. [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 Practice Statement – allows the House of Lords to depart from its own previous decisions when it is ‘right to do so’;
- Describe the situation prior to the Practice Statement – House of Lords bound by its own previous decisions;
- Describe how the Practice Statement only applies to the House of Lords;
- Describe the use of the Practice Statement eg *Conway v Rimmer*, *Herrington v BRB*, *R v R*, *Pepper v Hart* etc;
- Describe the restrictions on its use and also the House of Lords reluctance eg *Jones v Secretary of State for Social Services* (1972);
- Credit reference to the source.

- (ii) Discuss the advantages and disadvantages of the Practice Statement being limited to the House of Lords. [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 effect on the system of precedent – creates problems for the lower courts but increases flexibility;
- Discuss how it would make legal advice more difficult and could result in more cases coming before the courts;
- Discuss the fact that for many the Court of Appeal is the final appeal court;
- Discuss the lack of experience the House of Lords has in certain legal areas eg criminal law;
- Discuss how it would make the law uncertain due to more conflicting precedents;
- Discuss the fact that since Lord Denning's attempts there has been no calls for the lower courts to be given more power;
- 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.

[Total Marks 60]

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.

Grade Thresholds

Advanced GCE Law H134
June 2009 Examination Series

Unit Threshold Marks

Unit		Maximum Mark	A	B	C	D	E	U
G151	Raw	120	85	75	65	55	45	0
	UMS	120	96	84	72	60	48	0
G152	Raw	60	43	37	31	25	20	0
	UMS	80	64	56	48	40	32	0

Specification Aggregation Results

Overall threshold marks in UMS (ie after conversion of raw marks to uniform marks)

	Maximum Mark	A	B	C	D	E	U
H134	200	160	140	120	100	80	0

The cumulative percentage of candidates awarded each grade was as follows:

	A	B	C	D	E	U	Total Number of Candidates
H134	12.2	25.3	43.7	62.6	79.0	100	9025

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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