

Mark Scheme for June 2010

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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.

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 Delegated Legislation

- 1 (a)* Describe the need for delegated legislation using the Source and your knowledge of delegated 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 (12)

- Describe the lack of Parliamentary time;
- Describe how delegated legislation can be passed at speed;
- Describe that it can utilise technical and local knowledge;
- Explain that delegated legislation can be passed quickly to deal with emergencies;
- Explain that delegated legislation allows greater flexibility to amend or revoke than an Act of Parliament;
- Describe how it allows for future needs to be met.

Assessment Objective 3 (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) Identify and explain the most suitable type of delegated legislation to implement law in the following situations:
- (i) To implement a European Union Directive quickly when Parliament is not sitting. [5]
 - (ii) To allow a government department to issue regulations on education. [5]
 - (iii) For a train company (a public corporation) to implement a ban on the use of mobile phones by passengers. [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 the most suitable type would be an Order in Council. Explain the power was given via the European Communities Act. Credit reference to any relevant case or a link to the source.

In the case of **(ii)** recognise the most suitable type would be Statutory Instruments. Explain that government ministers introduce particular regulations under powers delegated to them by Parliament in enabling legislation. Credit reference to any relevant case or a link to the source.

In the case of **(iii)** recognise the most suitable type would be Bylaws. Bylaws can be made by local authorities or public corporations. Credit reference to any relevant case or a link to the source.

(c) With reference to the Source and your knowledge of delegated legislation.

(i) Describe the controls on 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

Commission:

- Describe the enabling act;
- Describe the powers of the Scrutiny Committees;
- Describe affirmative, super affirmative and negative resolutions;
- Describe the process of judicial review;
- Describe substantive and procedural ultra vires;
- Make relevant reference to the source material.

- (c) (ii)* Discuss the effectiveness of the controls on 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 (12)

- 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;
- Make relevant references to the source.

Assessment Objective 3 (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)* With reference to Source A and other cases.

Describe the use of the Practice Statement.

[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

(12)

- 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 and G*, *Pepper v Hart* etc;
- Make relevant reference to the source.

Assessment Objective 3

(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 *A v Hoare* is about to be heard by the House of Lords. [5]
- (ii) The House of Lords is hearing an appeal in 1965. There is a previous precedent on this issue from the House of Lords in 1960. [5]
- (iii) A case comes before the House of Lords. There is a previous decision by the Privy Council which conflicts with an earlier decision of the House of Lords. [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 the House of Lords has the power of the Practice Statement. Discuss that this power means that it can depart from the previous decision if it feels it is right to do. Discuss House of Lords reluctance 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 bound by the previous decision of the House of Lords. Recognise that this is due to the decision of *London Tramways v London County Council*. Credit reference to distinguishing.

In the case of **(iii)** recognise that the House of Lords has two options. It can overrule its own past decision and follow the persuasive authority of the Privy Council or follow its own previous decision. Use any relevant case in illustration.

(c) With reference to Source A and Source B and your knowledge.

(i) Describe the role of the Law Commission.

[15]

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

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.

Describe the main roles of the Commission:

- To systematically keep all English law under review;
- To codify and consolidate areas of law eg the draft criminal code;
- To receive and consider proposals for law reform and consult relevant parties;
- To put forward proposals for reform;
- Make relevant reference to the source.

- (c) (ii)* Discuss the problems encountered by the Law Commission in fulfilling its role. [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 (12)

- Discuss the success rate of the Law Commission;
- Discuss the Law Commission's problems with codification;
- Discuss the lack of political will regarding the Law Commission's proposals;
- Discuss how its work is affected by its staffing and budgetary constraints;
- Discuss the problems associated with it being the only full-time law reform body;
- Make relevant reference to the source.

Assessment Objective 3 (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]

Annotations

}	Irrelevant
>	better than
<	less than
R	repetition
V	vague
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

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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