

Mark Scheme for January 2011

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

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

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

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This mark scheme must be used in conjunction with the Advanced Subsidiary GCE Law Assessment Grid. When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit will be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, will 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.

Exercise on Statutory Interpretation

1 (a)* Source A at lines 7 refers to the literal rule.

Describe the literal rule using Source A and other cases to illustrate your answer.

[15]

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

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

Potential answers **MAY**:

Assessment Objective 1**(12)**

- Explain that the literal rule involves giving words their plain, ordinary literal meaning;
- Describe how the literal rule relies on a dictionary, normally of the time, to help the judge reach a literal meaning;
- Explain that the literal rule involves the judge applying the literal rule even if it results in absurdity — Lord Esher in *R v Judge of the City of London* (1892);
- Describe the historical dominance of the literal rule;
- Describe how this rule respects parliamentary supremacy;
- Use cases to illustrate its use — *Fisher v Bell*, *Whiteley v Chappel*, *LNER v Berriman*;
- Credit 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) Consider whether any of the following is guilty under section 8(1) Food and Drugs Act 1955 (Source B, line 5) of selling food unfit for but intended for human consumption using Source B and the rules of statutory interpretation:

- (i) Mark, a butcher, is knowingly selling chickens which are two weeks out of date. [5]
- (ii) Lucy, a restaurant manager, sells a customer what she believes to be water, but is in fact, bleach. [5]
- (iii) Sunhil, a bar manager, is having a charity barbeque. He gives a free burger to all those who attend. The burgers are contaminated. [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 under the application of the literal rule Mark would be guilty. There would be no need to use the golden rule as the literal rule does not lead to an absurd outcome. The purposive approach or mischief rule would also lead to Mark being found guilty as it was the intention of Parliament to cover this type of activity under the Act. Credit application through intention.

In the case of (ii) recognise that the facts are similar to *Meah v Roberts*. Explain that the precedent of *Meah v Roberts* should be followed. Explain that if the courts adopted the golden rule the defendant (Lucy) would be found guilty.

In the case of (iii) recognise that Sunhil would be not guilty under the literal rule as he is not selling food unfit for human consumption. Discuss whether this would be an absurd outcome. Recognise that the application of other rules may result in different outcomes. Credit reference to the use of *Hansard* to discover Parliamentary intent.

- (c) (i) Sources A and B illustrate the golden rule.

Describe the golden rule using the Sources and other 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

- Define the golden rule;
- Describe how the golden rule is a modification of the literal rule;
- Describe the two variants of the golden rule, narrow and wide. The narrow approach of the golden rule chooses between the best of two alternative meanings. The wide approach of the golden rule modifies the outcome to avoid an absurd outcome;
- Use cases to illustrate its use — *R v Allen*, *Maddox v Storer*, *Adler v George*, *Re: Sigsworth*;
- Credit reference to the use of the source.

- (c) (ii)* Discuss the advantages and disadvantages of the golden rule. [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)

Advantages:

- Discuss how the golden rule can prevent the problems of the literal rule eg injustice;
- Discuss how this rule can put into practice what Parliament intended;
- Discuss how the golden rule provides a check on the strictness of the literal rule;
- Discuss how the golden rule respects parliamentary supremacy as it does not give judges complete freedom.

Disadvantages:

- Discuss how an absurdity may mean different things to different judges;
- Discuss how the golden rule has not been an effective check on the literal rule;
- Discuss how the golden rule may give a judge too much discretion;
- Discuss Zander's criticisms of the golden rule — 'an unpredictable safety valve'.

Candidates will be unable to achieve level 4 marks without discussion of both advantages **and** disadvantages.

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

2 (a)* Source B at lines 6 refers to *stare decisis*.

Describe *stare decisis* using both sources and cases to illustrate your answer. [15]

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

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

Potential answers **MAY**:

Assessment Objective 1 (12)

- Describe what *stare decisis* is — to stand by what has previously been decided;
- Describe that *stare decisis* requires law reporting to operate effectively;
- Describe how *stare decisis* is the principle that underlines the operation of the doctrine of binding precedent;
- Describe original and persuasive precedents
- Describe how *stare decisis* operates through the court hierarchy;
- Describe the importance of the *ratio decidendi* to the concept of *stare decisis*;
- Describe how judges can avoid *stare decisis* — reversing, overruling, distinguishing and *per incuriam*;
- Use cases to illustrate *stare decisis* use — *Donoghue v Stevenson*, *Re A*, *Carlill v Carbolic Smoke Ball* etc;
- Credit reference to the sources.

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) Consider the following situations and explain how the doctrine of precedent will apply using Sources A and B and your knowledge of precedent:
- (i) The Court of Appeal (Civil Division) is hearing an appeal. The past precedent is from the House of Lords. [5]
- (ii) The Court of Appeal (Criminal Division) is hearing an appeal. The past precedent is from the Court of Appeal (Civil Division). [5]
- (iii) The Court of Appeal (Civil Division) is hearing an appeal. The previous precedent is from the Court of Appeal (Civil Division). [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 Court of Appeal is bound by the decisions of the House of Lords. Explain why — because the Court of Appeal is below the House of Lords in the hierarchy. Explain the possibility of distinguishing or that the Court of Appeal can refuse to follow the House of Lords in a limited number of circumstances.

In the case of **(ii)** recognise that the Court of Appeal is not bound. Explain why — that the divisions do not bind each other. Recognise that the Court of Appeal (Criminal) is only persuaded by the Court of Appeal (Civil) and it has the choice whether to follow their decision. Refer to appropriate case illustration eg *Re A*.

In the case of **(iii)** recognise that the Court of Appeal is bound. Explain that under the doctrine of binding precedent the Court of Appeal is bound by its own past decisions. Discuss the possibility of applying the Young criteria. Credit reference to the source or distinguishing.

For this series read House of Lords and Supreme Court interchangeably.

- (c) (i) **Sources A and B** illustrate the powers of the Court of Appeal.

Describe the Court of Appeal's powers regarding its own decisions, using the sources and other 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

- Describe how the Court of Appeal is bound by its own past decisions;
- Describe the importance of *Young v Bristol Aeroplane (1944)*;
- Describe the three exceptions in *Young v Bristol Aeroplane* — if a previous decision conflicts with the House of Lord's decision the House of Lord's decision must be followed; if there are two conflicting decisions they can choose between them as in *Starmark Enterprises v CPL Enterprises (2001)*; if the decision is made *per incuriam* as in *Williams v Fawcett (1985)*;
- Describe how the Court of Appeal (Criminal Division) has additional flexibility eg *R v Gould (1969)*, *R v Rowe (2007)*;
- Describe how the Court of Appeal (Civil Division) does not bind the Court of Appeal (Criminal) and vice-versa they merely persuade;
- Credit reference to the sources.

- (c) (ii)* Discuss the advantages and disadvantages of giving the Court of Appeal more power to depart from its own decisions, using the sources and your knowledge to illustrate your answer. [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)

Advantages:

- Practically it is the final appeals court for most cases;
- It deals with the vast majority of appeals;
- It will stop unnecessary appeals to the House of Lords;
- It would improve the flexibility of the doctrine of precedent;
- It will allow justice more quickly.

Disadvantages:

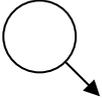
- There could be a reluctance to use the power similar to the House of Lords;
- It reduces certainty;
- It undermines the power and role of the House of Lords;
- It could cause the system of precedent to break down;
- It could cause increased appeals.

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
BC	basic case
C	case
C+	developed/explained case
F	feature
BP	bald point
P	point
DP	developed point
WDP	well developed point
LTS	link to the source
xLTS	no link to the source
so	sort of
L1	level 1
L2	level 2
L3	level 3
L4	level 4
+	advantages/positives
-	disadvantages/negatives
	tracking a point
1, 2, 3, 4 etc	Points of evidence or examples or statutes etc

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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