

To be taken only between ... and ... 2012

AS GCE LAW

G152/01/I: Sources of Law

Candidates answer on the Answer Booklet

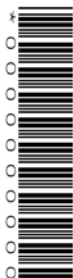
OCR Supplied Materials:

- 24-page Answer Booklet

Duration: 2 hours

Other Materials Required:

None



INSTRUCTIONS TO CANDIDATES

- Write your name, centre number and candidate number in the spaces provided on the Answer Booklet. Please write clearly and in capital letters.
- Use black ink. HB Pencil may be used for graphs and diagrams only.
- Read each question carefully. Make sure you know what you have to do before starting your answer.
- Answer **three** questions; **one** from Section A, **one** from Section B and **one** from Section C
- When answering the following questions you are required to demonstrate some synoptic thinking. In Section A this is achieved by relevant reference to precedent and/or statutory materials including the development of law and comments on justice or morality where appropriate. In Section B this is achieved by relevant use of precedent and/or statutory materials in the application of legal reasoning to given factual situations, including comment on the justice or morality of the outcome where appropriate. You are not required to demonstrate synoptic thinking in Section C.
- If additional space is required, you should use pages 14 to 16 of the Answer Booklet. If you use additional sheets of paper, fasten these securely to the Answer Booklet.
- Do **not** write in bar codes.

INFORMATION FOR CANDIDATES

- The number of marks is given in brackets [] at the end of each question or part question.
- The total number of marks for this paper is **120**.
- Candidates are reminded of the need to write in continuous prose, where appropriate, in answering **Section A** and **Section B** questions you will be assessed on the quality of your written communication (QWC) including your use of appropriate legal terminology. These questions are marked with an asterisk (*).
- This document consists of **8** pages. Any blank pages are indicated.



Answer **one** question.

- 1 Read the Source material below and answer parts (a) to (c) which follow.

Exercise on Delegated Legislation

SOURCE A

Delegated legislation consists of laws created under the authority of Parliament but not actually created by Parliament. There are three types: Statutory Instruments, Bylaws and Orders in Council.

Kruse v Johnson (1898)

Kent County Council made a bylaw, under the Local Government Act 1888, providing that 'No person shall sound or play upon any musical or noisy instrument or sing in any public place or highway within fifty yards of any dwelling-house after being required by any constable or by an inmate of such house personally or by his or her servant to stop doing so'. 5

SOURCE B

Delegated legislation is necessary for a number of reasons. Local bylaws can only be made effectively with awareness of the locality. The new assemblies for Scotland, Wales and Northern Ireland have important powers to make delegated legislation. Also, modern legislation often needs to include detailed technical provisions and MPs do not usually have the technical skill required. Delegated legislation can be made by experts who are familiar with the relevant areas. 5

However, the main criticism of delegated legislation is that there is a lack of democratic involvement due to the fact that most delegated legislation is made by civil servants rather than elected politicians.

Adapted from: 'English Legal System', Catherine Elliott and Frances Quinn, Longman

Answer all parts.

1 (a)* **Source A** refers to a bylaw.

Describe and illustrate bylaws and two other types of delegated legislation. [15]

Start writing your answer to Question 1(a)* on page 2.

(b) Identify and explain which **type** of delegated legislation would be most appropriate to introduce a law relating to each of the following:

(i) parking restrictions in a district or town; [5]

Start writing your answer to Question 1(b)(i) on page 5.

(ii) the implementation of regulations outlined in an Enabling Act relating to the use of mobile phones in cars; [5]

Start writing your answer to Question 1(b)(ii) on page 6.

(iii) powers needed to deal with an emergency situation. [5]

Start writing your answer to Question 1(b)(iii) on page 7.

(c) With reference to **Source B** and your knowledge of delegated legislation:

(i) state the reasons why delegated legislation is needed; [15]

Start writing your answer to Question 1(c)(i) on page 8.

(ii)* discuss the **disadvantages** of delegated legislation. [15]

Start writing your answer to Question 1(c)(ii)* on page 11.

[Turn over

- 2 Read the Source material below and answer parts (a) to (c) which follow.

Exercise on Judicial Precedent

SOURCE A

At first sight, it may seem that the doctrine of precedent means that the common law will almost never alter. But it would be an oversimplification to see the common law as a process of mechanically applying and restating rules of law that have already been created in the past. From time to time, cases arise that are so unusual that there is little or nothing in the way of case law to apply. In addition, judges find ways to avoid applying an existing precedent. No two cases have identical facts. Judges generally have to choose which of a number of precedents to apply to the current case. Earlier cases that are similar, but are in some crucial respect different, need to be *distinguished* from valid precedents. Some courts may *overrule* the decisions of other courts (or themselves) and some courts may *reverse* the decision of lower courts. 5 10

SOURCE B

There are two factors to bear in mind when trying to establish the *ratio* of any particular case. Taken together, these factors indicate why there may be scope for debate as to what the *ratio* is and, often, why there is no simple black and white answer to the question. First, written judgments do not have headings. There is never a clear heading, the '*ratio decidendi*'. The judgments in appeal cases can often run to a dozen or more pages. As a result, it is not always clear what is *ratio* and what are *obiter dicta*. Second, there is always more than one judge in the appeal courts. In the House of Lords there may be up to seven. Each judge is likely to give a separate judgment containing a different set of reasons for deciding the case and a different view of the law. Which judgment provides the *ratio*? 5

Adapted from: 'Law in Focus', Simon Jackson, Causeway Press, 2003

Answer all parts.

2 (a)* **Source B** refers to the terms ratio decidendi and obiter dicta.

Describe and illustrate what is meant by **both** of these terms.

[15]

Start writing your answer to Question 2(a)* on page 2.

(b) **Source A** identify various methods by which judges avoid having to apply past precedents.

Explain which method of avoidance is **most** suited to each of the scenarios below. Illustrate your answer where appropriate:

(i) The House of Lords wish to depart from a past decision of their own;

[5]

Start writing your answer to Question 2(b)(i) on page 5.

(ii) on appeal, the Court of Appeal disagrees with a ruling of the High Court and wishes to replace it with a different decision;

[5]

Start writing your answer to Question 2(b)(ii) on page 6

(iii) a judge in the Crown Court does not wish to follow a past precedent of a higher court as she feels that the facts are slightly different.

[5]

Start writing your answer to Question 2(b)(iii) on page 7.

(c) With reference to **Sources A and B**:

(i) describe the justifications for judges following binding precedents.

[15]

Start writing your answer to Question 2(c)(i) on page 8.

(ii)* discuss the disadvantages of the doctrine of precedent.

[15]

Start writing your answer to Question 2(c)(ii)* on page 11.

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Copyright Acknowledgements:

Sources

Q1 Source A: Adapted from: 'A Level Law', AM Dugdale, MP Furnston, SP Jones, CH Sherrin, Butterworths

Q1 Source B: Adapted from the Regulations

Q2 Source A: Fisher v Bell [1960] 1 QB 394

Q2 Source B: Adapted from the judgment of Lord Denning in Davis v Johnson [1979] AC 264

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OXFORD CAMBRIDGE AND RSA EXAMINATIONS

Advanced Subsidiary GCE

LAW

[G152MS]

Unit G152: Sources of Law

Specimen Mark Scheme

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. Reward grammar, spelling and punctuation.

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.

Question Number	Answer	Max Mark															
1(a)	<p>Source A refers to a bylaw. Describe and illustrate bylaws and two other types of delegated legislation.</p> <table border="0"> <thead> <tr> <th>Mark levels</th> <th>AO1</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 4</td> <td>10-12</td> <td>-</td> </tr> <tr> <td>Level 3</td> <td>7-9</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <p>Describe the character of a bylaw:</p> <ul style="list-style-type: none"> • Explain that they can be made by local authorities to cover local matters and sometimes by public corporations and certain companies for matters within their jurisdiction which involve the public; • Explain that they involve matters of only local concern e.g. parking restrictions or dogs fouling footpaths, or, in the case of corporations, restrictions on the behaviour of people who use their services e.g. smoking on the underground. • Give any example of a bylaw and credit any appropriate reference to the Source. <p>Describe the character of a statutory instrument:</p> <ul style="list-style-type: none"> • Explain that they are generally introduced by Ministers of government departments under powers given in enabling Acts; • Identify that it is a major method of law making – some 3000 are brought into force each year; • Explains that they can be introduced by either an ‘affirmative resolution’ (involving some debate) or a ‘negative resolution’ procedure (not involving any debate); • Gives an example such as Lord Chancellor’s powers regarding legal aid schemes. <p>Describe the character of an Order in Council:</p> <ul style="list-style-type: none"> • Explain that they are drafted usually by a government department and approved by the Queen and the Privy Council; • Identify that the authority is granted by the Emergency Powers Act 1920 and used generally in times of emergency, particularly war and when Parliament is not sitting e.g. the fuel crisis of September 2000 saw Parliament put the Privy Council on alert had the need to pass emergency legislation arisen. • Give any example of an Order in Council. <p>Assessment Objective 3</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</p> <p>Reward grammar, spelling and punctuation.</p>	Mark levels	AO1	AO3	Level 4	10-12	-	Level 3	7-9	3	Level 2	4-6	2	Level 1	1-3	1	[15]
Mark levels	AO1	AO3															
Level 4	10-12	-															
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Level 1	1-3	1															

Question Number	Answer	Max Mark								
<p>1(b)</p> <p>1(b)(i)</p> <p>1(b)(ii)</p> <p>1(b)(iii)</p>	<p>Identify and explain which <u>type</u> of delegated legislation would be most appropriate to introduce a law relating to each of the following:</p> <p>Parking restrictions in a district or town;</p> <p>The implementation of regulations outlined in an Enabling Act relating to the use of mobile phones in cars;</p> <p>Powers needed to deal with an emergency situation.</p> <p>Mark Levels AO2 (for each of i, ii, iii)</p> <table data-bbox="284 584 528 752"> <tr> <td>Level 4</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-2</td> </tr> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 2</p> <p>In the case of (i) recognise that the use of bylaws would be most suited to this situation because local authorities can make bylaws for their district or town to cover local matters which involve the public e.g. parking restrictions.</p> <p>In the case of (ii) recognise that the use of a statutory instrument is most appropriate here because statutory instruments are the means through which government ministers introduce particular regulations under powers delegated to them by Parliament in enabling legislation.</p> <p>In the case of (iii) recognise the well-known function of an Order in Council to enable a prompt reaction to an emergency situation. They are drafted by the relevant government department, approved by the Privy Council and signed by the Queen.</p>	Level 4	5	Level 3	4	Level 2	3	Level 1	1-2	<p>[5]</p> <p>[5]</p> <p>[5]</p>
Level 4	5									
Level 3	4									
Level 2	3									
Level 1	1-2									

Question Number	Answer	Max Mark
<p>1(c) 1(c)(i)</p>	<p>With reference to Sources A and B: Describe the justifications for judges following binding precedents. Mark Levels AO1 Level 4 13-15 Level 3 9-12 Level 2 5- 8 Level 1 1-4</p> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <ul style="list-style-type: none"> • Recognise that Parliament has limited time and much to do; • Recognise that it lacks the technical expertise in specialist areas such as health and safety – better to leave the detail to experts in the field; • Explain that some areas of legislation benefit from local knowledge rather than centralised view of what might be appropriate – use of bylaws; • Explain that the delegated legislation can be passed quickly to deal with emergencies – use of Orders in Council; • Explain that delegated legislation allows greater flexibility to amend or revoke than an Act of Parliament. • Credit appropriate reference to the Source. 	<p>[15]</p>

Question Number	Answer	Max Mark															
1(c)(ii)	<p>Discuss the <u>disadvantages</u> of the doctrine of precedent.</p> <table border="0"> <thead> <tr> <th>Mark Levels</th> <th>A02</th> <th>A03</th> </tr> </thead> <tbody> <tr> <td>Level 4</td> <td>10-12</td> <td>-</td> </tr> <tr> <td>Level 3</td> <td>7-9</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 2</p> <ul style="list-style-type: none"> • Recognise that it is based on an undemocratic procedure – a necessary evil?; • Recognise that there is a lack of debate and a lack of publicity; • Show awareness that Parliamentary scrutiny of delegated legislation is limited; • Identify the problem of sub-delegation; • Recognise the limitations of judicial review; • Recognise that delegated legislation can be as bulky and complex as statues. <p>Credit any appropriate reference to the Source.</p> <p>Assessment Objective 3</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</p> <p>Reward grammar, spelling and punctuation.</p>	Mark Levels	A02	A03	Level 4	10-12	-	Level 3	7-9	3	Level 2	4-6	2	Level 1	1-3	1	[15]
Mark Levels	A02	A03															
Level 4	10-12	-															
Level 3	7-9	3															
Level 2	4-6	2															
Level 1	1-3	1															

Question Number	Answer	Max Mark															
2(a)	<p>Source B refers to the terms <i>ratio decidendi</i> and <i>obiter dicta</i>. Describe and illustrate what is meant by both of these terms</p> <table border="0"> <thead> <tr> <th>Mark levels</th> <th>AO1</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 4</td> <td>10-12</td> <td>-</td> </tr> <tr> <td>Level 3</td> <td>7-9</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <p>Ratio decidendi:</p> <ul style="list-style-type: none"> Identify that it is the most important part of the speech made by the judge – it is where the reasons for the decision is given, and is binding on future cases with the same or similar facts. A Level 4 answer should give an example of a ratio, e.g. the ratio in <i>Carlill v Carbolic Smoke Ball Co Ltd (1892)</i>, that an offer that is sufficiently clear, may be accepted by performing the stipulated conduct. <p>Obiter dicta:</p> <ul style="list-style-type: none"> Explain that the remainder of the judgement is known as the obiter dicta (things said 'by the way') and does not have any binding authority in relation to future cases, though may provide persuasive authority. Explain that such statements are often made where a judge speculates on what the decision would have been had the facts been different. A level 4 answer should give an example of obiter dicta, e.g. <i>Central London Property Trust Ltd v High Trees House Ltd (1947)</i>. <p>Assessment Objective 3</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</p> <p>Reward grammar, spelling and punctuation.</p>	Mark levels	AO1	AO3	Level 4	10-12	-	Level 3	7-9	3	Level 2	4-6	2	Level 1	1-3	1	[15]
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<p>2(b)</p> <p>2(b)(i)</p> <p>2(b)(ii)</p> <p>2(b)(iii)</p>	<p>Source A identify various methods by which judges avoid having to apply past precedents.</p> <p>Explain which method of avoidance is <u>most</u> suited to each of the scenarios below. Illustrate your answer where appropriate:</p> <p>The House of Lords wish to depart from a past decision of their own;</p> <p>On appeal, the Court of Appeal disagrees with a ruling of the High Court and wishes to replace it with a different decision;</p> <p>A judge in the Crown Court does not wish to follow a past precedent of a higher court as she feels that the facts are slightly different.</p> <p>Mark Levels AO2 (for each of i, ii, iii)</p> <table data-bbox="288 772 526 936"> <tr> <td>Level 4</td> <td>5</td> </tr> <tr> <td>Level 3</td> <td>4</td> </tr> <tr> <td>Level 2</td> <td>3</td> </tr> <tr> <td>Level 1</td> <td>1-2</td> </tr> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 2</p> <p>In the case of (i): recognise that the House of Lords has the power to overrule its own previous decisions and can overrule the decisions of any court below it. Credit should be given where the <i>Practice Statement</i> is explained, e.g. <i>Conway v Rimmer</i> (1968), <i>Pepper v Hart</i> (1993), etc.</p> <p>Credit will be given where the candidate recognises the possibility of distinguishing. Credit any appropriate use of the Source materials.</p> <p>In the case of (ii): recognise that a court higher up in the court hierarchy may overturn, or reverse, the decision of a lower court on appeal in the same case. In this scenario, the Court of Appeal is superior to the High Court and can reverse the decision made and replace it with their own decision where they come to a different view of the law.</p> <p>Credit any appropriate use of the Source materials.</p> <p>In the case of (iii): recognise that a judge (in any court) may avoid having to apply a previous decision by using the method of distinguishing. Where the facts are sufficiently different, it may be possible to draw a distinction between the present case and the previous precedent. In this scenario, the judge may avoid the previous precedent if she can argue that the facts are sufficiently different. A level 4 answer should use relevant cases in illustration, e.g. <i>Balfour v Balfour</i> (1919) and <i>Merritt v Merritt</i> (1971).</p> <p>Credit any appropriate use of the Source materials.</p>	Level 4	5	Level 3	4	Level 2	3	Level 1	1-2	<p>[5]</p> <p>[5]</p> <p>[5]</p>
Level 4	5									
Level 3	4									
Level 2	3									
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Question Number	Answer	Max Mark								
<p>2(c) 2(c)(i)</p>	<p>With reference to Sources A and B: Describe the justifications for judges following binding precedents. Mark Levels AO1</p> <table data-bbox="288 371 544 539"> <tr> <td>Level 4</td> <td>13-15</td> </tr> <tr> <td>Level 3</td> <td>9-12</td> </tr> <tr> <td>Level 2</td> <td>5- 8</td> </tr> <tr> <td>Level 1</td> <td>1-4</td> </tr> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 1</p> <ul data-bbox="288 770 1358 1312" style="list-style-type: none"> • Certainty: Explain that the courts must follow past decisions – <i>stare decisis</i>; identify that citizens know what the law is; lawyers can advise clients on the likely outcome of cases; businesses can operate knowing that financial and other arrangements are recognised by law; key House of Lords cases provide evidence of the preference for certainty to the reform of outdated laws; • Consistency and fairness: Explain that similar cases are treated in the same way; explain that the law must be consistent if it is to be credible; • Flexibility: Recognise that the system does allow the law to adapt and change; the <i>Practice Statement</i> available to the House of Lords and distinguishes cases allows all courts some freedom to avoid past decisions and develop the law; explain the importance of having safety valves to prevent the system from perpetuating bad laws; • Time-saving: Recognise the value of having a system where, once a principle is established, cases with similar facts are unlikely to go through the lengthy process of litigation. <p>Credit use of relevant case materials and any appropriate reference to the Source.</p>	Level 4	13-15	Level 3	9-12	Level 2	5- 8	Level 1	1-4	<p>[15]</p>
Level 4	13-15									
Level 3	9-12									
Level 2	5- 8									
Level 1	1-4									

Question Number	Answer	Max Mark															
2(c)(ii)	<p>Discuss the disadvantages of the doctrine of precedent.</p> <p>Mark levels</p> <table border="1"> <thead> <tr> <th></th> <th>AO2</th> <th>AO3</th> </tr> </thead> <tbody> <tr> <td>Level 4</td> <td>10-12</td> <td>-</td> </tr> <tr> <td>Level 3</td> <td>7-9</td> <td>3</td> </tr> <tr> <td>Level 2</td> <td>4-6</td> <td>2</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>1</td> </tr> </tbody> </table> <p>Potential answers MAY:</p> <p>Assessment Objective 2</p> <ul style="list-style-type: none"> • Rigidity: Identify the fact that lower courts are bound by higher courts, the Court of Appeal has little power to depart from previous decisions and the House of Lords is reluctant to use the <i>Practice Statement</i>. • Complexity: Explain the practical difficulties involved in trying to find relevant cases from decidendi contained in long and complex judgments, and the problems associated with multiple judgments in the Court of Appeal and the House of Lords, where more than one judge sits; • Illogical distinctions: Explain how it can be argued that distinguishing to avoid past decisions can lead to 'hair-splitting'; • Slow to develop: Where the law is in need of development or change it can take years for a suitable case to come before a court with any power to change it. <p>Credit use of relevant case materials and any appropriate reference to the Source.</p> <p>Assessment Objective 3</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.</p> <p>Reward grammar, spelling and punctuation.</p>		AO2	AO3	Level 4	10-12	-	Level 3	7-9	3	Level 2	4-6	2	Level 1	1-3	1	[15]
	AO2	AO3															
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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.

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.