



Support Materials

GCE AS Law H134:

Teacher Support Booklet: AS

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Exemplar candidate work English Legal System (G151)

These materials should be read alongside the approved specimen question paper and mark schemes and specification.

Question:

- 1 (a) Describe the sentences available for adult offenders. [18]**
(b) Discuss the advantages and disadvantages of custodial sentences. [12]

Example Grade B Answer:

a) When an offender is convicted in the crown court it is the trial judge alone who determines the appropriate sentence. Once the defendant has been found guilty it must be decided first what category of sentence is appropriate and then the amount, duration and form of that sentence. There are a number of sentences available for adult offenders. Firstly a custodial sentence may be taken into consideration. There are two elements to this sentence i.e. for a person aged 18 or over it is a sentence of imprisonment or a suspended sentence. For a person under 18 a custodial sentence may include detention in a young offenders institution or a sentence of custody for life. In section 143 of the Criminal Justice Act it states " In considering the seriousness of any offence the court must consider the offender's culpability in committing the crime and any harm which the offence caused, was intended to cause or might foreseeably have caused." A court should not pass a custodial sentence unless it considers that the crime was so serious that only a custodial sentence is justified. The next type of sentence is a community sentence . This can only be imposed in the offence was serious to warrant such a one. 44% of offenders are given these. The Criminal Justice Act has established a single Community order which can be applied in the following possibilities. An unpaid work requirement, a curfew requirement etc. A custodial or community sentence can only be ordered where certain statutory conditions are satisfied. An adult offender can face a fine for their offence apart from murder. This carries a more serious life sentence. The court must ensure that the amount of the fine reflects the seriousness of the offence. There is no set maximum in the Crown Court but in the Magistrates' the highest is £5000. Three quarters of criminal cases that come to court are the least summary offences that's why

RECOGNISING ACHIEVEMENT

fines are the most common given out sentence for an adult offender.

Home detention curfews are another type of sentence that can be taken into account.

Prisoners sentenced between three months and four years imprisonment can be released early on licence that includes a curfew condition. i.e. remain at a certain address at certain times.

They are used as a punishment to reduce the offender's criminal activity and protect the public from anti-social behaviour.

The Court may consider an absolute or conditional discharge. These are miscellaneous sentences i.e. an absolute discharge means that no action is taken at all and is generally made where the defendant's conduct is wrong in law but no one would blame them for what they did.

A conditional discharge means no further action will be taken unless the offender commits another offence within a specified period of up to 3 hours.

In any given sentence the judge must first give his reasons for the sentence and explain the effectiveness of the sentence.

Any court dealing with an adult offender in respect of his offence must have regard to the following purposes of sentencing.

- the punishment of offender
- reduction of crime
- reform of offender
- protection of the public

These specifications were set out by the Criminal Justice Act.

b) For adult defendants a custodial sentence means prison. Most of those given custodial sentences do not serve a full sentence in custody and are released early on licence.

It is argued that imprisonment lacks any reformation power as criminals spend time with other criminals and this is how they acquire new ideas. There is now little effective training and education due to budget cuts thus making prisoners time in prison a waste of time as they are not doing anything worthwhile.

The stigma remains of having been in prison increasing the difficulty of finding full time employment. Some academics argue that prisons only prevent the offender from re-offending for a short while and in time they will do it again. Prisons are also very expensive to run, it costs £24,000 + per year to keep a prisoner and why continue with this when an offender can be dealt with just as effectively and far more cheaply in the community. Prison conditions are poor and therefore there has been many cases of suicide over the last decade. Many of whom have been under 21. So should the court really be issuing out sentences if this is the result.

To my mind the only advantage of a custodial sentence is that offenders once in prison cannot commit an offence again and therefore the public is protected.

To conclude on this point the disadvantages of custodial sentences outweigh the good .

I propose radical changes. Sentences should not be given for trivial offences. If we took away the kids, mentally ill and the asylum seekers the prison population would be cut by 40,000

Prisoners should put something back into society i.e. community order. They should be recognised for their good and not be left to stew on their negative thoughts in overcrowded prisons as this only creates resentment and a conscience to reoffend.

The government has done nothing to address this issue and average prison populations in Europe are a third lower than in the UK.

Examiner's commentary

Part a) would be awarded 10 marks, putting it at the top of Level 2. Unfortunately much of the answer does not really answer the question and is completely irrelevant. The different types of sentence are all mentioned but only there is only some limited description on custodial sentences, no real description of community sentences and adequate description of fines and discharges.

Part b) would be awarded 8 marks, putting it just into Level 4. There is a fairly balanced discussion of both the advantages and disadvantages of custodial sentences.

QWC would be awarded 3 marks as it just gets into Level 3.

Giving a total of 21 marks out of 30.

Example Grade A Answer:

a) There are four main categories in which sentences for adult offenders can be placed. These are custodial, community, fines/ monetary and miscellaneous.

For a custodial sentence the defendant must be over 21. Some of the reasons for a custodial sentence are to punish offenders, to protect the public and to deter other criminals. These reasons must be presented in writing. There are some early release rules on custodial sentences. If you have been given a sentence of up to 4 years you will automatically be released after half of your sentence and usually be on licence for the rest of it. A custodial sentence more than 4 years could be after serving $\frac{1}{2}$ or $\frac{2}{3}$ of sentence.

When released on licence some offenders can be given a home detention curfew. This is where tags can be used to monitor the offender. They can only leave the house in exceptional circumstances.

Offenders could also be given custody plus which means a short period in custody and the rest under supervision. This is to make sure future prospects are not ruined for the offender.

Intermittent custody is when the offender serves some of their sentence in custody and some out. For example if they are relied on for a job they could spend evenings and weekends in prison.

The CJA 2003 changed the system of community sentences so they are now community orders. There are 12 requirements which could all be attached. The minimum age for community orders is 16. One condition that could be attached is unpaid work. This cannot last more than 12 months and will be between 40-300 hours. Another requirement is prohibited activity This is where offenders are stopped from doing things for a certain amount of time. E.g. contacting other gang members or the victim.

The third category is fines, where money goes into criminal justice system and can be imposed for anything but murder. The Magistrates' Court have limits to the fines they can give, these are normally £5000 but can be £20,000 for businesses. When a Judge or magistrate is giving a fine they take into account D's earnings. The Crown Court has unlimited amount for a fine they can give but rarely give it as a punishment.

One example of a miscellaneous sentence is absolute discharge. The D doesn't serve any sentence at all, they are convicted but not blamed for what happened. Another example is a deferred sentence. They won't sentence straight away but within 6 months. This may be if they have a job or think the circumstances might change.

b) There are advantages and disadvantages of custodial sentences. One main advantage is that it protects the public from serious offenders. The D can be helped so they have a chance after prison to get work and rebuild relationships, custody plus.

With intermittent custody the prisoner can keep employment, education, and family ties. One main disadvantage for the criminal is that it ruins the chance of a good life when they out of prison. Most offenders don't serve all of their sentence and there are high re-offending rates after prison. Prison can also teach the offender new tricks for committing crime. When an offender is given intermittent custody there is a risk of prisoners not returning.

Examiner's commentary

Part a) would be awarded 17 marks, putting it into Level 4, as all the major types of sentence are described in some level of detail. This example shows a good breadth of answer.

Part b) would be awarded 8 marks, putting it just into Level 4, as there are points on both the advantages and disadvantages and there is also some discussion, although towards the end the points tend to be simply stated rather than discussed.

QWC would be awarded 3 marks as it reaches the Level 3 criteria.

Giving a total of 28 marks out of 30.

Example Grade E Answer:

- a) There are two main courts to choose from when sentencing. These are the magistrate's and the crown court.
- Adult offenders tried in the crown court will be put across many types of sentences. To be sentenced as an adult you must be over 18 years were you will be sentenced according to your crime.
- There are many types of sentencing: community service order, intermittent custody custodial sentences and suspended sentences; discretionary, mandatory and fixed term sentences are a wide variety available for the judge to impose.
- The only sentence imposed for life is the discretionary and mandatory sentence. The judge can only impose this sentence on the adult offender if he has committed murder.
- If a suspended sentence is used on an adult offender it means that the sentence is deffered for at least 2 years. If during that time the offender commits an offence he will have that sentence imposed. If no offence has been committed he will have the sentence cleared.
- A community service order can also be imposed on the offender according to the Criminal Justice Act 2003. Within this order the offender will be placed on a scheme where he will have to cary out many hours of work or whatever his sentence imposes like drug treatment.
- A fine can also be given.
- b) The advantage of custodial sentences is that it locks criminals up. They are kept away from ordinary people and cannot commit crimes. Mandatory and discretionary is good for murderers.

Examiner's commentary

Part a) would be awarded 8 marks; it is a Level 2 answer with a few sentences described in a limited way. Much of the answer is not relevant to the question.

Part b) would be awarded 2 marks (top of Level 1) as it only makes one valid point.

QWC would be awarded 2 marks; although parts do not make sense there is enough structure and use of correct terminology to reach Level 2 descriptors.

Giving a total of 12 marks out of 30.

Question:

6 (a) Describe the powers the police have to stop and search an individual on the street.

[18]

Tyrone, aged 16, has missed the last bus and has to walk home. It is 2am and a police officer driving past in a police car sees Tyrone and stops. The police officer tells Tyrone to empty his pockets and Tyrone refuses. The police officer then grabs Tyrone's shoulder, pushes him into the police car and takes him to the local police station.

6 (b) Advise Tyrone on whether the police officer acted lawfully with regard to stop and search and the arrest.

[12]

Example Grade C Answer:

(a) Under section 1 of the Police and Criminal Evidence Act (PACE 1984). The police have many powers to stop and search an individual. If a police officer stops an individual they must tell the individual their name, station and their reason for searching them. They must also produce a report to be available to the individual within 24 hours. If an individual is stopped then they can only be asked to remove a coat jacket and gloves, they cannot be asked to remove a hat this is due to religious purposes. If they believe there are stolen goods hidden under the hat they can be taken to the police station or a van to remove the hat.

A section 60 area can be declared with the permission of the magistrates. A section 60 area is one where any individual can be stopped and searched without a reason. A section 60 area can be declared in anticipation of violence/ it can only be a section 60 for 24 hours.

(b) The police officer appears not to be acting lawfully because he didn't tell Tyrone his name, station and why he had stopped him to search him. Tyrone has not committed an arrestable offence or refused to give his name or address, therefore the police officer had no right to arrest him. Another thing the police officer has acted unlawfully on is that he did not tell Tyrone he was being arrested and did not give him a proper caution. The police man maybe used more than reasonable force.

Examiner's commentary

Part a) would be awarded 9 marks, which is a Level 2 answer. There is some accurate information but it is limited with many major points left out.

Part b) would be awarded 7 marks (top of Level 3). Many of the main points have been noted and applied to the situation but reasonable suspicion should have been discussed to get into level 4.

QWC would be awarded 3 marks as it fulfils the criteria for Level 3.

Giving a total of 19 marks out of 30.

Example Grade A Answer:

a) Under S1 Police and Criminal Evidence Act 1984 (PACE) as amended. The police have the power to stop and search a person if they have reasonable suspicion that they will find stolen goods or prohibited articles. Reasonable suspicion is described in Code A of the police codes of practice as not to include appearance or previous record but should be based on what an ordinary person would regard as suspicious.

The police officer must tell the suspect why they have stopped them and what they expect to find also they have to say their name, and station so they can be identified.

Only outer coat, jacket and gloves can be removed for the search and a written report must be produced of the search.

Under the Criminal Justice and Public Order Act 1994 the police have the right to stop and search anyone in a specified area for up to 24 hours if a senior police officer has declared that area to be subject to S 60 searches. There does not have to be any reasonable suspicion of anything, for this type of search. Other Acts also give powers to the police such as the Misuse of Drugs Act 1971 and the Terrorist Act 2000.

b) There is no apparent reason to stop and search or arrest Tyrone as there does not appear to be any crime committed or any reason to suspect him of having any stolen goods or prohibited articles. The reason for stopping him seems to be his age and the time of night it is arguable that this might be regarded as reasonable suspicion, however the police officer has not identified himself or told Tyrone why he is being searched. In Osman this resulted in an unlawful search. There is no mention of any crime that the police officer believed Tyrone to be connected with so there is no reason to arrest Tyrone and the pushing into the police car may be more than reasonable force. Tyrone has also not been cautioned, told he is under arrest or given a reason. For these reasons both the stop and search and the arrest are unlawful.

Examiner's commentary

Part a) would be awarded the full 18 marks. Although it is very concise all the main points are covered in some detail.

Part b) would be awarded 9 marks. All the points of discussion are covered and a reasoned conclusion is formulated.

QWC would be awarded 3 marks.

Giving a total of 30 marks out of 30.

Example Grade E Answer:

a) The powers that the police have to stop and search someone are under the Police and Criminal Evidence Act 1984 or PACE. Sections 1-7 state they have the power to stop and search someone. The police have the power to stop and search someone when they are suspicious they have committed a crime. If the police think someone has stolen goods on them then they can search them. If they believe they maybe carrying prohibitid articles on them then the police can stop and search them.

The policeman must tell someone their name and station and why the search is happening.

b) Tyrone should do what the policeman says. He will get into trouble because he is not obeying the policeman. The policeman should of told him his name and stashion and why he is being arrested and searched so he might get in trouble to.

Examiner's commentary

Part a) would be awarded 8 marks. It is a Level 2 answer with some of the basic points of detail. It has mentioned PACE, correctly identifying the relevant sections, but is not very accurate on the criteria for stop and search. It has also identified that police need to identify themselves and give a reason for the search but that is all.

Part b) would be awarded 4 marks. It just gets into Level 2 as it has identified a few areas where the policeman has not complied with the rules on stop and search and arrest.

QWC would be awarded 2 marks as it fulfils all the criteria for a Level 2 in the assessment levels.

Giving a total of 14 marks out of 30.

Exemplar candidate work Sources of Law (G152)

These materials should be read alongside the approved specimen question paper and mark schemes and specification.

Question:

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

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

Example Grade A Answer:

Bylaws are laws made by local councils or companies such as train companies. Those laws will include things like what to do in local parks and whether or not you are allowed to use mobile phones on trains. These powers are laid down in a parent Act made by Parliament setting out the powers of the council.

Another type of delegated legislation is Orders in Council made by the Privy Council. These are for times of emergency such as war where the Prime Minister does not have to act through Parliament to get the law passed as an event may need an immediate resolution.

The third type of delegated legislation is statutory instruments. These are laws made by government ministers. Depending on the importance, Parliament may be consulted either by a negative resolution or an affirmative resolution. Negative resolution is where the new law is left in Parliament for 40 days and MP's have the chance to put their opinion on it. Affirmative resolution requires a vote from the House of Commons and/or the House of Lords. This type of resolution is usually for laws involving public money or tax. Ministers must be careful not to act ultra vires and to consult all parties concerned where necessary. In Aylesbury Mushrooms the law was declared void as a mushroom organisation was not consulted.

Question:

1(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]**
- (ii) the implementation of regulations outlined in an Enabling Act relating to the use of mobile phones in cars; [5]**
- (iii) powers needed to deal with emergency situations. [5]**

Example Grade A Answer:

1 (b) (i)

For parking restrictions bylaws would be the most appropriate type to be used. This is because areas where cars are parked tend to be owned or controlled by local councils or private car park companies such as NCP.

1 (b) (ii)

For the implementation of regulations relating to mobile phone use in cars statutory instruments would be used. This is as powers would be given by Parliament in an Enabling Act to the Minister for Transport which would mean he/she can then pass laws. He/she must then make sure not to act ultra vires in the laws introduced in this way.

1 (b) (iii)

Orders in Council will be used by the Privy Council to implement laws in an emergency. This is because they are the quickest as they do not need resolutions like statutory instruments do.



Examiner's commentary

General comments

The candidate has a clear and precise understanding of the issues involved in the question and of the appropriate skills needed for answering it.

In each case the candidate has correctly identified the appropriate type of delegated legislation that would be used given the facts in the scenarios, has correctly identified which body would introduce it and has also said why it would do so or given some context explaining the nature of the particular type. This is an excellent part (b) answer. While answering economically given the time allowed, 15 minutes, the candidate has also been careful to state that it is the most appropriate type or to say this type would be used in this situation, rather than just naming a type and leaving the examiner to imply that it is the most appropriate.

Level 4 and maximum AO2 reasoning marks have easily been achieved by the candidate.

Mark

AO2	15
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Examiner's advice

The candidate has a clear understanding and good skills. There is little improvement that could have been made. One possible improvement would have been to give an example of an emergency situation for Orders in Council, although the candidate has given some context by explaining the significance of the speed involved in introducing them.



Example Grade E Answer:

1 (b) (i)

To introduce parking restrictions in a district or a town you would use a bylaw. This is because it is only applicable to that certain area.

1 (b) (ii)

Enforcing the Enabling Act that prevents the use of mobile phones in cars would be using a statutory instrument. This is because the Act applies to the whole of the UK. Different areas may have different ways of enforcing the law but it still applies to the whole country.

1 (b) (iii)

Orders in Council give the council the powers to deal with an emergency situation. An example of when this may be used is in a drought when water usage in an area may be restricted due to limited supplies of water.

Examiner's commentary

General comments

The response is brief but reasonably informative. The candidate correctly identifies the appropriate type of delegated legislation in each case. There is also a justifying reason for (i), but not the body that would introduce it; the same could be said of (ii); and for (iii) a good example of when Orders in Council might be used, but the word 'council' cannot be accepted as the introducing body without the word 'Privy' prefixing it because of the potential confusion with local councils.

Generally though this is a high Level 3 answer and more than would be required for a grade E response to the individual question.

Mark

AO2

12

Examiner's advice

The candidate clearly understands the topic and is aware of the key factors and has good identification skills. The candidate could have achieved maximum marks for this question with a little attention to detail. The appropriate body introducing the individual type of delegated legislation could have been added to each type and this would have been sufficient.

Question:

1 (c)

With reference to Source B and your knowledge of delegated legislation:

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

[15]

Example Grade A Answer:

1 (c) (i)

One reason delegated legislation is needed is because of expertise. Although MP's may have a general background knowledge of a topic, they may not have the type of knowledge that experts on the subject have. Therefore it is necessary to let an expert make the law as it will make it more specific and detailed.

Another reason for delegated legislation is the importance of local knowledge. For example the House of Commons will not know what is best for a small town or village in the middle of nowhere. Therefore law making is delegated to the council who can make bylaws. These would be best suited to that area which is better than having a law made by Parliament governing the whole of the UK. The same point applies with devolution with new assemblies in Scotland and Wales. Because of this it is important for Parliament to delegate law making powers to these places so they can govern themselves.

Delegated legislation is also quicker than Parliament.

Sample Classroom Activity: GCE Law (H134) English Legal System (G151)

Activity 1: At the Police Station

Powers of the police	Limitations on powers	Individual rights
To detain individual	Only for certain time limits	Custody officer
Can delay right to legal advice	Only if	Right to legal advice
Can delay right to inform	Only if	Right to have someone informed of detention
Can interview suspect	Must be taped and	Appropriate adult for young offenders or if mental problems Interpreter if necessary
Can search suspect 3 types of search Check in search Strip search Intimate search	Only if going to find something prohibited	Must be done in particular way to protect privacy of suspect
Can take samples	Non intimate	By With permission from
	Intimate	By With permission from

Sample Classroom Activity: GCE Law (H134) English Legal System (G151)

Activity 2: Police Powers Activity

Quiz on Police Interviews

1. What is the relevant part of PACE 1984?
2. What are the rules on taping?
3. What is the position if the questioning starts before the suspect arrives at the police station?
4. Does there have to be a solicitor present?
5. What is the position if the detainee is under 17 years of age or appears to be mentally vulnerable?
6. In what way does s76 PACE give protection to suspects?
7. What does Code C say about the conditions in which the detainee is held?
8. What is the role of the custody officer?
9. Is there a right of silence?

Sample Classroom Activity: GCE Law (H134) English Legal System (G151)

Activity 3: Sentencing Activity

Complete the following grid:

Sentence	Description	Aims of sentencing
Mandatory life sentence	For murder – no choice in sentence, life imprisonment	Protection of the public and retribution
Discretionary life sentence		
Fixed term sentence		
Custody plus		
Intermittent custody		
Suspended sentence		
Home Detention Curfew		
Minimum sentences		
Community Order		
Unpaid work requirement		
Curfew requirement		
Programme requirement		
Exclusion requirement		
Fines		



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Conditional Discharge		
Absolute Discharge		
Reparation order		
Action plan order		
Reprimands and warnings		

Sample Classroom Activity: GCE Law (H134) English Legal System (G151)

Activity 4: Stop and Search Activity

Describe the powers the police have to stop and search someone.

Section _____ PACE gives the police the right to _____ and _____ people or _____ in a _____ if they have _____ for suspecting that the person is in possession of _____ or _____ or _____.

Code __ says “_____” must be more than prejudice about _____ or just because someone has _____.

Police officers must give their _____, _____ and _____ for the search as is illustrated by the case of _____ 1999 where the court held that;

If the search is in _____, the police officer can only ask the suspect to remove _____, _____ and _____.

Provided the search is lawful, the police officer may use _____.

The police officer must make a _____ as soon as possible after the search and give a _____ to the person searched if requested.

There are separate powers to stop and search where the suspect may be involved with _____ or _____.



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Also, under the _____ Act 1994, a _____
_____ who believes _____ may take place in his area may declare
that s.60 is in force for ____ hours. Then a police officer may stop and search someone
without _____.

Sample Classroom Activity: GCE Law (H134) Sources of Law (G152)

Activity 1: Legislation Exercise

For a Bill to become an Act it has to go through a number of stages:

- First Reading
- Second Reading
- Committee Stage
- Report Stage
- Third Reading
- Switch House and Repeat
- Royal Assent



Task

Explain what happens in the various stages of the passage of a Bill and produce a flow chart outlining its passage.

Extension Activity

7 Using the rules of language analyse the following scenarios:

- There is confusion over the meaning of the word “food”. The statute states “cat baskets, toy mice and food”.
- There is confusion over the words “other animals”. The Act states it applies to “cats, dogs and other animals”.

GCE Law (H134)

Suggested Reading List: GCE AS Level

As the areas of law covered by this course are subject to constant change it is important to use the most up to date textbooks available. The list below is currently regarded as the most suitable for the course and includes internet sites which are constantly updated.

Main Student Textbook

The English Legal System	Jacqueline Martin	Hodder Arnold	2005
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Other Texts Useful for Additional Classroom Material

Looking at the English Legal System	Jacqueline Martin		2003
OCR Law in Focus AS Level	Simon Jackson	Causeway Press	2003

A Selection of Useful Internet Sites

- www.e-lawstudent.com an alternative to a textbook that can be purchased by a centre with individual licences for students.
- www.lawteacher.net a free site with a variety of resources including good links to other useful sites.
- www.timesonline.co.uk law section on a Tuesday often has useful articles on topics for this course.
- www.directgov.uk offers a direct link to all government departments.
- www.homeoffice.gov.uk particularly useful for updates on police and sentencing changes.
- www.lcd.gov.uk site for the Department of Constitutional Affairs offers updates on personnel including reforms to the judiciary and legal funding.