

# A-LEVEL

## **Law**

LAW01/Unit 1 Law Making and the Legal System  
Mark scheme

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(2160)  
June 2015

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Version/Stage: 1.0 Final

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Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts: alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Assessment Writer.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this Mark Scheme are available from [aqa.org.uk](http://aqa.org.uk).

# LAW01

## Assessment Objectives One and Two

### General Marking Guidance

You should remember that your marking standards should reflect the levels of performance of students, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.

### Positive Marking

You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as students penalise themselves in terms of the time they have spent.

### Mark Range

You should use the whole mark range available in the mark scheme. Where the student's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the student's answer does not deserve credit, then no marks should be given.

### Citation of Authority

Students will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.

**Assessment Objective Three****QUALITY OF WRITTEN COMMUNICATION (QoWC)**

|                |   |
|----------------|---|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"><li>• clear expression of ideas</li><li>• a good range of specialist terms</li><li>• few errors in grammar, punctuation and spelling</li><li>• errors do not detract from the clarity of the material.</li></ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>  |

### The level of understanding in AS Law – LAW01

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year-old, so the level of understanding required by these criteria will be that of the notional 17-year-old.

|                       |  |
|-----------------------|--|
| <p><b>Sound</b></p>   | <ul style="list-style-type: none"> <li>• The material will be generally accurate and contain material relevant to the Potential Content.</li> <li>• The material will be supported by generally relevant authority and/or examples.</li> <li>• It will generally deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>  |
| <p><b>Clear</b></p>   | <ul style="list-style-type: none"> <li>• The material is broadly accurate and relevant to the Potential Content.</li> <li>• The material will be supported by some use of relevant authority and/or examples.</li> <li>• The material will broadly deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.</p>                       |
| <p><b>Some</b></p>    | <ul style="list-style-type: none"> <li>• The material shows some accuracy and relevance to the Potential Content.</li> <li>• The material may occasionally be supported by some relevant authority and/or examples.</li> <li>• The material will deal with some of the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.</p>                             |
| <p><b>Limited</b></p> | <ul style="list-style-type: none"> <li>• The material is of limited accuracy and relevance to the Potential Content.</li> <li>• The material will be supported by minimal relevant authority and/or examples.</li> <li>• The material will deal superficially with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the concepts of the Potential Content will barely be established, as there will be many errors, omissions and/or confusion which almost completely undermine the essential elements of the Potential Content.</p> |

## Section A Law Making

### Topic: Parliamentary Law Making

|          |          |  |                   |
|----------|----------|--|-------------------|
| <b>0</b> | <b>1</b> | Outline <b>each</b> of the following: <ul style="list-style-type: none"> <li>• the meaning and purpose of Green and White Papers <b>and</b></li> <li>• the doctrine of Parliamentary supremacy (sovereignty).</li> </ul> | <b>[10 marks]</b> |
|----------|----------|--|-------------------|

#### Potential Content

##### (A) Outline of Green and White papers

###### For Green Papers

- meaning – to gain views about proposed legislation from a variety of interested bodies and people
- purpose – initial consultation document, responses may be, but do not have to be, acted on

###### For White Papers

- meaning – to set out government's preferred approach to a future piece of legislation
- purpose – not for consultation, but views of interested parties may be expressed and taken into account

##### (B) Outline of doctrine of Parliamentary supremacy (sovereignty)

- legal supremacy – highest form of law, must be applied by judges
- political supremacy – can legislate on any subject matter and/or Parliament not binding successors.

**Note:** for Sound (A) and (B), all bullet points should be outlined.

#### Mark Bands

|        |   |
|--------|---|
| 8 – 10 | The student deals with (A) and (B) as follows:<br><b>max 10:</b> two sound<br><b>max 9:</b> one sound, one clear<br><b>max 8:</b> one sound, one some <b>or</b> two clear                                       |
| 5 – 7  | The student deals with (A) and (B) as follows:<br><b>max 7:</b> one sound <b>or</b> one clear, one some<br><b>max 5:</b> one clear <b>or</b> two some   |
| 3 – 4  | The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B).   |
| 1 – 2  | The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges<br><b>or</b><br>mistakes and confusion fundamentally undermine a more substantial attempt at explanation. |
| 0      | The answer contains no relevant information.  |

|          |          |  |                   |
|----------|----------|--|-------------------|
| <b>0</b> | <b>2</b> | Describe the legislative process in Parliament, including the role of the Crown. | <b>[10 marks]</b> |
|----------|----------|--|-------------------|

**Potential Content**

(A) A sound answer **will** describe the legislative process in the House of Commons, the House of Lords and the constitutional role of the Crown in Parliament and/or the effect of the Royal Assent

It **may** also describe any of:

- the introduction of a bill by Minister (for government bill) or promoter (for private members' bill);
- role of the House of Lords as a revising chamber
- a description of the ping-pong procedure in conjunction with House of Commons until final agreement has been reached on wording of all clauses
- the effect of the Parliament Acts

Description of legislative process in House of Commons should include a description of the order of readings – first reading, second reading, committee stage, Report stage, third reading. Description of legislative process in House of Lords should include a description of the order of readings – first reading, second reading, committee stage, third reading (no Report stage in HoL)

**Mark Bands****Mark bands**

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|            |  |
|------------|--|
| <b>0 3</b> | Briefly discuss advantages <b>and</b> disadvantages of the legislative process in Parliament.<br><b>[10 marks + 2 marks for AO3]</b> |
|------------|--|

**REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY****Potential Content**

Brief discussion of advantages and disadvantages of legislative process:

(A) Advantages could include:

- it is democratic
- there is thorough discussion/scrutiny of proposals
- law can be made after detailed inquiry or Law Commission report
- law can give effect to election manifesto commitments
- it is an open process
- there is the possibility of amendment(s) being made to original proposal or draft
- there is supremacy of Parliamentary law over other forms of law-making.

(B) Disadvantages could include:

- there may be delay in dealing with issues
- the law may be affected by political influences rather than genuine debate
- there may be non-democratic issues affecting the proposals, particularly the involvement of the House of Lords and/or the Crown
- legislative matters – laws are written in complex language rarely understood by the man in the street, there is often piecemeal development of laws, there is often a need to read more than one document to understand what the law is
- there may have to be a compromise in the process between Commons and Lords to ensure law is passed.

**Note:** advantages only – max 7 for a Sound answer to A

**Note:** disadvantages only – max 7 for a Sound answer to B

At least two bullet points to be briefly discussed for Sound A or B.



**Mark Bands**

- 8 – 10 The student deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear
- 5 – 7 The student deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some
- 3 – 4 The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B).
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

**AO3**

|                |  |
|----------------|--|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>  |

**Topic: Delegated Legislation**

|            |   |
|------------|---|
| <b>0 4</b> | Briefly explain statutory instruments and by-laws as forms of delegated legislation.<br><b>[10 marks]</b> |
|------------|---|

**Potential content**

- (A) Brief explanation of statutory instruments:
- the existence of law made by government ministers.
  - ministers having delegated powers under the authority of primary legislation (enabling Acts) supported by example(s) of both enabling Act and of statutory instrument, eg annual amendments to amount of minimum wage.
- (B) Brief explanation of by-laws:
- how they are made – under delegated powers e.g. by Local Government Act 1972 or any other relevant statute and approved by government minister
  - made by local authority for the benefit of the local authority area – example such as dog fouling
  - made by other bodies – such as smoking ban made by Transport For London or penalty fares made by train companies.

**Note:** for Sound (A) or (B) – all bullet points to be briefly explained.

**Mark Bands**

- 8 – 10      The student deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear
- 5 – 7      The student deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some
- 3 – 4      The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B)
- 1 – 2      The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation
- 0            The answer contains no relevant information.

|          |          |   |                   |
|----------|----------|---|-------------------|
| <b>0</b> | <b>5</b> | Explain judicial controls on delegated legislation. | <b>[10 marks]</b> |
|----------|----------|---|-------------------|

### Potential Content

(A) Explanation of judicial controls could include:

- judicial review on grounds of procedural ultra vires, eg **Agricultural Training Board v Aylesbury Mushrooms Ltd (1972)**
- judicial review on grounds of substantive ultra vires, eg **Commissioners of Custom and Excise v Cure and Deely Ltd (1962)**
- unreasonableness, eg **R (on the application of Rogers) v Swindon NHS Primary Care Trust 2006**
- conflict with EU law/ECHR, eg **Vinter and others v UK 2012**

**Note:** for Sound A - at least two of the above points should be explained, supported by a case example.

### Mark bands

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|          |          |   |                                     |
|----------|----------|---|-------------------------------------|
| <b>0</b> | <b>6</b> | Discuss why Parliament delegates law-making powers. | <b>[10 marks + 2 marks for AO3]</b> |
|----------|----------|---|-------------------------------------|

## REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

### Potential Content

(A) Discussion of why Parliament delegates law-making powers. Reasons could include:

- Parliament is not in session when an emergency arises
- the need for detail to fill in outline of primary legislation
- the need for specialist rules
- the need to set starting dates for primary legislation
- to update rules, eg the amount of fines or minimum wage
- to deal with local issues (by-laws)
- to deal with specific needs of public authorities, eg by-laws made by transport providers.
- to save Parliamentary time

**Note:** for Sound (A), at least three bullet points to be discussed.

### Mark bands

8 – 10      The student demonstrates a sound understanding of (A).

5 – 7      The student demonstrates a clear understanding of (A).

3 – 4      The student demonstrates some understanding of (A).

1 – 2      The student demonstrates limited understanding of (A).

0          The answer contains no relevant information.

### AO3

|                |  |
|----------------|--|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>  |

**Topic: Statutory Interpretation**

|            |  |                   |
|------------|--|-------------------|
| <b>0 7</b> | Describe the literal rule of statutory interpretation. | <b>[10 marks]</b> |
|------------|--|-------------------|

**Potential Content**

(A) Description of literal rule

- judges giving words their ordinary, natural (Oxford English) dictionary meaning even if it results in an absurdity. Could also include - words are given their meaning at the time of the passing of the Act
- case example(s) to illustrate the application of the rule, eg **Whiteley v Chappel 1868, Cheeseman v DPP 1990, Fisher v Bell 1961, LNER v Berriman 1946**

**Note:** for Sound (A), both bullet points to be described.

**Mark bands**

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|            |   |                   |
|------------|---|-------------------|
| <b>0 8</b> | Describe the golden rule of statutory interpretation. | <b>[10 marks]</b> |
|------------|---|-------------------|

### Potential Content

(A) Description of the golden rule

- the judge follows the literal rule unless that is at variance with the intention of the legislature or would lead to an absurd result
- narrow approach – where the word is capable of more than one meaning, the judge selects a meaning to avoid an absurdity, eg **Allen**
- broad approach – where the word has one meaning but that results in an absurdity or repugnance, the meaning is altered to avoid the absurdity/repugnance, eg **Re Sigsworth; Adler v George**.

**Note:** for Sound (A), all bullet points to be described.

### Mark bands

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|          |          |  |
|----------|----------|--|
| <b>0</b> | <b>9</b> | Briefly discuss advantages <b>and</b> disadvantages of the golden rule.<br><b>[10 marks + 2 marks for AO3]</b> |
|----------|----------|--|

## REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

### Potential Content

(A) Brief discussion of advantages could include:

- fewer absurd and repugnant results being made
- Parliament would not have wanted to pass laws that produced absurd or repugnant results
- it is democratic (alternative argument could be that as the court does not follow the stated will of Parliament, it is undemocratic)

(B) Brief discussion of disadvantages of golden rule could include:

- that it depends on individual judges to decide what is an unintended, absurd or repugnant result
- that it gives too much power to judges and therefore it can be considered undemocratic (or democratic because the judge(s) have followed the stated will of Parliament)
- it is inadequate (feeble parachute)

**Note:** at least two bullet points to be briefly discussed for Sound A or B supported by case examples where appropriate.

### Mark Bands

|        |  |
|--------|--|
| 8 – 10 | The student deals with (A) and (B) as follows:<br><b>max 10:</b> two sound<br><b>max 9:</b> one sound, one clear<br><b>max 8:</b> one sound, one some <b>or</b> two clear                                      |
| 5 – 7  | The student deals with (A) and (B) as follows:<br><b>max 7:</b> one sound <b>or</b> one clear, one some<br><b>max 5:</b> one clear <b>or</b> two some  |
| 3 – 4  | The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B).  |
| 1 – 2  | The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges<br><b>or</b><br>mistakes and confusion fundamentally undermine a more substantial attempt at explanation |
| 0      | The answer contains no relevant information.   |

**AO3**

|                |   |
|----------------|---|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"><li>• clear expression of ideas</li><li>• a good range of specialist terms</li><li>• few errors in grammar, punctuation and spelling</li><li>• errors do not detract from the clarity of the material.</li></ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>  |



**Topic: Judicial Precedent**

|          |          |  |                   |
|----------|----------|--|-------------------|
| <b>1</b> | <b>0</b> | Outline the main features of judicial precedent. | <b>[10 marks]</b> |
|----------|----------|--|-------------------|

**Potential Content**

(A) Outline of main features of precedent. A sound answer will outline **all** three of the following features:

- Hierarchy of courts – an outline of court structure (either civil and/or criminal); which courts bind others; which courts are bound
- Ratio decidendi/obiter dicta (key distinctions) – **should include** the reason for the decision/things said by the way;
 

**May include** the binding part of the decision/the persuasive part of the decision; must be followed by other judges (depending on status)/may be followed by other judges.
- Law reporting - the need for reporting; content of law reports; written by authorised barristers; authorised by judge; example of different sources of reports, e.g. All England Law Report, The Times.

**Mark Bands**

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|   |   |  |                   |
|---|---|--|-------------------|
| 1 | 1 | Outline <b>two</b> ways in which judges can avoid following a binding precedent. | <b>[10 marks]</b> |
|---|---|--|-------------------|

### Potential Content

- (A) Outline of first way judge can avoid binding precedent.  
 (B) Outline of second way judge can avoid binding precedent.

Ways of avoiding precedent could be any of the following:

- Supreme Court using 1966 Practice Direction when it is right to do so, example(s) such as **Herrington, Hoare v A, Anderton v Ryan/Shivpuri, R v G & R/MPC v Caldwell, Howe, Lynch**
- Court of Appeal having the power to overrule any precedent itself in civil cases using rules in **Young v Bristol Aeroplane**; in criminal cases using **R v Young** to avoid injustice to defendant, example(s).
- Distinguishing – outline of what distinguishing is, which judges can distinguish and when – in the context of an earlier decision in a different case, example(s) such as **Balfour/Merrit, Brown/Wilson**.
- Overruling – outline of what overruling is, which judges can overrule and the context of previous and current case, example(s) such as **Herrington, R v G & R** overruled **MPC v Caldwell, Howe** overruled **DPP v NI v Lynch, Pepper (Inspector of Taxes) v Hart** overruled **Davis v Johnson**; connection to 1966 Practice Direction and/or powers of Court of Appeal.
- Disapproving – outline of what disapproving is, which judges can disapprove, effect of disapproving statements, example(s) such as in **Cheshire** the decision of **Jordan** was disapproved.

### Mark Bands

- 8 – 10      The student deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear
- 5 – 7      The student deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some
- 3 – 4      The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B).
- 1 – 2      The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
 mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0          The answer contains no relevant information.

|          |          |   |
|----------|----------|---|
| <b>1</b> | <b>2</b> | Briefly discuss advantages <b>and</b> disadvantages of judicial precedent.<br><b>[10 marks + 2 marks for AO3]</b> |
|----------|----------|---|

## REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

### Potential Content

(A) Brief discussion of advantages of precedent could include:

- flexibility – dealing with new situations as they arise, or updating out-of-date rules as in **R v R** and/or **Herrington**
- dealing with real, as opposed to theoretical, cases
- providing detailed rules for later cases
- gives a just outcome, as judges are impartial and basing their decisions on legal rules
- authoritative – especially in decisions of Supreme Court and Court of Appeal due to the numbers and experience of judges in court
- certainty
- time saving.

(B) Brief discussion of disadvantages of precedent could include:

- the undemocratic nature of law making, as judges' role can be said to be applying law passed by Parliament rather than making law
- in order to make precedent, there is need for case to come to court, especially the higher courts, which may be a lottery based on the lawyer's advice and funding
- in some cases, each judge may give a different reason for their decision which may result in difficulty for later judges/lawyers identifying ratio
- the number of precedents made and the difficulty of finding an authoritative law report
- rigidity – bad decisions difficult to change
- uncertainty
- retrospective nature of decision, eg **R v R 1991**

**Note:** for Sound (A or B,) at least two of the bullet points should be briefly discussed, supported by case example(s) where appropriate.

**Mark Bands**

- 8 – 10 The student deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear
- 5 – 7 The student deals with (A) and (B) as follows:  
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- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

**AO3**

|                |  |
|----------------|--|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>  |

## Section B: The Legal System

### Topic: The Civil Courts and other forms of dispute resolution

|          |          |  |                   |
|----------|----------|--|-------------------|
| <b>1</b> | <b>3</b> | Outline the following alternative dispute resolution (ADR) processes: <ul style="list-style-type: none"> <li>• negotiation <b>and</b></li> <li>• mediation.</li> </ul> | <b>[10 marks]</b> |
|----------|----------|--|-------------------|

#### Potential Content

##### (A) Outline of negotiation

- who carries out the negotiation – the parties, their lawyers or unqualified representatives
- possible forms of negotiation – face to face, using telephone, email or conference calls
- types of dispute dealt with using this method
- process – continued talking/contact until resolution made or fails
- successful outcome is agreement which is enforceable if the parties formally agree/ no obligation to make agreement

##### (B) Outline of mediation

- process can arise through agreement or requirement, as with family disputes
- mediator will be qualified in mediation and possibly area of dispute
- types of dispute settled using this method
- process – the mediator passing messages between parties until they reach agreement between themselves
- successful outcome is agreement which is enforceable if the parties formally agree/ no obligation to make agreement

**Note:** for Sound (A or B), at least three bullet points to be outlined.

#### Mark Bands

- 8 – 10      The student deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear
- 5 – 7      The student deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some
- 3 – 4      The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B).
- 1 – 2      The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
 mistakes and confusion fundamentally undermine a more substantial attempt at explanation.

0 The answer contains no relevant information.

|          |          |  |                   |
|----------|----------|--|-------------------|
| <b>1</b> | <b>4</b> | Explain the work of tribunals as a form of alternative dispute resolution. | <b>[10 marks]</b> |
|----------|----------|--|-------------------|

### Potential Content

(A) Explanation of the work of tribunals could include:

- the panel – often a legally qualified judge and two lay members (generally with some background in the area of dispute)
- how tribunals can come about – statutory requirement, eg employment
- types of cases dealt with, eg employment, rent, land
- tier structure
- nature of hearing – formal hearing, rules of evidence, possible representation by lawyer or lay representative, reasons given for decision
- potential outcome – an award which is enforceable
- possibility of appeal to an appeal tribunal and then to the courts on a point of law.

**Note:** for Sound A, at least five bullet points should be explained, supported where appropriate by example(s).

### Mark bands

- 8 – 10 The student demonstrates a sound understanding of (A).
- 5 – 7 The student demonstrates a clear understanding of (A).
- 3 – 4 The student demonstrates some understanding of (A).
- 1 – 2 The student demonstrates limited understanding of (A).
- 0 The answer contains no relevant information.

|          |          |   |
|----------|----------|---|
| <b>1</b> | <b>5</b> | Briefly discuss advantages <b>and</b> disadvantages of alternative dispute resolution.<br><b>[10 marks + 2 marks for AO3]</b> |
|----------|----------|---|

## REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

### Potential Content

(A) Brief discussion of advantages of alternative dispute resolution could include:

- speed in comparison with court-based resolution
- informality in comparison with court-based resolution
- control of process by parties
- expertise of decision makers, eg arbitrator or tribunal panel
- limited need for legal representation
- effect of award is usually legally enforceable
- cost compared to court
- privacy
- statutory regulation to limit court intervention.
- maintaining of relationships

(B) Brief discussion of disadvantages of alternative dispute resolution could include:

- lack of state funding and therefore representation – particularly in tribunals
- possible imbalance between parties because of lack of funding for individuals
- availability and success of process dependent on agreement – especially for mediation and negotiation
- cost/availability of specialists – especially for arbitrator and mediator
- limited appeal rights
- some forms of ADR not appropriate where complex points of law are involved.
- not being bound by precedent therefore impossibility of predicting outcome - particularly in arbitration and negotiation.

**Note:** for Sound A or B, at least two bullet points should be briefly discussed.

### Mark Bands

8 – 10 The student deals with (A) and (B) as follows:

**max 10:** two sound

**max 9:** one sound, one clear

**max 8:** one sound, one some **or** two clear

5 – 7 The student deals with (A) and (B) as follows:

**max 7:** one sound **or** one clear, one some

**max 5:** one clear **or** two some

3 – 4 The student demonstrates some understanding of (A) or (B), or limited understanding of (A) and (B).

- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

**AO3**

|                |  |
|----------------|--|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>  |



**Topic: The Criminal Courts and lay people**

|            |   |                   |
|------------|---|-------------------|
| <b>1 6</b> | Describe how jurors qualify <b>and</b> are selected for jury service. | <b>[10 marks]</b> |
|------------|---|-------------------|

**Potential Content**

(A) Description of jury qualification **and** selection

Qualification - age limits, being on electoral register, residence.

Reasons for not qualifying - disqualification, deferral, other good reason for not serving, discharge, e. g. knowing parties in case, being a victim of a similar crime

Selection - initial (random) selection by JCSB, further selections in jury waiting room and in court room, swearing in, vetting, challenges

**Note:** for Sound (A), all three elements (qualification, not qualifying and selection) to be described.

**Mark Bands**

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|          |          |  |                   |
|----------|----------|--|-------------------|
| <b>1</b> | <b>7</b> | Explain the work of lay magistrates in criminal cases. | <b>[10 marks]</b> |
|----------|----------|--|-------------------|

### Potential Content

(A) Explanation of work of lay magistrates in a criminal case could include:

- deciding initial bail/custody issues (grant/extension of Legal Representation Certificates now administrative, not judicial + not done in court)
- at trial of summary or EWO – hearing evidence, deciding guilt/innocence, deciding sentence, advice of legal adviser
- sending cases to Crown Court for trial (indictable and EWO) or committal for sentence (EWO guilty pleas only) – **new process**
- sitting on appeals at Crown Court, issuing search or arrest warrants and extensions of custody, specialist panel for Youth Court.

**Note:** for Sound (A), at least three bullet points to be explained.

### Mark Bands

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|            |   |
|------------|---|
| <b>1 8</b> | Discuss advantages of using lay persons (juries <b>and</b> lay magistrates) in the criminal courts. |
|------------|---|

**[10 marks + 2 marks for AO3]**

## REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

### Potential Content

(A) Discussion of advantages could include:

- trial by peers
- open justice
- public confidence in the use of lay persons
- fairness of using lay persons
- the limited number of appeals from decisions of lay magistrates or the decisions of juries (as opposed to judge's directions)
- cost compared to using professionals
- the reduction of professional involvement in decision making
- local knowledge
- shared decision making.

**Note:** for Sound A, at least three bullet points should be discussed **and** both juries **and** lay magistrates must be referred to. Answers which deal with only magistrates or juries or which fail to distinguish between magistrates and juries – max 7.

### Mark Bands

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

**AO3**

|                |   |
|----------------|---|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"><li>• clear expression of ideas</li><li>• a good range of specialist terms</li><li>• few errors in grammar, punctuation and spelling</li><li>• errors do not detract from the clarity of the material.</li></ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>  |

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**Topic: The Legal Profession and other sources of advice, and funding**

|          |          |                                  |                   |
|----------|----------|----------------------------------|-------------------|
| <b>1</b> | <b>9</b> | Describe the work of barristers. | <b>[10 marks]</b> |
|----------|----------|----------------------------------|-------------------|

**Potential Content****(A) Out of court**

- giving specialist advice to solicitors and clients
- drafting contracts and specialist documents
- advising solicitors and clients, in conference, on merits of case or possible appeal.

**In court**

- advocacy – rights of audience in all courts, paid either privately via no win no fee arrangements or, in mostly criminal cases, by Legal Representation.

**Working arrangements**

- tend to specialise in limited areas of law
- by referral through solicitors especially in criminal litigation; Bar Direct does allow direct access in certain areas.
- Self-employed, working from chambers, though some barristers are employed by firms of solicitors or in legal departments of companies, local authorities, government departments or agencies, e.g. CPS.

**Note:** for Sound A, at least **two** of the three areas (out of court/in court/working arrangements) should be described.

**Mark Bands**

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|          |          |   |                   |
|----------|----------|---|-------------------|
| <b>2</b> | <b>0</b> | Sarah is charged with a serious criminal offence. Briefly explain where she can obtain legal advice and representation <b>and</b> outline how such advice and representation can be paid for. | <b>[10 marks]</b> |
|----------|----------|---|-------------------|

### Potential Content

(A) Brief explanation of where Sarah can get legal advice and representation:

- 24-hour duty solicitor at police station
- duty solicitor at Magistrates Court (first appearance only)
- representation at Magistrates and Crown Courts by solicitor (solicitor advocate) or solicitor and barrister
- find own lawyer – by recommendation, previous use, contact by telephone, internet.

An outline of how legal advice and representation could be paid for could include:

- private finance
- free 24-hour duty solicitor scheme at police station
- free duty solicitor at Magistrates Court (subject to limits of types of case)
- Legal Representation Order for Magistrates and Crown Court hearings; qualifying tests (means and interests of justice)

**Note:** for Sound A, at least four bulleted points to be briefly explained/outlined with at least one from each aspect (advice and payment)

### Mark Bands

- |        |  |
|--------|--|
| 8 – 10 | The student demonstrates a sound understanding of (A). |
| 5 – 7  | The student demonstrates a clear understanding of (A). |
| 3 – 4  | The student demonstrates some understanding of (A).    |
| 1 – 2  | The student demonstrates limited understanding of (A). |
| 0      | The answer contains no relevant information.           |

|          |          |   |                                     |
|----------|----------|---|-------------------------------------|
| <b>2</b> | <b>1</b> | Discuss disadvantages of the methods of obtaining advice <b>and</b> representation in criminal cases. | <b>[10 marks + 2 marks for AO3]</b> |
|----------|----------|---|-------------------------------------|

## REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

### Potential Content

(A) Discussion of disadvantages related to obtaining advice could include:

- in theory 24 hour/7 day a week cover, in practice cover is patchy
- advice may be by telephone only
- quality issues relating to advice given at police station
- high costs associated with private funding.

Discussion of disadvantages related to representation funding could include:

- limitations on duty solicitors in Magistrates Court (first appearance only, does not extend to minor motoring and non-imprisonable offences)
- financial constraints on Criminal Legal Representation orders, eg low financial limits, family rather than just accused's income assessed, high financial contributions, narrow tests for interests of justice (assessed on money rather than justice)
- high costs of private funding (dual fees – both solicitors and barristers).

**Note:** for Sound A, at least three bullet points should be discussed and both advice and funding must be referred to.

### Mark Bands

- |        |  |
|--------|--|
| 8 – 10 | The student demonstrates a sound understanding of (A). |
| 5 – 7  | The student demonstrates a clear understanding of (A). |
| 3 – 4  | The student demonstrates some understanding of (A).    |
| 1 – 2  | The student demonstrates limited understanding of (A). |
| 0      | The answer contains no relevant information.           |

**AO3**

|                |   |
|----------------|---|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"><li>• clear expression of ideas</li><li>• a good range of specialist terms</li><li>• few errors in grammar, punctuation and spelling</li><li>• errors do not detract from the clarity of the material.</li></ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"><li>• reasonable expression of ideas</li><li>• the use of some specialist terms</li><li>• errors of grammar, punctuation and spelling</li><li>• errors detract from the clarity of the material.</li></ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"><li>• poor expression of ideas</li><li>• limited use of specialist terms</li><li>• errors and poor grammar, punctuation and spelling</li><li>• errors obscure the clarity of the material.</li></ul>  |



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**Topic: The Judiciary**

|          |          |  |                   |
|----------|----------|--|-------------------|
| <b>2</b> | <b>2</b> | Describe how judges are selected <b>and</b> appointed for judicial office. | <b>[10 marks]</b> |
|----------|----------|--|-------------------|

**Potential Content**

(A) Description of selection and appointment of judges

- Selection – eligibility, advertisements for posts, making an application, pre-appointment testing, Judicial Appointments Commission (JAC) consider applications; possibility of promotion
- Appointment - for inferior judges, appointment by Minister of Justice and Lord Chancellor after recommendation by JAC; for superior judges, appointment by Queen, after recommendation by JAC.

**Note:** for Sound (A), both selection and appointment to be described.

**Mark Bands**

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|            |   |                   |
|------------|---|-------------------|
| <b>2 3</b> | Describe the work of a judge in a Crown Court criminal trial. | <b>[10 marks]</b> |
|------------|---|-------------------|

**Potential Content**

(A) Description of the work of a judge in a Crown Court criminal trial:

- dealing with pre-trial hearings, eg plea, directions, venue, questions of bail/custody
- running trial, eg overseeing swearing in of jury, keeping order, ruling on questions of law, keeping note of the evidence given
- jury matters, eg directing jury on law and evidence, directing the jury on burden and standard of proof, answering questions from the jury during deliberation, decision on accepting unanimous/majority verdict
- passing sentence following guilty verdict or guilty plea.

**Note:** for Sound A, at least three of the above points to be described.

**Mark Bands**

- 8 – 10      The student demonstrates a sound understanding of (A).
- 5 – 7      The student demonstrates a clear understanding of (A).
- 3 – 4      The student demonstrates some understanding of (A).
- 1 – 2      The student demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

|          |          |  |                                     |
|----------|----------|--|-------------------------------------|
| <b>2</b> | <b>4</b> | Discuss why there is a principle of judicial independence. | <b>[10 marks + 2 marks for AO3]</b> |
|----------|----------|--|-------------------------------------|

## REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

### Potential Content

- (A) Discussion of why there is a principle of judicial independence could include:
- the theory of separation of powers and democratic implications of that theory
  - avoiding judges being influenced by either executive or legislature
  - public confidence in the judiciary
  - judges uphold the Rule of Law
  - decision making will be free of pressure from parties to the case/outside influences
  - the ability of judges to hear and decide judicial review matters and cases involving the Government.

**Note:** for Sound A, at least three bullet points should be discussed, supported by case examples, where appropriate.

### Mark bands

8 – 10 The student demonstrates a sound understanding of (A).

5 – 7 The student demonstrates a clear understanding of (A).

3 – 4 The student demonstrates some understanding of (A).

1 – 2 The student demonstrates limited understanding of (A).

0 The answer contains no relevant information.

### AO3

|                |  |
|----------------|--|
| <b>2 marks</b> | The work is characterised by some or all of the following: <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul> |
| <b>1 mark</b>  | The work is characterised by: <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>                                    |
| <b>0 marks</b> | The work is characterised by: <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>  |

**ASSESSMENT GRID - A Level Law (LAW01)**  
(To show the allocation of marks to Assessment Objectives)

|   | <b>AO1</b> | <b>AO2</b> | <b>AO3</b> |
|---|------------|------------|------------|
| <b>Topic: Parliamentary Law Making</b>                                      |            |            |            |
| Question 01   | 10         |            |            |
| Question 02   | 10         |            |            |
| Question 03   |            | 10         | 2          |
| <b>Topic: Delegated Legislation</b>   |            |            |            |
| Question 04   | 10         |            |            |
| Question 05   | 10         |            |            |
| Question 06   |            | 10         | 2          |
| <b>Topic: Statutory Interpretation</b>                                      |            |            |            |
| Question 07   | 10         |            |            |
| Question 08   | 10         |            |            |
| Question 09   |            | 10         | 2          |
| <b>Topic: Judicial Precedent</b>  |            |            |            |
| Question 10   | 10         |            |            |
| Question 11   | 10         |            |            |
| Question 12   |            | 10         | 2          |
| <b>Topic: The Civil Courts and other forms of dispute resolution</b>        |            |            |            |
| Question 13   | 10         |            |            |
| Question 14   | 10         |            |            |
| Question 15   |            | 10         | 2          |
| <b>Topic: The Criminal Courts and lay People</b>                            |            |            |            |
| Question 16   | 10         |            |            |
| Question 17   | 10         |            |            |
| Question 18   |            | 10         | 2          |
| <b>Topic: The Legal Profession and other sources of advice, and funding</b> |            |            |            |
| Question 19   | 10         |            |            |
| Question 20   | 10         |            |            |
| Question 21   |            | 10         | 2          |
| <b>Topic: The Judiciary</b>   |            |            |            |
| Question 22   | 10         |            |            |
| Question 23   | 10         |            |            |
| Question 24   |            | 10         | 2          |