

Mark Scheme for June 2012

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It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

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

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

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.












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Any enquiries about publications should be addressed to:

OCR Publications
PO Box 5050
Annesley
NOTTINGHAM
NG15 0DL

Telephone: 0870 770 6622
Facsimile: 01223 552610
E-mail: publications@ocr.org.uk

Annotations used in the detailed Mark Scheme (to include abbreviations and subject-specific conventions)

Annotation	Meaning
	Not irrelevant or seen
	Repetition
	Vague
	Point
	Developed point
	Expansion of developed point ('well developed point')
	Link to the source
	level 1
	level 2
	level 3
	level 4
X	Not correct
K	Question 1(a)* - definition of <i>stare decisis</i>
C	Question 1(c)(i) - see mark scheme

Awarding Assessment Objective 3

AO3 marks are awarded based on the marks achieved for either AO1 or AO2. You must refer to each question's mark scheme for details of how to calculate the AO3 mark.

Question	Answer	Marks	Guidance										
1 (a)*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> • Describe what <i>stare decisis</i> is – to stand by what has previously been decided • Describe that <i>stare decisis</i> requires law reporting to operate effectively • Describe how <i>stare decisis</i> is the principle that underlines the operation of the doctrine of binding precedent • Describe how <i>stare decisis</i> operates through the court hierarchy • Describe the importance of the <i>ratio decidendi</i> and <i>obiter dicta</i> to the concept of <i>stare decisis</i> • Describe binding, original and/or persuasive precedent (<i>Re: S, Hunter v Canary Wharf, R v Howe</i>) • Describe how judges can avoid <i>stare decisis</i> – reversing (<i>Sweet v Parsley</i>), overruling (<i>R v Shivpuri & Anderton v Ryan</i>), distinguishing (<i>Balfour v Balfour & Merritt v Merritt</i>) and <i>per incuriam</i> (<i>Rickards v Rickards</i>) • Describe exceptions to the rules of <i>stare decisis</i> – the UKSC and the Practice Statement; the Court of Appeal and <i>Youngs v Bristol Aeroplane</i>; <i>per incuriam</i> (<i>Williams v Fawcett (1985)</i>) • Use cases to illustrate the use of <i>stare decisis</i> (<i>Donoghue v Stevenson, Re A, Carlill v Carbolic Smoke Ball</i>) • Credit reference to the Sources • Credit any other relevant point. 	12	<table border="1" data-bbox="1400 284 1792 459"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a good description, a link to the source (LNK), definition and case(s).</p> <p>Responses will be unlikely to achieve level three without an adequate description. If no cases used then top level three only.</p> <p>Responses will be unlikely to achieve level two without a limited description.</p> <p>Responses will be unlikely to achieve level one without basic point or points.</p> <p>The use of a diagram can be credited.</p>	AO1 Level	AO1 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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Question	Answer	Marks	Guidance												
(b)	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>(i) Recognise that the Court of Appeal is not bound (CP). Explain why – that the divisions do not bind each other. Recognise that the Court of Appeal (Criminal) is only persuaded by the Court of Appeal (Civil) and it has the choice whether to follow their decision (eg <i>Re A, R v Spencer</i>).</p> <p>(ii) Recognise that the Court of Appeal is bound by the decisions of the Supreme Court (House of Lords) (CP). Explain why – because the Court of Appeal is below the House of Lords in the hierarchy. Explain the possibility of distinguishing or that the Court of Appeal can refuse to follow the House of Lords in a limited number of circumstances (eg <i>R v James & Karimi</i>) or that it may follow a later decision of the ECHR/ECJ which overrules the HL decision (<i>Re Medicaments</i>).</p> <p>(iii) Recognise that the Court of Appeal is bound (CP). Explain why – that due to <i>stare decisis</i> the Court of Appeal is bound by its own previous decision. The Court of Appeal can exercise the <i>Young's</i> criteria. In this situation the only relevant exception is where there is a conflict with its own decision and the Supreme Court it must follow the Supreme Court's decision (<i>Miliangos; Williams v Fawcett</i>) OR Recognise that the Court of Appeal is bound (CP). Explain why – that due to <i>stare decisis</i> the Court of Appeal is bound because it is lower in the hierarchy. Recognise possibility of using distinguishing.</p>	5	<table border="1" data-bbox="1400 247 1792 459"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td colspan="2">For each part i, ii, iii</td> </tr> <tr> <td>4</td> <td>5</td> </tr> <tr> <td>3</td> <td>4</td> </tr> <tr> <td>2</td> <td>3</td> </tr> <tr> <td>1</td> <td>1–2</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without critical point (bound or not bound) plus why plus one other element eg case or LNK etc.</p> <p>Responses will be unlikely to achieve level three without critical point (bound or not bound) and why.</p> <p>Responses will be unlikely to achieve level two without critical point (bound or not bound).</p> <p>Responses will be unlikely to achieve level one without any basic point(s).</p>	AO2 Level	AO2 Marks	For each part i, ii, iii		4	5	3	4	2	3	1	1–2
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(c) (i)	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> • Describe how the Court of Appeal is bound by its own past decisions • Describe the importance of <i>Young v Bristol Aeroplane (1944)</i> • Describe the three exceptions in <i>Young v Bristol Aeroplane</i> – if a previous decision conflicts with the House of Lords’ decision the House of Lords’ decision must be followed; if there are two conflicting decisions they can choose between them as in <i>Starmark Enterprises v CPL Enterprises (2001)</i>; if the decision is made <i>per incuriam</i> as in <i>Williams v Fawcett (1985)</i> • Describe how the Court of Appeal (Criminal Division) has additional flexibility eg <i>R v Gould (1969)</i>, <i>R v Rowe (2007)</i> • Describe how the Court of Appeal (Civil Division) does not bind the Court of Appeal (Criminal) and <i>vice versa</i> they merely persuade <i>Re A</i> • CoA has power to hear appeals from lower courts • CoA has power to consider referrals from the Attorney General on points of law • CoA has power to consider referrals from the Attorney General on unduly lenient sentences • Describe the power of the Court of Appeal which allows it to ignore a House of Lords (Supreme Court) decision when that decision has been overruled by the ECJ (<i>Sharp v Caledonia Group Services Ltd [2005] All ER (D) 09</i>) and credit both views on a conflict between a binding decision of the UKSC and the ECHR: does bind = <i>Re: Medicaments (2001)</i> does not bind = <i>Kay v Lambeth LBC [2006]</i>; <i>Leeds City Council v Price [2006]</i> • Credit reference to distinguishing (<i>Balfour & Merritt</i>) • Credit reference to the Sources • Credit any other relevant point. 	15	<table border="1" data-bbox="1402 248 1794 427"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>13–15</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a good description. Candidates will only be able to reach level four if at least one case is used as illustration. NO LNK needed.</p> <p>Responses will be unlikely to achieve level three without an adequate description.</p> <p>Responses will be unlikely to achieve level two without a limited description.</p> <p>Responses will be unlikely to achieve level one without basic point or points.</p> <p>Credit will be limited for description of powers that are not peculiar to the Court of Appeal such as FORD, BOP and <i>per incuriam</i></p>	AO1 Level	AO1 Marks	4	13–15	3	9–12	2	5–8	1	1–4
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(ii)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>A discussion of the following reasons in favour:</p> <ul style="list-style-type: none"> • Practically it is the final appeal court for most cases as very few cases reach the Supreme Court (House of Lords) • It deals with the vast majority of appeals • It will stop unnecessary appeal to the Supreme Court (House of Lords) • It would improve the flexibility of the doctrine of precedent • It will allow justice more quickly. <p>A discussion of the following reasons against:</p> <ul style="list-style-type: none"> • There could be a reluctance to use the power similar to the Supreme Court (House of Lords) • It reduces certainty and predictability. This is due to there being two conflicting decisions for the lower courts to choose from. Not only would this be difficult for the lower court it makes legal advice difficult • It undermines the power and role of the Supreme Court (House of Lords) • It could cause the system of precedent to break down • It could cause increased appeals • Credit reference to the Sources. <p>Credit any other relevant point.</p>	12	<table border="1" data-bbox="1400 247 1792 422"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without four or more developed points one of which must be well developed. Cannot be one – sided (i.e. must consider both sides of the argument at bottom level four) and must have balance for top level four.</p> <p>Responses will be unlikely to achieve top of level three without four or more developed points or two well developed points. Three or more developed points for the bottom of level three. (Can be one– sided).</p> <p>Responses will be unlikely to achieve top of level two without two developed points or one well developed point or a range of limited points.</p> <p>Responses will be unlikely to achieve level one without basic point's advantages and/or disadvantages.</p>	AO2 Level	AO2 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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2	(a)*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Describe the role of the Law Commission:</p> <p>Identify legislation relevant to the Law Commission’s role: the Law Commission Act 1965 and the Law Commission Act 2009 What they do:</p> <ul style="list-style-type: none"> • To systematically keep all English law under review • To receive and consider proposals for law reform and consult relevant parties; • To put forward proposals for reform; • Repeal – to remove out of date statutes (the Statute Law (Repeals) Act 1998 repealed over 150 complete Acts of Parliament, which were outdated) • Consolidation – to draw all the existing provisions together in one Act where it is currently found in a number of smaller provisions (Family Law Act 1996) • Codification – bringing together all the law on one topic into one source. • The draft Criminal Code 1985 and the full Code 1989 were an attempt to codify all criminal law. <p>Describe the composition of the Law Commission:</p> <ul style="list-style-type: none"> • There are five full-time Commissioners • The Chairman is either a High Court or an Appeal Court judge appointed for up to three years • The other four Commissioners are experienced judges, barristers, solicitors or teachers of law • They are appointed by the Lord Chancellor and Secretary of State for Justice for up to five years 	12	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a good description of both the role and composition of the Law Commission. Must include some reference to both what they do and how they do it for top L4. Plus link to source (LNK).</p> <p>Responses will be unlikely to achieve level three without an adequate description.</p> <p>Responses will be unlikely to achieve level two without a limited description.</p> <p>Responses will be unlikely to achieve level one without basic point or points.</p>	AO1 Level	AO1 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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	<ul style="list-style-type: none"> • The Commissioners are supported by a Chief Executive and about 20 members of the Government Legal Service, two Parliamentary Counsel (who draft the Bills to reform and consolidate the law), and a number of research assistants. <p>How they do it:</p> <ul style="list-style-type: none"> • Referral: topics may be referred by the Lord Chancellor on behalf of the Government, or it may itself select areas in need of reform • Research: LC researches the area of law in need of reform and publishes a consultation paper seeking views on possible reform • Consultation: a consultation paper will describe the current law, set out the problems and look at options for reform • Proposals for reform: these will be presented in a report which will also set out the research that led to the conclusions. There will often be a draft Bill attached to the report. <p>Describe any relevant success of the Law Commission – the <i>Occupier's Liability Acts 1984</i>, the <i>Land Registration Act 2002</i>, the <i>Fraud Act 2006</i> and the <i>Corporate Manslaughter and Corporate Homicide Act 2007</i> are all seen as successes.</p> <p>Credit any other relevant point.</p>										
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(b)	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>(i) Identify a local authority as the most appropriate body (CP). This is because a local authority like the local Council has been given authority through Parent Acts such as the Local Government (Miscellaneous Provisions) Act 1982. An example of the kind of power dealt with in this way is control of local highways, licensing of various establishments and administration of local educational provision. This will be done through a bylaw. Credit reference to the Source.</p> <p>(ii) Identify a Government Minister is the most appropriate person (CP). This is because Government Ministers introduce regulations. An example is the Home Secretary who has the power to alter police powers. This will be done through a statutory instrument. Credit reference to the Source.</p> <p>(iii) Identify the Queen and Privy Council as the most appropriate body (CP). This is because they are responsible for producing emergency legislation under the Emergency Powers Act 1920. This will be done by an Order in Council. Credit reference to the Source.</p>	5	<table border="1" data-bbox="1400 247 1792 459"> <thead> <tr> <th data-bbox="1400 247 1594 284">AO2 Level</th> <th data-bbox="1594 247 1792 284">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td colspan="2" data-bbox="1400 284 1792 320">For each part i, ii, iii</td> </tr> <tr> <td data-bbox="1400 320 1594 357">4</td> <td data-bbox="1594 320 1792 357">5</td> </tr> <tr> <td data-bbox="1400 357 1594 394">3</td> <td data-bbox="1594 357 1792 394">4</td> </tr> <tr> <td data-bbox="1400 394 1594 430">2</td> <td data-bbox="1594 394 1792 430">3</td> </tr> <tr> <td data-bbox="1400 430 1594 459">1</td> <td data-bbox="1594 430 1792 459">1–2</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without critical point plus other element eg why and one type or link to source (LNK) etc.</p> <p>Responses will be unlikely to achieve level three without critical point and why.</p> <p>Responses will be unlikely to achieve level two without critical point.</p> <p>Responses will be unlikely to achieve level one without basic relevant point(s).</p>	AO2 Level	AO2 Marks	For each part i, ii, iii		4	5	3	4	2	3	1	1–2
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	(c) (i)	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> Describe the limitations in the Enabling Act: revocation, limitation or extension, consultation and publication Describe the powers of the Scrutiny Committees: Lords Select Committees (eg Merits of Statutory Instruments Committee) and the Joint Committee on Statutory Instruments Describe affirmative, negative and super affirmative resolutions Describe the doctrine of ultra vires and the process of judicial review Describe substantive (<i>Fire Brigades Union, Welfare of Immigrants</i>), substantive for unreasonableness (<i>Wednesbury</i>) and procedural <i>ultra vires</i> (<i>Aylesbury Mushroom</i>) Describe possible role of Human Right Act 1998 Credit reference to the Source material Credit any other relevant point. 	15	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>13–15</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a good description. Must include both judicial and parliamentary controls.</p> <p>Responses will be unlikely to achieve level three without an adequate description of controls.</p> <p>Responses will be unlikely to achieve level two without a limited description.</p> <p>Responses will be unlikely to achieve level one without basic point or points.</p>	AO1 Level	AO1 Marks	4	13–15	3	9–12	2	5–8	1	1–4
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(ii)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> • Discuss the fact that Parliament has the ultimate form of control (revocation) but that many parliamentary controls are limited • Discuss how Parliamentary controls are subject to the parameters set out in the Enabling Act • Recognise that, under affirmative resolution procedures, Parliament can only approve, annul or withdraw • Discuss the fact that the resolution procedures rarely lead to delegated legislation being rejected • Discuss the fact that the Scrutiny Committees have no power to alter statutory instruments, they may only refer SIs back to Parliament on certain technical matters • Explain that judicial review relies on an individual starting a claim. This can be affected by a lack of awareness • Discuss the fact that the potential for <i>ultra vires</i> is limited due to the breadth of most enabling acts giving ministers wide discretion • Discuss that most judicial review does not attract legal aid funding and is therefore not accessible to those with modest means • Discuss that judicial review has strict and limiting requirements in terms of establishing <i>locus standii</i> - can ignore references to individuals and <i>locus standii</i> • Credit reference to the Source • Credit any other relevant point. 	12	<table border="1" data-bbox="1402 248 1794 427"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without four or more developed points one of which must be well developed. Cannot be one-sided (i.e. must consider both Parliament and the Courts)</p> <p>Responses will be unlikely to achieve top of level three without four or more developed points or two well developed points. Three or more developed points for the bottom of level three. (Can be one-sided).</p> <p>Responses will be unlikely to achieve top of level two without two developed points or one well developed point or a range of limited points.</p> <p>Responses will be unlikely to achieve level one without any basic point(s).</p>	AO2 Level	AO2 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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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. Similarly, there are **three** levels of assessment of AO3 in the AS units.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

OCR (Oxford Cambridge and RSA Examinations)
1 Hills Road
Cambridge
CB1 2EU

OCR Customer Contact Centre

Education and Learning

Telephone: 01223 553998

Facsimile: 01223 552627

Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

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OCR (Oxford Cambridge and RSA Examinations)
Head office
Telephone: 01223 552552
Facsimile: 01223 552553

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