

Mark Scheme for January 2013

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















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

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

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

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Annotations

Annotation	Meaning
	correct (does not equate to a mark)
highlight 	incorrect
	not relevant/not linked to question
	sort of
	better than/advantage
	less than/disadvantage
	repetition
	Seen but not creditable or page checked
	point
	developed point
	well developed point
	very well developed point
	applied point
	not answering question

Subject-specific Marking Instructions

Before you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria *₁ (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column*₂
- question specific guidance given in 'Guidance' column*₃
- the 'practice' scripts*₄ provided in Scoris and accompanying comment (where provided)

- *₁ The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- *₂ The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.
- *₃ Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.
- *₄ The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

Awarding Assessment Objectives 1 and 2

To award the level for the AO1 or AO2 (some questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided below, with the key point being that you start at the **middle*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, should receive no marks.

For answers marked by levels of response:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

Awarding Assessment Objective 3

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

Rubric

What to do for the questions the candidate has not answered?

The rubric for G151 instructs candidates to answer **four** questions (both parts) from either:

- 2 x Section A + 2 x Section B
- 3 x Section A + 1 x Section B

For the questions the candidate has not answered you should record NR (no response) in the mark column on the right-hand side of the screen. Do **not** record a 0.


What to do for the candidate who has not complied with the rubric either by answering more than four questions or by answering more or less Section A or B questions than is permitted? *This is a very rare occurrence but must be picked up to ensure the candidate is not unfairly advantaged or disadvantaged.*

Mark all questions the candidate has answered. Then work out the combination of questions which gives them the highest mark whilst conforming to the rubric. Do **not** 'violate' the rubric and do **not** submit the script. Send your supervisor the script number and combination of questions you are proposing for the script to give it the highest mark which conforms to the rubric. Your supervisor will then view the script in your 'Open' items and will check and confirm the correct combination for this candidate.

Once your team leader has confirmed the correct combination you will need to amend the marks on the script to ensure the candidate receives the correct overall mark. To do this reopen the script and for the response(s) which are not included in the correct combination change the marks to NR (no response). Do **not** remove the annotations – the annotations will demonstrate that the response(s) has been marked but is not included in the correct combination.






Once you have submitted this script, contact your supervisor. Your supervisor will then double check in your closed items that you have correctly processed this script.

Blank pages and missed answers


Sometimes candidates will skip a few pages in their answer booklet and then continue their answer. To be sure you have not missed any candidate response before you submit each script you must review the whole script and check every page of the script and annotate any blank pages with: 


You must also check any additional items eg A, A1 etc. This will demonstrate that every page of a script has been checked.


For part (a) of questions only AO1 marks are available so credit cannot be given for any AO2 points. Any AO2 points should be marked as irrelevant. The main discriminator between the levels will be the level of detail and the level of understanding demonstrated in the answer.



Section A part (b) of questions require discussion. Each point should be annotated as  for point,  for developed point and  for a well developed point. Occasionally an argument will be worthy of a   (very well developed point). It is important to ensure that the discussion is based on the question asked.

Marks should be awarded on a points basis

 = 1 mark

 = 2 marks

 = 3 marks

  = 4 marks

However if there are only simple points **P** no matter how many points are made, a maximum of top Level 2 (5) for AO2 can be awarded as if there is no development the answer does not meet the descriptor for Level 3.

If there are only developed points **DEV** and no well developed points **WDEV** only top Level 3 marks (7) can be awarded for AO2 as such an answer would not meet the criteria for Level 4.

Section B part (b) of questions are marked differently as these questions require application. Identification of a relevant point should be awarded a P for a point if it is not then applied to the situation and an applied point should be awarded if a point is applied to the situation given. Points and applied points should be annotated with

Point **P** = 1 mark

Applied point **APP** = 2 marks

If there is no application but relevant points have been identified only top Level 2 marks can be awarded as the criteria for Level 3 will not have been met. There will always be more possible marks in a question than the maximum 9 for AO2 but obviously 9 marks is the maximum which can be awarded.

Part b* questions

AO2 marks should be awarded as follows:

Level 1 1–3

Level 2 4–5

Level 3 6–7

Level 4 8–9

AO3 marks should be added according to the following rule:

AO2 marks 1–3 add 1 AO3 mark

4–6 add 2 AO3 marks



7–9 add 3 AO3 marks

Question		Answer	Marks	Guidance										
1	(a)	<p>Possible answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Describe the three categories of offences with examples and indicate in which court each category will normally be heard:</p> <ul style="list-style-type: none"> • Summary offences – less serious offences always tried in the Magistrates’ Court eg driving offences and common assault • Triable either way offences – middle range offences which can vary in the degree of harm caused. Can be tried either in the Magistrates’ Court or in the Crown Court eg theft and assault occasioning actual bodily harm • Indictable offences – more serious crimes which must be tried in the Crown Court eg murder, manslaughter and rape. <p>Describe the process of deciding which court a triable either way offence will be heard in:</p> <ul style="list-style-type: none"> • Plea before venue – the defendant is asked whether he pleads guilty or not guilty to the offence. If guilty the case is automatically heard by the Magistrates’ Court but they retain the option of sending the defendant to the Crown Court if necessary for sentencing • If the defendant pleads not guilty a mode of trial procedure must take place to decide on the most appropriate court to try the case • The magistrates first consider whether they think the case is suitable for trial in the Magistrates’ Court. If they feel it is not they will transfer it to the Crown Court for trial • If the magistrates feel prepared to accept jurisdiction of the case the defendant is given the choice of which court he wishes to be tried in. 	18	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>15–18</td> </tr> <tr> <td>3</td> <td>11–14</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>A level 4 response will require a detailed description of the categories and procedure</p> <p>If only the categories of offences are covered it is not possible to award more than level 2 (9 marks). For each of the three categories award a mark for the name of the category, a mark for the correct court or courts and a mark for a correct example of an offence which would fall in that category. Incorrect examples cancel out correct examples.</p> <p><i>The number of ticks in a response do not necessarily equate to the number of marks awarded. The levels of assessment grid and guidance given within this mark scheme should be used when awarding levels and marks.</i></p>	AO1 Level	AO1 Marks	4	15–18	3	11–14	2	6–10	1	1–5
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Question	Answer	Marks	Guidance										
(b)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss the advantages of being tried in the Magistrates’ Court:</p> <ul style="list-style-type: none"> • Restricted penalties max fine £5,000, max prison – 6 months or 12 months for two or more TEW offences • Speed – most cases dealt with in less than one day • Less publicity - less serious crimes, journalists tend to spend time at Crown Court • Court procedure less daunting than Crown Court – less formal – solicitors used, no jury. <p>Discuss the disadvantages of being tried in the Magistrates’ Court:</p> <ul style="list-style-type: none"> • Higher conviction rate as magistrates less likely to acquit – 60% acquittal rate in Crown Court • Limited legal funding available – less likely to get legal funding so may need to represent themselves. • The benefits of using the magistrates for TEW matters may be lost when at the end the magistrates decide they lack sentencing powers and send the matter to the Crown Court for sentencing. 	9	<table border="1" data-bbox="1388 244 1765 424"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>8–9</td> </tr> <tr> <td>3</td> <td>6–7</td> </tr> <tr> <td>2</td> <td>4–5</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>A level 4 response will require at least one well developed point illustrating a real ability to discuss the advantages and disadvantages of being tried in the Magistrates’ Court. Candidates are unable to achieve level 4 without a discussion of both advantages and disadvantages</p> <p>If there are only developed points and no well developed points maximum top level 3 can be awarded</p> <p>A series of points with no real development maximum top level 2 can be awarded</p>	AO2 Level	AO2 Marks	4	8–9	3	6–7	2	4–5	1	1–3
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	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.</p>	3	<table border="1" data-bbox="1388 1038 1765 1182"> <thead> <tr> <th>AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>7–9</td> <td>3</td> </tr> <tr> <td>4–6</td> <td>2</td> </tr> <tr> <td>1–3</td> <td>1</td> </tr> </tbody> </table>	AO2 marks	AO3 mark	7–9	3	4–6	2	1–3	1		
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Question		Answer	Marks	Guidance										
2	(a)	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Demonstrate knowledge of the work and organisation of barristers:</p> <p>Organisation:</p> <ul style="list-style-type: none"> Controlled by the General Council of the Bar Regulated by the Bar Standards Board All barristers must be a member of one of the four Inns of Court Self-employed but usually work from a set of chambers with a clerk to organise the administration Some barristers are employed eg in the Crown Prosecution Service Organised by virtue of the Legal Services Act 2007; Legal Disciplinary Practices and Alternative Business Structures Usually work on instruction from a solicitor but there is direct access in civil cases <p>Work</p> <ul style="list-style-type: none"> Most will concentrate on advocacy Will also write opinions Give advice and Draft documents for use in court Some specialise in areas such as tax and rarely appear in court Can apply to become a Queen’s Counsel after ten years. <p>Demonstrate knowledge of the work and organisation of solicitors:</p> <p>Organisation:</p> <ul style="list-style-type: none"> Represented by the Law Society Regulated by Solicitors Regulation Authority Majority work in private practice in a solicitor’s firm as a partner or an assistant solicitor May be employed in local government or by the Crown Prosecution Service Organised by virtue of the Legal Services Act 2007; Legal Disciplinary Practices and Alternative Business Structure 	18	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>15–18</td> </tr> <tr> <td>3</td> <td>11–14</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Credit should be given for consideration of any other relevant comment(s)</p> <p>Candidates will be unable to achieve level 4 marks without describing the work and organisation of both solicitors and barristers</p> <p>If only work and organisation of barristers or solicitors is described maximum top level 2/ bottom level 3 can be awarded. An answer on only half the question would have to be very detailed to merit bottom level 3 marks</p> <p><i>The number of ticks in a response do not necessarily equate to the number of marks awarded. The levels of assessment grid and guidance given within this mark scheme should be used when awarding levels and marks.</i></p>	AO1 Level	AO1 Marks	4	15–18	3	11–14	2	6–10	1	1–5
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Question	Answer	Marks	Guidance
	<p>Work:</p> <ul style="list-style-type: none"> • Meeting with clients and taking instructions and offering advice; • Drafting legal documents; • Conveyancing which is the transfer of legal title of property from one person to another, for example, buying or selling a residential property; • Wills and probate – dealing with the estate of a deceased person; • Matrimonial and family matters, for example, divorce and child custody; • Negligence, for example, personal injury claims; • Negotiating on behalf of their clients; • Advocacy – all solicitors have rights of audience in the lower courts. Under the Solicitors' Higher Rights of Audience Regulations 2010 a solicitor, once admitted to the Roll, can apply for the higher courts qualification <p>Credit mention of the cab rank rule but it is not required for full marks.</p>		

Question	Answer	Marks	Guidance										
(b)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> Courts and Legal Services Act 1990 allowed solicitor in private practice to apply for Certificate of Advocacy enabling solicitors to appear in the higher courts. This allows solicitors to represent a client from start to finish and removes the need to instruct a barrister – only one lawyer required. It also reduces costs. Only a few solicitors have this certificate but numbers are increasing Barristers now have Direct Access. This allows clients in civil cases to have direct access to barristers which removes the need for a client to go through a solicitor. Direct Access allows a barrister to represent a client from start to finish removing the need to be instructed by a solicitor – only one lawyer required. It also reduces costs. There are however some limitations on this, for example, not available for criminal cases The different vocational courses demonstrate that training is still separate however, the rights of audience practicing certificate is now incorporated in solicitor’s training resulting in the vocational training preparing solicitors to undertake work previously reserved for barristers Under the Legal Services Act 2007 solicitors and barristers are able to work together in a Legal Disciplinary Practice promoting closer working relationships and a further overlap of work. This allows a practice to diversify the range of legal services provided and allow ‘one stop’ legal practices. This may mean the loss of the ‘cab rank principle’ Under the Legal Services Act 2007 Alternative Business Structures (ABSs) are allowed. Previously ownership of legal service providers was restricted to lawyers. However the ABS will allow anyone with a licence to operate to open an ABS. This could be, for example, a supermarket (Tesco law). ABSs to employ both solicitors and barristers to work together 	9	<table border="1" data-bbox="1424 228 1803 403"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>8–9</td> </tr> <tr> <td>3</td> <td>6–7</td> </tr> <tr> <td>2</td> <td>4–5</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>A level 4 response will require at least one well developed point illustrating a real ability to focus on the question and come to a conclusion</p> <p>Three well developed points should receive full marks</p> <p>If there are only developed points and no well developed points maximum top level 3 can be awarded</p> <p>A series of points with no real development maximum top level 2 can be awarded</p> <p>Be careful to credit only up to a   for one point. Some responses will repeat the same point in several different ways and this should only be credited once.</p> <p>Credit should be given for consideration of any other relevant comment(s)</p>	AO2 Level	AO2 Marks	4	8–9	3	6–7	2	4–5	1	1–3
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Question		Answer	Marks	Guidance									
		<ul style="list-style-type: none"> • Bar Standards Board have removed the ban on barristers conducting litigation. This will permit barristers to offer a 'one-stop shop' service, including both litigation and advocacy. This will lessen the difference between solicitors and barristers • The complaints procedure has been amalgamated at certain levels – Legal Services Ombudsman and Office for Legal Complaints to be created under the Legal Services Act 2007 which also illustrates a fusing of the professions • As a result of the Certificate of Advocacy there is no longer the monopoly by barristers on senior judicial positions. Both barristers and solicitors can now be appointed as superior judges. <p>Credit will be given for any other relevant points. Reach a sensible conclusion.</p>											
		<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</p>	3	<table border="1"> <thead> <tr> <th>AO2 marks</th> <th>AO3 marks</th> </tr> </thead> <tbody> <tr> <td>7–9</td> <td>3</td> </tr> <tr> <td>4–6</td> <td>2</td> </tr> <tr> <td>1–3</td> <td>1</td> </tr> </tbody> </table>	AO2 marks	AO3 marks	7–9	3	4–6	2	1–3	1	
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3 (a)	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Demonstrate knowledge of the qualifications set out in the Juries Act 1974 as amended</p> <ul style="list-style-type: none"> • Only those <ul style="list-style-type: none"> – aged between 18 and 70 – on the electoral register; and – resident in UK for five years since age 13 can sit • Must sit unless disqualified or excused. Demonstrate knowledge of those who cannot or need not sit • Disqualified <ul style="list-style-type: none"> – for life if imprisoned for life or have a sentence of 5 years or more – ten years for sentences of less than 5 years, suspended sentences or community orders – whilst on bail • Cannot sit if ineligible: mental disorder • Cannot sit for lack of capacity: cannot speak English, disability etc • Can be excused if serving in the armed forces and commanding officer certifies needed • Can be excused or have service deferred for “good reason” – application has to be made to Jury Central Summoning Bureau. <p>Demonstrate knowledge of selection:</p> <ul style="list-style-type: none"> • Chosen at random from the electoral registers for a court area by central office every fortnight • Summons are sent out electronically using a computer • Fifteen chosen at random from the jury pool to go into the court room • Twelve chosen at random in court by the clerk • Possible challenge to the array, by prosecution or defence on way jury selected • Possible challenge for cause, by prosecution or defence, because of connection with case or incapacity • Right of stand by, by prosecution • Vetting – routine police check and rarely wider background check for political affiliations. 	18	<table border="1" data-bbox="1630 225 2011 403"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>15–18</td> </tr> <tr> <td>3</td> <td>11–14</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>A level 4 response will require a detailed description of both the qualifications and the selection procedure for juries</p> <p>If only either the qualifications or the selection procedure is covered then maximum top level 2/ bottom level 3 can be awarded. An answer on only half the question would have to be very detailed to merit bottom level 3 marks</p> <p><i>The number of ticks in a response do not necessarily equate to the number of marks awarded. The levels of assessment grid and guidance given within this mark scheme should be used when awarding levels and marks.</i></p>	AO1 Level	AO1 Marks	4	15–18	3	11–14	2	6–10	1	1–5
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(b)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss the advantages of jury secrecy:</p> <ul style="list-style-type: none"> • Jury members free from pressure during their discussions allowing them to bring verdicts that may be unpopular with the public • Jury members are protected from outside pressures. People may be less willing to serve on a jury if they knew their discussions were public due to possible repercussions • Gives juries the freedom to ignore the strict letter of the law eg <i>Kronlid, Kings Norton 6</i> if they believe the law is wrong. They do not have to give reasons for their decision • Credit any reference to <i>Gregory v UK and Sander v UK ECHR</i> decision that the system of secrecy does not in itself amount to a breach of Article 6. <p>Discuss the disadvantages of jury secrecy:</p> <ul style="list-style-type: none"> • No reasons need to be given for a verdict, so no way of knowing if the jury did understand the case and came to the decision for the right reason(s). This makes it difficult to appeal • Contempt of Court Act 1981 makes it an offence to disclose, obtain or solicit information about what happened in a jury room so a juror cannot disclose even when a decision is made on very shaky grounds (<i>Mirza and Connor v Rollock</i>) but inquiries can be made into conduct of the jury outside the jury room <i>Young</i> <i>Ouija board case</i>, <i>Karakaya internet search case</i>. <p>Reach a sensible conclusion.</p> <p>Credit will be given for any other relevant points.</p>	9	<table border="1" data-bbox="1630 228 2011 403"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>8–9</td> </tr> <tr> <td>3</td> <td>6–7</td> </tr> <tr> <td>2</td> <td>4–5</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>A level 4 response will require at least one well developed point illustrating a real ability to discuss the advantages and disadvantages of the secrecy of the jury</p> <p>If there are only developed points and no well-developed points maximum level 3 marks can be awarded</p> <p>A series of points with no real development then maximum level 2 marks can be awarded</p> <p>The question is focused on ‘secrecy of the jury’ and therefore no credit is available for general discussion of the advantages and disadvantages of the jury system.</p>	AO2 Level	AO2 Marks	4	8–9	3	6–7	2	4–5	1	1–3
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Question	Answer	Marks	Guidance										
4 (a)	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>A description of mediation, conciliation and arbitration is required with at least one illustration (example) of each.</p> <ul style="list-style-type: none"> • Mediation – neutral person helps parties reach a compromise solution acting as a facilitator. Mediator does not offer an opinion unless asked. Often used in relationship situations eg Relate • Formalised settlement conference is another method of approaching mediation – mini trial but no binding results. Illustrations include Centre for Dispute Resolution dealing with companies and more local mediation services to deal with disputes between neighbours • Conciliation – conciliator goes beyond mediation in that they have the power to suggest grounds for compromise or a settlement. Often used in industrial disputes using ACAS • Mediation and conciliation both allow the parties to have control over the resolution process as they can withdraw at any time and a resolution to the dispute cannot be imposed on them as they must agree to it • Arbitration – both parties voluntarily agree to let their dispute be left to the judgment of an arbitrator or a panel of arbitrators who are neutral • Agreements to arbitrate are governed by the Arbitration Act 1996 and are usually in writing. Agreement to go to arbitration can be made before a dispute arises [usually by a <i>Scott v Avery</i> clause in a contract]. Agreement will either name an arbitrator or provide a method for choosing one. A court may also appoint an arbitrator. The parties agree the procedure for hearings and this ranges from a ‘paper’ arbitration to a formal court like hearing 	18	<table border="1" data-bbox="1348 245 1727 424"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>15–18</td> </tr> <tr> <td>3</td> <td>11–14</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>A level 4 response will require a detailed description of all three main types of ADR. It is possible to get full marks without describing negotiation as that is not specifically mentioned in the specification</p> <p>Mention of the Arbitration Act and the <i>Scott v Avery</i> clause are the level of detail that would be likely for high level 4 marks</p> <p>If the response describes the different types of ADR as a series of stages (that if one fails you go on to the next) it should not be placed in level 4 as it demonstrates a lack of understanding of ADR</p> <p>If no illustrations are given an answer cannot go beyond the top of level 3 as the question specifically asks for illustration</p> <p>Some description of arbitration is necessary to go beyond the top of level 2</p> <p><i>The number of ticks in a response do not necessarily equate to the number of marks awarded. The levels of assessment grid and guidance given within this mark scheme should be used when awarding levels and marks.</i></p>	AO1 Level	AO1 Marks	4	15–18	3	11–14	2	6–10	1	1–5
AO1 Level	AO1 Marks												
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Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"> • Arbitration decisions are binding on the parties and can be enforced by the courts if necessary. An award by an arbitrator can be challenged in the courts for serious irregularity in the proceedings or on a point of law. Illustrations of situations where arbitration is used include building contracts, holiday contracts and as a result of various other business contracts • Negotiation – parties reach agreement themselves with no third party. They may act through solicitors. <p>Credit any other relevant details.</p>		

Question	Answer	Marks	Guidance										
(b)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss the advantages of using the different methods of ADR:</p> <ul style="list-style-type: none"> • Costs – ADR is usually cheaper to solve disputes as there are no court costs incurred and potential reduction or removal of costs for legal advice • Speed – ADR will allow matters to be resolved more quickly than going through a court hearing • Control – the parties have more control over ADR rather than handing control to the courts • Flexibility - The time and place can be arranged to suit both parties resulting in a more informal and relaxed hearing. The strict letter of the law does not need to be followed • Expertise – the parties can choose their own mediator/conciliator/arbitrator – eg a technical expert • Privacy – the matter will be dealt with in private and therefore no publicity • ADR is less adversarial than court hearings and encourages co-operation. This allows relationships, eg business relationships to continue (avoiding bad feelings). They are often destroyed by the adversarial nature of a court hearing • Under the Woolf reforms courts are under a duty to encourage the use of ADR and may even stay proceedings. <p>Reach a sensible conclusion.</p>	9	<table border="1" data-bbox="1384 225 1765 403"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>8–9</td> </tr> <tr> <td>3</td> <td>6–7</td> </tr> <tr> <td>2</td> <td>4–5</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>A level 4 response will require at least one well developed point illustrating a real ability to focus on the question and come to a conclusion. Responses are expected to use the court to compare and this is required for a level 4 response</p> <p>Three well developed points should receive full marks</p> <p>If there are only developed points and no well developed points maximum top level 3 marks can be awarded</p> <p>A series of points with no real development maximum top level 2 marks can be awarded</p> <p>The question is focussed on advantages but credit should be given for the development of points which indicate a disadvantage or comment that it can be seen as a disadvantage by some people</p> <p>Be careful to credit only up to a   for one point. Some responses will repeat the same point in several different ways and this should only be credited once</p>	AO2 Level	AO2 Marks	4	8–9	3	6–7	2	4–5	1	1–3
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			<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.</p>	3	<table border="1"> <thead> <tr> <th>AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>7–9</td> <td>3</td> </tr> <tr> <td>4–6</td> <td>2</td> </tr> <tr> <td>1–3</td> <td>1</td> </tr> </tbody> </table>	AO2 marks	AO3 mark	7–9	3	4–6	2	1–3	1	
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Question		Answer	Marks	Guidance										
5	(a)	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Demonstrate knowledge and understanding of the qualifications of judges: Set out in the Courts and Legal Services Act 1990, amended by the Tribunal Courts and Enforcement Act 2007</p> <ul style="list-style-type: none"> Justices of the Supreme Court: 2 years high judicial office or 15 years High Court qualification Lords Justices of Appeal; 7 years High Court qualification or existing High Court Judge High Court Judges – 2 years as a Circuit Judge or right to practice in High Court for 7 years Circuit Judges – 3 years as a District Judge, Recorder or Tribunal Chair or rights of audience in the Crown or County Court for at least 7 years Recorders: 7 years relevant qualification; District Judges: 5 years general qualification (including Fellow of the Institute of Legal Executives as Deputy District Judges, Tribunal Chairmen, Trade Mark and Patent Attorneys). <p>Demonstrate knowledge of the selection of judges: Constitutional Reform Act 2005</p> <ul style="list-style-type: none"> Justices of the Supreme Court are selected by a Supreme Court Selection Committee specially convened by the Lord Chancellor when a vacancy arises All other judicial selection is organised by the Judicial Appointments Commission JAC comprised of a mixed panel of judges, lay people and lawyers All appointments now advertised with the aim to diversify the judiciary Committee will look for the five qualities desirable in a good judge which are; <ul style="list-style-type: none"> intellectual capacity Personal qualities ability to understand and deal fairly authority and communication skills efficiency 	18	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>15–18</td> </tr> <tr> <td>3</td> <td>11–14</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>For level 4 marks responses must give a good description of the qualifications and selection procedure for judges at all levels</p> <p>If only one of the areas is covered then maximum top level 2/ bottom level 3 can be awarded. The level of detail will determine the level and the mark</p> <p><i>The number of ticks in a response do not necessarily equate to the number of marks awarded. The levels of assessment grid and guidance given within this mark scheme should be used when awarding levels and marks.</i></p>	AO1 Level	AO1 Marks	4	15–18	3	11–14	2	6–10	1	1–5
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Question	Answer	Marks	Guidance
	<ul style="list-style-type: none">• Mainly by application with references• Applicants for lower level posts will be asked to write an essay or undertake a case study• Interviews assess attitude and aptitude and may include role play• Lord Chancellor has limited power to object to selection• Applicants for higher appointments are expected to show competence at a lower level (appointment at assistant recorder level is usually used to try out potential judges for more permanent positions).		

Question	Answer	Marks	Guidance										
(b)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss the advantages of replacing lay magistrates with judges:</p> <ul style="list-style-type: none"> • Training – judges have more training and experience so should have a better understanding of individual cases. However, the training of lay magistrates is now more specific and detailed • Legal knowledge – judges have greater legal knowledge by virtue of the educational standards required to enter the profession • Consistent sentencing – judges are more consistent in their sentencing. However, they are more likely to impose custodial sentences than magistrates. There is still an inconsistency in lay magistrates sentencing although this is improving due to better training • Judges are more consistent in the application of the law. They do not require advice from the Court Clerk. • Speed – judges are quicker due to their knowledge and the fact they do not need to rely on a Court Clerk. Lay magistrates are often criticised for their over reliance on the clerk • Less required – Only one judge is required where three lay magistrates are needed. To have just one judge would make organisation of the court much simpler rather than organising a rota for a group of part-time magistrates who may have availability issues. However the cost of replacing lay magistrates would be very high • Diversity – judges tend to be younger than magistrates – magistrates tend to be middle aged. However there is not the diversity seen in lay magistrates particularly in terms of gender. <p>Reach a sensible conclusion.</p>	9	<table border="1" data-bbox="1384 225 1765 403"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>8–9</td> </tr> <tr> <td>3</td> <td>6–7</td> </tr> <tr> <td>2</td> <td>4–5</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>A level 4 response will require at least one well developed point illustrating a real ability to focus on the question and come to a conclusion</p> <p>Three well developed points should receive full marks</p> <p>If there are only developed points and no well-developed points maximum top level 3 marks can be awarded</p> <p>If a series of points with no real development then maximum top level 2 marks can be awarded</p> <p>The question is focussed on ‘advantages of replacing’ but credit should be given for the development of points which indicate a disadvantage or comment that it can be seen as an disadvantage by some people</p> <p>Be careful to credit only up to a   for one point. Some responses will repeat the same point in several different ways and this should only be credited once.</p>	AO2 Level	AO2 Marks	4	8–9	3	6–7	2	4–5	1	1–3
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Question		Answer	Marks	Guidance										
6	(a)	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Under the Criminal Justice Act 2003 and the Crime and Disorder Act 1998 demonstrate knowledge and understanding of:</p> <p>Custodial sentences</p> <ul style="list-style-type: none"> • Mandatory life sentences – only sentence available for murder if over 18 years old. Minimum term to be served before release on licence ranges from whole life to 15 years. Tariff set out in CJA (2003) • Discretionary life sentences available for other serious offences but the judge has discretion in imposing a lesser sentence if it is more appropriate • Fixed term sentences automatic release on licence after half sentence is served. Only available if over 21 years old • Home Detention Curfew – early release from prison on a curfew • Indeterminate sentences for dangerous offenders for public protection (abolished December 2012)* • Extended sentences – custodial sentence up to the maximum for the crime followed by an extension period on licence • Minimum sentences for dealing in Class A drugs or a third burglary of a residential building • Suspended sentence of 28-51 weeks suspended for up to two years – sentence only has to be served if the offender commits further offences. <p>Community Sentences</p> <ul style="list-style-type: none"> • Criminal Justice Act 2003 created one Community Order under which the court can combine any requirement they think necessary: <ul style="list-style-type: none"> – Unpaid work requirement – 40–300 hours – Programme requirement – Prohibited activity requirement – Curfew requirement – between 2–12 hours in 24 hour period, max period 6 months. Often enforced by electronic tag – Exclusion requirement; – Supervision requirement – maximum of 3 years 	18	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>15–18</td> </tr> <tr> <td>3</td> <td>11–14</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>For full marks some mention of legislation is required.</p> <p>For level 4 marks responses must give good descriptions of at least 3 custodial and 3 requirements that can be attached to a community order However, responses should be rewarded for either depth or breadth</p> <p>If only custodial or community sentences is covered then maximum top level 2/ bottom level 3 can be awarded. The level of detail will determine the level and the mark.</p> <p>*The specification's 12-month rule stands.</p> <p><i>The number of ticks in a response do not necessarily equate to the number of marks awarded. The levels of assessment grid and guidance given within this mark scheme should be used when awarding levels and marks.</i></p>	AO1 Level	AO1 Marks	4	15–18	3	11–14	2	6–10	1	1–5
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Question			Answer	Marks	Guidance
			<ul style="list-style-type: none">– Drug rehabilitation requirement;– Alcohol treatment requirement– Attendance Centre requirement – those under 25– Activity requirement– Residence requirement– Mental health treatment requirement.		

Question	Answer	Marks	Guidance										
(b)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> • Rehabilitation – although Carole is 28 years old and an adult she is a drug addict so rehabilitation will be one of the main aims of the court • Punishment – the crime is serious therefore punishment is likely to be a factor in the sentencing of Carole • Protection of the public – Carole has burgled a house so an aim may be to protect the public from her • Deterrence – Carole is a repeat offender having been convicted of theft on two previous occasions so deterrence may also be a consideration particularly as her crime is now more serious • Reparation – courts are encouraged to make Compensation Orders where possible so she could be required to compensate her victim • As previous sentences of fines and community orders have not deterred her from committing further offences a Drug Rehabilitation Requirement may be considered. If the reason Carole steals is to gain money for drugs, this sentence will aim to reduce her drug related offending • If Carole's crimes have all been committed at a similar time the court may impose a curfew on her to stay at her home address during certain hours. This may be enforced by an electronic tag • As she has had previous sentences that have not worked and has now committed a serious offence the court may decide that it is necessary to give Carole a custodial sentence. <p>Reach a sensible conclusion.</p> <p>Credit any other reasoned application to the scenario.</p>	9	<table border="1" data-bbox="1317 228 1688 403"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>8–9</td> </tr> <tr> <td>3</td> <td>6–7</td> </tr> <tr> <td>2</td> <td>4–5</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>It is important to keep in mind that this is an application question. Points need to be applied to the situation</p> <p>Identification of a relevant point should be awarded a P for a point. An applied point (AP) should be awarded if a point is applied to the situation given</p> <p>P = 1 mark AP = 2 marks</p> <p>If there is no application but relevant points (ie if just points have been identified then only top level 2 marks can be awarded as the criteria for Level 3 will not have been met</p> <p>“Carole” or “she” or “D” needs to be mentioned to get out of level 2 as this is an application question</p> <p>Aims and two sentences need to be mentioned for level 4 marks</p> <p>The following points need to be considered and an applied point (worth 2 marks) is available for each – still max 9 marks in total</p> <ol style="list-style-type: none"> 1) <i>Drug addict</i> 2) <i>Serious offence of burglary</i> 3) <i>Repeat offender</i> 4) <i>Previous sentences</i> <p><i>The above must be linked to aims.</i></p> <ol style="list-style-type: none"> 5) <i>Suggest sentence with reason</i> 6) <i>Suggest sentence with reason.</i> 	AO2 Level	AO2 Marks	4	8–9	3	6–7	2	4–5	1	1–3
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			<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate terminology. Reward grammar, spelling and punctuation.</p>	3	<table border="1"> <thead> <tr> <th>AO2 marks</th> <th>AO3 mark</th> </tr> </thead> <tbody> <tr> <td>7–9</td> <td>3</td> </tr> <tr> <td>4–6</td> <td>2</td> </tr> <tr> <td>1–3</td> <td>1</td> </tr> </tbody> </table>	AO2 marks	AO3 mark	7–9	3	4–6	2	1–3	1	
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Question		Answer	Marks	Guidance										
7	(a)	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Demonstrate knowledge of powers set out under the Section 24 Police and Criminal Evidence Act 1984 as amended by the Serious Organised Crime and Police Act 2005 and the Criminal Justice Act 2003 and the Codes of Practice (Code G) arrest.</p> <p>Powers:</p> <ul style="list-style-type: none"> • Section 24 PACE as amended by SOCPA 2005 - sets out the power to arrest without warrant. Code G gives guidelines for arrest • The police have the power to arrest a person if: <ul style="list-style-type: none"> – a person has committed an offence (past) or – is in the act of committing an offence (present) or – is about to commit an offence (future) or – there are reasonable grounds for suspecting one of these occurrences (even if no offence is actually committed). • The police may use reasonable force to carry out the arrest • The police have the power to search the arrested person for anything that may help them escape. <p>Other powers of arrest:</p> <ul style="list-style-type: none"> • Arrest for breach of the peace (common law power) preserved by Section 26 PACE • Arrest for breaching bail conditions • Any other power of arrest, eg aggravated trespass under the Criminal Justice and Public Order Act 1994 • Arrest with a warrant – Section 8 Magistrates Court Act. • Section 41 Terrorism Act. <p>Limitations:</p> <ul style="list-style-type: none"> • The necessity test sets limits on when an officer has the power to arrest. The officer can only arrest if he has reasonable grounds for believing that it is necessary to make the arrest for one of the following reasons: <ul style="list-style-type: none"> – to enable the name and address of suspect to be ascertained – to prevent the person 	18	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>15–18</td> </tr> <tr> <td>3</td> <td>11–14</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>For level 4 marks it will be expected that the responses can show good knowledge of the powers of arrest under section 24 PACE (as amended) and any limitations on those powers. There must also be at least one other power of arrest demonstrated</p> <p>Some statutory reference is required for full marks</p> <p>If only one of these areas is covered then maximum top level 3 marks can be awarded</p> <p>Level 2 marks are likely to be awarded if there is basic understanding but no real detail</p> <p><i>The number of ticks in a response do not necessarily equate to the number of marks awarded. The levels of assessment grid and guidance given within this mark scheme should be used when awarding levels and marks.</i></p>	AO1 Level	AO1 Marks	4	15–18	3	11–14	2	6–10	1	1–5
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Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"> – causing physical injury to himself or any other person – suffering physical injury – causing loss or damage to property – committing an offence against public decency – causing an unlawful obstruction of the highway – to protect a child or vulnerable person or – to allow the prompt and effective investigation of the offence or the conduct of the person or – to prevent any prosecution for the offence from being hindered by the disappearance of the person in question. • Police must tell a person at the time of arrest, or as soon as practicable afterwards why they are under arrest, the reason for arrest (no set words but must be understandable <i>Taylor v Chief Constable of Thames Valley Police</i>), why the arrest is necessary and give a caution • They also have to identify themselves if not in uniform to make the arrest lawful. 		

Question	Answer	Marks	Guidance										
(b)*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> • It would only be lawful to arrest Raymond if the police can show it is necessary to arrest him. Supplying drugs is a serious offence and therefore would most likely be covered • The police must follow the past, present, future criteria and have reasonable grounds. A report by a member of the public would cover the past. This would also give the police officers reasonable grounds and make this part lawful • Lack of identification – the police should identify themselves, if not in uniform, as police if this is not done the arrest is unlawful • Saying ‘you know why’ would make his treatment unlawful. The police need to tell Raymond why he has been arrested although no specific words are required • Caution was mentioned so this would make it lawful. • The police will only have acted lawfully if they can show that they used reasonable force when they tackle Raymond to the ground. <p>Reach a sensible conclusion.</p>	9	<table border="1" data-bbox="1348 225 1727 403"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>8–9</td> </tr> <tr> <td>3</td> <td>6–7</td> </tr> <tr> <td>2</td> <td>4–5</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>It is important to keep in mind that this is an application question. Points need to be applied to the situation</p> <p>Identification of a relevant point should be awarded a P for a point. An applied point (AP) should be awarded if a point is applied to the situation given</p> <p>P = 1 mark AP = 2 marks</p> <p>If there is no application but relevant points (i.e. just Ps) have been identified only top level 2 marks can be awarded as the criteria for level 3 will not have been met</p> <p>“Raymond” or “he” or “D” needs to be mentioned to get out of level 2 as this is an application question</p> <p>The following points need to be considered and an applied point (worth 2 marks) is available for each – still max 9 marks in total</p> <ol style="list-style-type: none"> 1) <i>Arrest is lawful for selling drugs.</i> 2) <i>Report by member of the public</i> 3) <i>No identification – uniform required for AP.</i> 4) <i>Manner of arrest – ‘you know why’</i> 5) <i>Caution</i> 6) <i>Tackle – must link to reasonable force for AP.</i> 	AO2 Level	AO2 Marks	4	8–9	3	6–7	2	4–5	1	1–3
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APPENDIX 1**Advanced Subsidiary 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 of relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation, but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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