

Mark Schemes for the Units

June 2007

H124/H254/MS/R/07

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Any enquiries about publications should be addressed to:

OCR Publications
PO Box 5050
Annesley
NOTTINGHAM
NG15 0DL

Telephone: 0870 870 6622
Facsimile: 0870 870 6621
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Mark Scheme G141
June 2007

- 1 (a) Describe the selection and training of lay magistrates.

[18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of selection

- Application
- Two interviews, one to assess attitudes and one practical based on sentencing
- Advisory committee actively try to achieve a good cross section
- Committee will look for qualities of good character, communication skills, sound judgment, social awareness and commitment
- Names put forward to Department of Constitutional Affairs which appoints
- Must be between 18 and 65 and live or work in or near the local justice area in which they sit
- Will not be chosen if have serious conviction, have a conflict of interests (eg police officer, traffic warden or have a relative on the bench) or a condition which would interfere with their duties.

Demonstrate knowledge of training

- Reading and distance exercises re role and responsibilities
- Induction before sitting in court for 18 hours plus three court observations
- Visits to prisons, young offenders institution and probation service
- Six sittings with mentor
- Consolidation training (12 hours) after 2 years
- Covers law and procedure and development of skills such as decision making and communication
- Appraisal after 1 year
- Extra training for chair person and for youth and family courts.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- b) Discuss the advantages of using lay magistrates to make decisions in criminal matters. [9]

Mark Levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 2

Discuss some of the advantages of using lay magistrates

- Three people making a decision rather than one so less likely to be prejudiced
- Good range of people sitting more of a cross section of society than judges
- Express society's disapproval of defendant's actions when they convict
- Public involvement in the criminal justice system, sign of a democracy – not just the state charging, convicting and sentencing
- Local knowledge
- Magistrates' training has improved
- Public confidence
- Cheaper than using legal professionals
- Not as case hardened as judges.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

[3]

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total Marks [30]

- 2 (a) Describe the different methods of Alternative Dispute Resolution available to deal with civil cases. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

Assessment Objective 1

Describe each of the different methods of ADR

- Negotiation – parties reach agreement themselves with no third party. May use solicitors
- Mediation - neutral person helps parties reach a compromise solution. Mediator does not offer an opinion
- Conciliation - conciliator goes beyond mediation in that they have the power to suggest grounds for compromise or a settlement
- 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 is neutral. Agreements to arbitration 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 *Scott v Avery* 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. 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
- Mention of the Centre for Dispute Resolution or any other service available for mediation or conciliation will also be rewarded eg ACAS.

Credit will be given for any other details.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss the advantages of using Alternative Dispute Resolution rather than using the courts. [9]

Mark Levels AO2

Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 2

Explain the problems of court proceedings:

- Cost
- Delay
- Formality
- Adversarial
- Complexity
- Inequality.

Explain the advantages of ADR such as:

- The relative cheapness
- Speed
- The control of the parties over the way a dispute is resolved rather than handing over control to the courts
- The avoidance of bad feeling between the parties
- Privacy
- Able to continue business relationships
- Use of experts in arbitration.

Comment that the courts encourage the use of ADR under the Woolf reforms and may even stay court proceedings to allow ADR to be tried.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

[3]

Mark Levels AO3

Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total Marks [30]

- 3 (a) Describe the roles of judges in civil cases both in trial courts and in appeal courts. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of role in civil courts at first instance

- To ensure the hearing is carried out fairly and preside over the court
- To decide questions of law
- Decide verdict and award, in small claims help parties put their case.
- Decisions made by a single judge
- Case manager, deciding track, holding preliminary hearings to clarify issues, keep parties to time limits
- May be responsible for running court office.

Demonstrate knowledge of role in appeal courts

- Review hearing at first instance, decide whether the law was correctly decided and whether hearing carried out properly
- Decisions made by three or more judges sitting together
- Decide whether result is wrong or unsafe
- Can change decision or may order a retrial
- Can revise sentence or award
- Can decide issues of law in important cases (House of Lords and Court of Appeal usually)
- Can clarify or amend the law where appropriate.

Credit knowledge of judicial review and the Human Rights Act 1998 but this is not needed for full marks.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss the disadvantages of the present method of judicial selection. [9]

Mark Levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 2

Discuss the disadvantages of the present method of judicial selection

- Judges are middle aged as they have worked as an advocate first
- At present there is minimal training on human awareness, sentencing and presiding over a criminal court
- Little scope for specialisation as all inferior judges have to start with criminal work
- Not all good advocates become good judges
- Until recently senior judges were selected by the Prime Minister and Lord Chancellor – political bias could be present and it was secretive
- Inferior judges appointments more transparent and based on merit
- New Judicial Appointments Committee should remove the political bias in senior judicial appointments but it is too early to assess the success of this
- Compare with the system of having a career judiciary and the advantages of that.

Credit any other relevant argument.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

[3]

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total Marks [30]

- 4 (a) Describe conditional fee agreements and publicly funded representation in civil cases. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

Assessment Objective 1

Describe conditional fee agreements

- Developed to help people to deal with the risk of taking a case to court as costs are uncertain and there is always a risk of losing the case
- Solicitor and client agree on a fee that would normally be charged for a particular case
- Success fee is agreed up to 100% of normal fee added to fee if case is won but cannot exceed 25% of damages
- If case is lost solicitor gets nothing
- Success fee may be ordered to be paid by losing party
- Insurance is taken out to protect against paying costs of other side if case is lost. This premium can also be claimed off the losing party.

Describe publicly funded representation in civil cases

- Some matters excluded eg personal injury, wills, boundary disputes, defamation
- Not available for cases involving less than £5,000
- Not available for tribunals except mental health
- Means tested on disposable capital and disposable income
- Priorities for funding as there is a finite fund
- Merits test based on likelihood of success and amount of damages likely to be awarded.

Credit should be given for details of any of these points.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

(b) Discuss the problems of conditional fee agreements. [9]

Mark Levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 2

Discuss the problems of conditional fee agreements

- Poorest clients cannot afford disbursements or insurance premiums
- Difficult to find solicitors to deal with risky cases
- Difficult for lawyers to estimate costs in complicated cases so some cases make a loss even with 100% uplift fee
- Problem reclaiming front loaded costs in many cases if the case is settled early as it is disproportionate to the stage the case had reached
- Some claim firms have been accused of charging very high rates for insurance cover
- Some large firms dealing with conditional fee agreements have gone into liquidation showing the difficulty of making a profit unless cases are carefully screened before taking them on
- Levels of compensation agreed by large firms thought to be lower than those negotiated by independent solicitors.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3 [3]

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total Marks [30]

5 (a) Describe the training of barristers and solicitors.

[18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of training of Barristers

- Academic: law degree (7 core subjects) or other degree plus Common Profession Examination after one year's extra training on core subjects
- Vocational: join Inn of Court and dine 12 times or attend residential training courses during Bar Vocational course – practical training with emphasis on advocacy and drafting opinions and statements of case
- Practical: called to the Bar, pupillage of two six month periods with a pupil master, tenancy.

Demonstrate knowledge of training of solicitors

- Academic: law degree (7 core subjects) or other degree plus CPE to cover core subjects
- Vocational: 1 year Legal Practice Course, includes dealing with clients, accounts etc
- Practical: 2 years working in a solicitors' office shadowing and working under supervision
- Certificate of advocacy course and examinations may also be taken but is not compulsory.

Credit will be given for details of training and mention of further training after qualification.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss the disadvantages of the current system of training barristers and solicitors. [9]

Mark Levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

Assessment objective 2

Discuss the disadvantages of the current system of training

- CPE not sufficient grounding in law for non law graduates
- Variable quality of pupillages and training contracts
- Choice to become a barrister or solicitor has to be made early
- Difficulty in finding a pupillage or training contract leading to complete training
- LPC tries to cover too much in one year
- Costs put off many able candidates especially with the scarcity of pupillages etc as large debts accrued with no guarantee of being able to complete the training
- Many newly qualified lawyers have accrued large debts
- Difficulties lead to only those with financial backing being able to qualify, not necessarily the best people.

Credit any suggestions for reform eg more joint training, better funding, more opportunities to do qualifying work in a legal environment while studying.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3 [3]

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total Marks [30]

- 6 (a) Describe the powers of the police to arrest a person on the street. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

Assessment Objective 1

Demonstrate knowledge of rights set out under the 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

Arrest

- S.24 PACE as amended by SOCPA 2005 - sets out the power to arrest without warrant
If a person has committed an offence or is in the act of committing an offence or is about to commit an offence or there are reasonable grounds for suspecting one of these occurrences. (even if no offence is actually committed)
- There is a necessity test and this power of arrest can only occur for one of the following reasons - to enable the name and address of suspect to be ascertained, to prevent physical injury, loss or damage to property, causing an offence against public decency, obstruction of the highway, to allow effective investigation of the offence, protect a vulnerable person or prevent any prosecution being hindered by the disappearance of the person in question
- Arrest for breach of the peace (common law power)
- 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
- Police must tell person they are under arrest and the reason for arrest and also have to identify themselves to make arrest lawful
- Reasonable force may be used
- Arrested person may be searched for anything that may help them escape.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) **Matthew is arrested on suspicion of a minor theft. He is taken to the police station and held for 40 hours without charge. He is refused access to a solicitor for advice while he is at the police station.**

Explain to Matthew whether his detention at the police station was lawful. [9]

Mark Levels AO2

Level 4 8-9

Level 3 6-7

Level 2 4-5

Level 1 1-3

Potential answers **MAY**:

Assessment Objective 2

Demonstrate knowledge of suspect's rights set out under the Police and Criminal Evidence Act 1984 and the codes of practice most recently amended in 2003 and how these enable the police to investigate crime during a suspect's detention.

- To detain a suspect for up to 24 hours normally but that can be extended to 36 hours with permission of a police officer of the rank of superintendent or above for an arrestable offence or up to 96 hours if authorised by magistrates for a serious arrestable offence. Explain that Matthew has been detained for 40 hours which is excessive for a non serious arrestable offence. It is unlikely that permission from a magistrate was given for this and that would still not make it lawful
- For serious arrestable offences a senior officer may authorise a delay of up to 36 hours to the right of the suspect to have someone informed of their arrest if they believe that it may *inter alia* lead to interference with evidence or allow others to escape. This delay would not be available in Matthew's case as theft is not a serious arrestable offence and 40 hours exceeds the maximum delay
- For serious arrestable offences a senior officer may authorise a delay of up to 36 hours to the right of the suspect to legal advice for similar reasons. This would also not be justified
- Detention is monitored by a custody officer who keeps a custody record to ensure the codes of practice are adhered to
- Point out that police powers are limited by the codes of practice and breach of the codes may lead to evidence being excluded from court.

Matthew could complain about his treatment and may take a civil action against the police for unlawful detention.

Credit will be given for the use of appropriate cases eg *R v Samuel*

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3**[3]**

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total Marks [30]

- 7 (a) Describe how matters relating to the granting of bail to a person awaiting trial are decided. [18]

Mark Levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

Potential answers **MAY**:

Assessment Objective 1

Identify that bail enables a defendant to remain at liberty until the next stage of their case.

Show a clear understanding that both police and magistrates can grant bail and the powers of the magistrates' court.

Demonstrate a clear understanding of unconditional and conditional bail, and the types of conditions that may be imposed on a defendant including sureties.

Demonstrate a clear understanding of the Bail Act 1976 and subsequent amendments in the Bail (Amendment) Act 1993, the Crime and Disorder Act 1998 and the Criminal Justice Act 2003

- General right to bail
- Reasons for refusing bail eg failure to surrender to custody, likely to commit further offences or interfere with the course of justice
- Factors to be taken into account including: nature and seriousness of offence, antecedents of defendant, previous bail record, strength of evidence against defendant
- Bail only granted in exceptional circumstances for murder, attempted murder, manslaughter, rape or attempted rape if the defendant has already served a custodial sentence for such a crime
- Bail is restricted for adult drug users under the Criminal Justice Act 2003 in certain circumstances.

Candidates may also mention the process involved in making renewed applications and an appeal against a rejected bail application by the defendant but it is not necessary for full marks.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Charlie is charged with criminal damage. He has three previous convictions for criminal damage, one which was committed whilst on bail. He does not live locally and he has no contact with his family.

Explain which factors and conditions are likely to be considered when making a decision whether or not to grant bail to Charlie. [9]

Mark Levels	AO2
Level 4	8-9
Level 3	6-7
Level 2	4-5
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 2

Identify that for offences such as criminal damage there is a presumption in favour of bail.

The factors taken into account under the Bail Act would all need to be considered with particular reference to:

- As Charlie has a previous record for criminal damage the likelihood of him re-offending whilst on bail will need to be considered especially as he has previously offended whilst on bail
- The strength of the evidence against him
- The fact that he has no ties to the area would mean that his possible absconding before the trial would also need to be considered
- Conditions could be attached to his bail to enable bail to be granted for example a curfew, surrender of his passport and reporting to the police station.

Credit will be given mention of any other relevant factors or conditions.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

[3]

Mark Levels	AO3
Level 3	3
Level 2	2
Level 1	1

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total Marks [30]

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 be 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. Rewards 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. Rewards 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. Rewards grammar, spelling and punctuation.

Mark Scheme G142
June 2007

1 Exercise on Legislation and Delegated Legislation

- a) **Source A** at lines 2–3 refers to making an Act of Parliament.

Describe how an Act of Parliament is created.

[12]

Mark Levels	AO1
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 1

Describe the stages involved:

Green paper

White paper

First Reading

Second Reading

Committee stage

Report stage

Third reading

Switch house and repeat

Royal Assent

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- b) Identify and explain the most suitable type of delegated legislation to implement law in the following situations.
- (i) A national emergency such as an outbreak of war involving the UK. [5]
 - (ii) Where an enabling Act authorises the issuing of regulations concerning police powers. [5]
 - (iii) The local imposition of penalties for dogs fouling footpaths. [5]

Mark Levels	AO2 (for each of i, ii, iii)
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 2

- (i) Recognise that the use of Orders in Council would be most suited to this situation. They are used in times of emergency or when Parliament is not sitting. The main use for Orders in Council is to give effect to European Directives.
- (ii) Recognise that the use of Statutory Instruments would be most suitable to this situation. Explain that Government Ministers introduce particular regulations under powers delegated to them by Parliament in enabling legislation.
- (iii) Recognise that the use of Bylaws would be most suited to this situation. Bylaws can be made by local authorities or public corporations. Local authorities can enforce rules regarding dog fouling.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

c) With reference to Source B:

(i) describe the controls on delegated legislation; [15]

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 1

- Describe the enabling act.
- Describe the powers of the Scrutiny Committee.
- Describe affirmative and negative resolutions.
- Describe the process of judicial review.
- Describe substantive and procedural ultra vires.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (ii) discuss the effectiveness of the controls of delegated legislation. [12]

Mark Levels	AO2
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 2

- Discuss the fact that Parliamentary powers are limited.
- Discuss how Parliamentary controls are affected by the parameters set by the Enabling Act.
- Recognise that, under affirmative resolution procedures, Parliament can only approve annul or withdraw.
- Discuss the fact that the Scrutiny Committee has no power to alter the statutory instrument; it can only refer it 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 knowledge due to volume or limited finances.
- Discuss the fact that the potential for ultra vires is limited due to the breadth of most enabling acts.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

Marks are awarded holistically for the whole question.

[6]

Mark Levels	AO3
Level 3	5-6
Level 2	3-4
Level 1	1-2

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total marks [60]

2 Exercise on Judicial Precedent

- (a) Using the Source and other cases, describe the powers of the Court of Appeal. [12]

Mark Levels	AO1
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 1

- Explain the current powers of the Court of Appeal. It binds all Courts below it in the hierarchy.
- Explain that the Court of Appeal for many is the final appeal court.
- Describe the limitations on the Court of Appeal – bound by the House of Lords and bound by its own previous decisions.
- Explain the effect of the *Human Rights Act 1998* and membership of the European Union.
- Explain the *Young* criteria
- Describe how Lord Denning tried to extend the power of the Court of Appeal
- Use appropriate cases- *Broome v Cassell (1971)*, *Schorsch Meier*, *Davis v Johnson (1979)*, *Gallie v Lee (1969)* etc.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

(b) Consider each of the following situations and explain whether or not the Court of Appeal can depart from the previous decision.

- (i) A case concerning a death resulting from medical negligence was heard by the Court of Appeal (Civil Division). A year later, a similar issue is being heard by the Court of Appeal (Criminal Division). [5]
- (ii) A case concerning breach of contract was decided by the Court of Appeal (Civil Division). Days later a similar issue is heard by the same court but the judges now feel that the decision should be different. [5]
- (iii) A case concerning murder was decided by the House of Lords. The Court of Appeal (Criminal Division) believes the decision of the House of Lords is out of date. [5]

Mark Levels	AO2
	(for each of i, ii, iii)
Level 4	5
Level 3	4
Level 2	3
Level 1	1-2

Potential answers **MAY**:

Assessment Objective 2

In the case of (i): recognise that the Court of Appeal is normally bound by its own previous decisions. Discuss the fact that this situation involves the two divisions of the Court of Appeal and they are not bound by each other.

In the case of (ii): recognise that the Court of Appeal is bound by its own previous decisions – subject to the exceptions in *Young v Bristol Aeroplane (1944)*. Discuss that the most applicable exception is per incurium. Discuss the possibility of distinguishing.

In the case of (iii): recognize that the Court of Appeal is bound by the decisions of the House of Lords – *Miliangos v George Frank (Textiles) Ltd (1976)*. Discuss that the Court of Appeal can only refuse to follow a decision of the House of Lords if it conflicts with the *Human Rights Act 1998* or a decision of the European Court of Justice. Discuss the possibility of distinguishing.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (c) (i) The Source line 13 refers to *stare decisis*.

Describe the concept of *stare decisis* using the source and cases to illustrate your answer. [15]

Mark Levels	AO1
Level 4	13-15
Level 3	9-12
Level 2	5-8
Level 1	1-4

Potential answers **MAY**:

Assessment Objective 1

- Define *stare decisis* - standing by previous decisions.
- Describe how *stare decisis* operates in the court hierarchy eg higher courts binding lower courts.
- Describe how *stare decisis* is created through the *ratio decidendi*.
- Describe that accurate law reporting is essential for *stare decisis* to operate.
- Describe how *stare decisis* can be avoided – distinguishing, overruling and reversing etc.
- Use cases to illustrate *stare decisis* eg *Donoghue v Stevenson*, *Knulier v DPP*, *Jones v Secretary of State for Social Services*.

- (ii) Discuss whether or not the powers of the Court of Appeal within the doctrine of precedent, should be extended. [12]

Mark Levels	AO2
Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

Potential answers **MAY**:

Assessment Objective 2

- Discuss the reluctance of the House of Lords to use the Practice Statement.
- Discuss Lord Denning's limitations regarding the existing system. Not all defendants have the financial capacity to appeal, companies settle with litigants to prevent precedents, the time it takes to reach the House of Lords.
- Discuss that since Lord Denning's departure, the Court of Appeal has not challenged the authority of the House of Lords.
- Discuss the practical difficulties that extending the Court of Appeal's power would create – uncertainty for the lower courts regarding what decision to follow and difficulties for lawyers in giving legal advice.
- Discuss that it would allow the law to develop more quickly as in *Miliangos*
- Discuss the expertise of the Court of Appeal. It hears more appeals and its criminal expertise is stronger.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

Marks are awarded holistically for the whole question. [6]

Mark Levels	AO3
Level 3	5-6
Level 2	3-4
Level 1	1-2

Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology.
Reward grammar, spelling and punctuation.

Total marks [60]

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 be 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. Rewards 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. Rewards 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. Rewards grammar, spelling and punctuation.

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

OCR Customer Contact Centre

(General Qualifications)

Telephone: 01223 553998

Facsimile: 01223 552627

Email: helpdesk@ocr.org.uk

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