

# **Mark Scheme for January 2012**

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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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Annesley  
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NG15 0DL

Telephone: 0870 770 6622  
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## Annotations

Annotation	Meaning
	Not Relevant or no response or response achieves no credit
	Repetition
	Point
	Point developed
	Developed point expanded
	Link to the source
	Vague
	Level 1
	Level 2
	Level 3
	Level 4
	Advantage or feature
	Disadvantage
	Definition
	Undeveloped case The highlight tool may also be used to draw attention to a word or phrase which means that the statement or reasoning is inaccurate

Question		Answer	Marks	Guidance										
1	(a)*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>The Council of the European Union:</p> <ul style="list-style-type: none"> <li>Describe composition – each member state sends a representative; exact membership is dictated by the content of the agenda; twice a year the heads of member states' governments meet in a summit.</li> <li>Describe how the Presidency is held by each member state in rotation for six months</li> <li>Describe the main role as the principal decision making body of the Union</li> <li>Describe the different voting systems used: unanimity, simple majority and qualified majority voting.</li> </ul> <p>Commission:</p> <ul style="list-style-type: none"> <li>Describe the Commission's role in proposing legislation – it has the 'right of initiative'</li> <li>Describe how the Commission helps enforce EU Law in their role as 'guardian of the treaties'</li> <li>Describe how the Commission negotiates on the EU's behalf with other nations</li> <li>Describe its role regarding the EU budget</li> <li>Describe how the Commission is organised – 27 Commissioners responsible for different areas of EU policy etc</li> <li>Use any relevant case example – <i>Re Tachographs</i>.</li> </ul>	12	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a good description of both and <b>must</b> have a link to the source (LNK).</p> <p>Responses will be unlikely to achieve level three without an adequate description of <u>both</u> institutions.</p> <p>Responses will be unlikely to achieve level two without a limited description of both or adequate one.</p> <p>Responses will be unlikely to achieve level one without 1-3 basic points.</p> <p>Responses which only discuss one institution cannot access levels 3 or 4.</p> <p>Bullet point list only will be unlikely to achieve no more than top of Level two</p>	AO1 Level	AO1 Marks	4	10–12	3	7–9	2	4–6	1	1–3
AO1 Level	AO1 Marks													
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Question	Answer	Marks	Guidance										
(b)	<p>Potential answers may:</p> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>(i) Recognise that the most appropriate source would be a Treaty (CP). This is because Treaties are used to implement major change. Use appropriate examples eg The Treaty of Lisbon. Credit reference to the Source.</p> <p>(ii) Recognise that the most appropriate source would be a directive (CP). Directives are left to Member States to implement and are the major vehicle for harmonisation. Credit reference to examples such as the Working Time Directive. Credit reference to the Source.</p> <p>(iii) Recognise that the most appropriate source to use would be a regulation (CP). Regulations are similar to an Act of Parliament and are directly applicable. Use appropriate case citation eg <i>Re Tachographs</i>. Credit reference to the Source.</p>	5	<table border="1" data-bbox="1402 244 1794 459"> <thead> <tr> <th data-bbox="1402 244 1597 280">AO2 Level</th> <th data-bbox="1597 244 1794 280">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1402 280 1597 317">4</td> <td data-bbox="1597 280 1794 317">5</td> </tr> <tr> <td data-bbox="1402 317 1597 354">3</td> <td data-bbox="1597 317 1794 354">4</td> </tr> <tr> <td data-bbox="1402 354 1597 391">2</td> <td data-bbox="1597 354 1794 391">3</td> </tr> <tr> <td data-bbox="1402 391 1597 459">1</td> <td data-bbox="1597 391 1794 459">1–2</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without identifying the most appropriate source <b>plus</b> why and one other points eg case, example or LNK.</p> <p>Responses will be unlikely to achieve level three without identifying the most appropriate source <b>plus</b> why.</p> <p>Responses will be unlikely to achieve level two without identifying the most appropriate source.</p> <p>Responses will be unlikely to achieve level one without any basic point.</p> <p>Responses need to have addressed the critical point (CP) and the 'why' before a further mark can be awarded for any other relevant point (eg the case, example or LNK).</p> <p>(b)(ii) Cannot credit 'harmonise' as in question</p>	AO2 Level	AO2 Marks	4	5	3	4	2	3	1	1–2
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(c)	(i)	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Describe the role of the ECJ – ensuring the uniform application of EU law throughout the EU – Article 19</li> <li>• Describe the two roles – hearing direct actions against member states and other institutions and also hearing references for preliminary rulings under Article 267</li> <li>• Describe how actions against Member States are normally brought by the Commission eg <i>Commission of the European Communities v UK: Re Tachographs (1979)</i></li> <li>• Describe how the ECJ deals with referrals from member states' courts through mandatory and discretionary referrals (<i>Torfaen BC v B&amp;Q, Bulmer v Bollinger, Van Duyn v Home Office</i>)</li> <li>• Describe the fact that the ECJ is assisted by a Court of First Instance</li> <li>• Describe the composition of the ECJ <ul style="list-style-type: none"> <li>○ 27 judges – 1 per member state</li> <li>○ (qualifications set out in Article 253/4)</li> <li>○ appointed for a renewable 6 year term</li> <li>○ They sit in 'chambers' of 3 or 5 judges</li> <li>○ Occasionally 13 judges sit as a Grand Chamber</li> <li>○ The ECJ may sit in plenary session (all 27)</li> <li>○ They work as a collegial body publishing a single unanimous decision with no dissenting judgments</li> <li>○ A President of the Court is chosen from amongst their number for a renewable term of 3 years</li> <li>○ They are assisted by 8 [9] Advocates General</li> </ul> </li> </ul>	15	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>13–15</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a good description and must have a LNK.</p> <p>Responses will be unlikely to achieve level three without an adequate description.</p> <p>Responses will be unlikely to achieve level two without a limited description.</p> <p>Responses will be unlikely to achieve level one without 1-3 basic points.</p>	AO1 Level	AO1 Marks	4	13–15	3	9–12	2	5–8	1	1–4
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(ii)*	<p>Potential answers may:</p> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <ul style="list-style-type: none"> <li>Discuss the role of the ECJ regarding assertion of supremacy through decisions such as <i>Van Gend en Loos</i>, <i>Costa v ENEL</i>, <i>Internationale Handelsgesellschaft &amp; Factortame</i></li> <li>Discuss the reaction of UK courts to supremacy: interpretation of section 2 ECA 1972, <i>Bulmer v Bollinger</i>, <i>Garland v BR Engineering</i>, <i>Pickstone v Freemans plc</i>, <i>Factortame</i> and the Merchant Shipping Act 1988 and <i>R v S of State for Employment ex parte EOC</i></li> <li>Discuss how the court has supported the concept of direct applicability; conferring rights on individuals</li> <li>Discuss how the court has developed the concept of horizontal and vertical direct effect through cases such as <i>Van Gend en Loos</i>, <i>Marshall v SW Hants HA</i>, <i>Defrenne v SABENA Airlines</i>, <i>McCarthy v Smith</i></li> <li>Discuss the development of indirect effect through cases such as <i>Von Colson v Land Nordrhein-Westfalen (1984)</i> and <i>Marleasing</i></li> <li>Discuss the importance of State Liability where the state are liable for compensation for breaches of Community law <i>Frankovitch</i></li> <li>Credit reference to the source.</li> </ul>	12	<table border="1" data-bbox="1294 245 1684 421"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without four developed points of which <b>one must</b> be well developed. Well developed point must include a case or example.</p> <p>Responses will be unlikely to achieve level three without three developed points (one must include a case to achieve top level 3 <b>or</b> three developed points with a number of limited points to achieve top level 3); three developed points (no case) will achieve middle level 3; two developed points (no case) will achieve bottom level 3.</p> <p>Responses will be unlikely to achieve level two without a range of limited points (no development) <b>or</b> a single developed point for top level two.</p> <p>Responses will be unlikely to achieve level one without any basic point(s).</p> <p>Some use of <b>source only</b> will achieve a maximum of level two.</p> <p>Straight lift from source would attract no credit.</p>	AO2 Level	AO2 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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2	(a)*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>• Explain that the literal rule involves giving the words their plain, ordinary literal meaning</li> <li>• Identify that the literal rule involves the judge applying literal rule even if it results in absurdity – Lord Esher in <i>R v Judge of the City of London</i> (1892)</li> <li>• Describe how the rule can rely on the use of a dictionary</li> <li>• Describe the historical dominance of the literal rule</li> <li>• Describe how this rule respects parliamentary supremacy</li> <li>• Use cases to illustrate its use – <i>Fisher v Bell</i>, <i>Whiteley v Chappel</i>, <i>LNER v Berriman</i>, <i>Cutter v Eagle Star</i>, <i>Cheeseman v DPP</i></li> <li>• Credit reference to the Sources.</li> </ul>	12	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a definition and three cases (excluding the source case) + LNK. All three cases must be developed (ie must say what words were being interpreted and how this affected the outcome – otherwise award level 3).</p> <p>Responses will be unlikely to achieve level three without a definition and two cases (excluding the source case) both cases must be developed (ie must say what words were being interpreted and how this affected the outcome – otherwise award level 2).</p> <p>Responses will be unlikely to achieve level two without a definition and a case. At the top it might be 1 explained case or 2 or 3 bald cases, at the bottom it might be basic points eg definition, features, bald cases, bald source use.</p> <p>Responses will be unlikely to achieve level one without any basic (relevant) point(s) eg definition, features, case. Bald point will achieve low level 1 eg dictionary meaning,</p>	AO1 Level	AO1 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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(i)	Identify the most appropriate rule of language as <i>ejusdem generis</i> [or the 'general rule'] (CP). This is because there is a list followed by general words. A bear will therefore not be included as it is not a domesticated pet. Use appropriate authority – <i>Powell v Kempton Racecourse</i> . Credit reference to the Source.	5	Responses will be unlikely to achieve level four without identifying the correct rule of language plus 'why' plus any other relevant point eg case/LNK/correct outcome														
(ii)	Identify the most appropriate rule of language as <i>expressio unius alterius</i> [or the 'specific rule'] (CP). This is because there is a specific list and only those in the list are included. As a bear is not mentioned it is excluded. Use appropriate authority – <i>Tempest v Kilner</i> . Credit reference to the Source.	5	Responses will be unlikely to achieve level three without identifying the correct rule of language plus 'why'.  Responses will be unlikely to achieve level two without identifying the correct rule of language (CP)														
(iii)	Identify the most appropriate rule of language as <i>noscitur a sociis</i> [or the 'context rule'] (CP). This is when the words take their meaning from the words around them and their broader context. It will not apply to chocolate eggs. Use appropriate authority – <i>Muir v Keay</i> or <i>IRC v Frere</i> . Credit reference to the Source.	5	Responses will be unlikely to achieve level one without any basic point.  Both Latin or English phrase is acceptable.  Responses need to have addressed the critical point (CP) and the 'why' before a further mark can be awarded for any other relevant point (eg the case, example or LNK).														

Question		Answer	Marks	Guidance										
(c)	(i)	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <ul style="list-style-type: none"> <li>Identify that the purposive approach takes a broader approach than the mischief rule in that the court is not just looking to see what the gap was in the old law; the judges are deciding what they believe Parliament is trying to achieve – what is the purpose of the Act?</li> <li>Explain that judges are required to consider the context in which the law was created – what were the concerns of government and Parliament at the time the Act was created?</li> <li>Recognise the essential link with external aids</li> <li>Describe how this rule has been increasingly used</li> <li>Describe how this rule links to a more continental approach to interpretation</li> <li>Describe the perceived unconstitutional nature of the rule</li> <li>Use any relevant cases to illustrate its use – <i>Coltman v Bibby Tankers</i> (1987), <i>Fitzpatrick v Sterling Housing Association</i> (1999), <i>R v Registrar General ex p Smith</i> (1990); <i>Jones v Tower Boat</i></li> <li>Credit reference to the Sources.</li> </ul>	15	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>13–15</td> </tr> <tr> <td>3</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a definition and three cases (excluding the source case) + LNK. All three cases must be developed (ie must say what words were being interpreted and/or the intent of parliament and how this affected the outcome – otherwise award level 3).</p> <p>Responses will be unlikely to achieve level three without a definition and two cases (excluding the source case). Both cases must be developed (ie must say what words were being interpreted and/or the intent of parliament and how this affected the outcome – otherwise award level 2).</p> <p>Responses will be unlikely to achieve level two without a definition and a case. At the top it might be 1 explained case or 2 or 3 bald cases. At the bottom it might be a range of basic points eg definition, features, bald cases, bald source use.</p> <p>Responses will be unlikely to achieve level one without 1-3 basic (relevant) point(s) eg definition, features, case. Bald point award low level 1 eg European approach.</p>	AO1 Level	AO1 Marks	4	13–15	3	9–12	2	5–8	1	1–4
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	<p>(ii)* Potential answers may:</p> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <ul style="list-style-type: none"> <li>• Discuss how the approach gives effect to parliament's true intentions</li> <li>• Discuss the way the approach avoids harsh and destructive analysis of language</li> <li>• Discuss the way the approach avoids the absurdity and injustice of the more literal approaches</li> <li>• Discuss the way the approach can allow for judicial law-making which goes against the doctrines of Parliamentary Sovereignty and Separation of Powers</li> <li>• Discuss the limitation that the approach can only be used if the judge can find parliament's intention</li> <li>• Discuss how trying to find the intention of parliament relies on extrinsic aids, in particular Hansard, and that can cause delays and adds to the cases costs</li> <li>• Discuss the difficulties of finding the intent of Parliament</li> <li>• Discuss how finding the intent of Parliament prevents cases ending in absurdity or injustice</li> <li>• Discuss the different judicial attitudes towards trying to find Parliamentary intent – Lord Denning versus Lord Scarman</li> <li>• Discuss whether there is an actual Parliamentary intent</li> <li>• Discuss how trying to find intent allows a judge too much power. This has been argued goes against Parliamentary supremacy</li> <li>• Discuss how the approach goes further than the mischief rule in that judges are not required to identify a 'mischief' which the Act was intended to remedy</li> <li>• Credit reference to the Source</li> </ul>	12	<table border="1" data-bbox="1368 284 1760 459"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10–12</td> </tr> <tr> <td>3</td> <td>7–9</td> </tr> <tr> <td>2</td> <td>4–6</td> </tr> <tr> <td>1</td> <td>1–3</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve Level four without four developed points of which one <b>must</b> be well developed, and there needs to be some balance.</p> <p>Responses will be unlikely to achieve Level three without three developed points <b>or</b> three developed points with a number of limited points for the top of the level; two developed points will achieve bottom level 3. There needs to be some balance.</p> <p>Responses will be unlikely to achieve level two without a range of limited points (no development); or a single developed point for top level two. Can be exclusively one-sided.</p> <p>Responses will be unlikely to achieve level one without basic points advantages and/or disadvantages.</p> <p>Some use of source <b>only</b> will achieve a maximum of level two.</p> <p>Straight lift from source should attract no credit.</p>	AO2 Level	AO2 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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