



GCE

Law

Unit **G152**: Sources of Law

Advanced Subsidiary GCE

Mark Scheme for June 2017

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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
	Not Relevant or no response or response achieves no credit
	Not correct
	Point
	Developed point
	Developed point extended
	Link to the source
	Feature
	level 1
	level 2
	level 3
	level 4
	Case
	Correct
	Bald case/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

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 commentaries.

*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 the '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 that this to be the case you should discuss the candidates answer with your supervisor to ensure consistent application of the mark scheme.

Question		Answer	Marks	Guidance										
1	(a)*	<p>Potential answers may include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>The European Commission</p> <p>Composition – 28 Commissioners (one per member state) who are appointed for a renewable 5 year term (accept 27)</p> <p>Commissioners act in the general interest of the EU and act with independence from national governments</p> <p>One of the Commissioners is the Commission president (currently Jean-Claude Juncker) who is proposed by the Council and elected by the Parliament</p> <p>The Council appoints the other Commissioners in agreement with the President and subject to a confirmatory vote by the Parliament</p> <p>The Commission is supported by an administrative staff of 33,000 European civil servants</p> <p>The Commission is divided into 'Directorates General' or departments each dealing with a different area of responsibility (e.g. Transport, Environment & Trade)</p> <p>Because Commissioners are not 'elected' they are answerable to the European Parliament who can veto their appointment or force the resignation of the entire Commission by a vote of censure</p> <p>The Commission is responsible for drafting proposals for legislation and initiates the EU legislative process (at the request of the Council or the Parliament)</p> <p>Since the Lisbon Treaty EU citizens can call on the Commission to propose laws by means of the European Citizens' Initiative (1 million signatures required)</p> <p>The Commission also acts as the Guardian of the Treaties and ensures implementation of EU policy</p> <p>The Commission can bring cases against member states (<i>Re: Tachographs: The Commission v United Kingdom</i> (1979)) and other institutions (<i>Commission v Council</i> (Case 45/86) (1987))</p> <p>Credit also any mention of the Commission's role in respect of the budget, representing the EU in foreign affairs and its newly acquired executive</p>	12	<table border="1"> <thead> <tr> <th>AO1 Levels</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>To access L4 – Candidate offers: Low – adequate detail on both Mid – adequate detail on one and good detail on the other High – good detail on both</p> <p>To access L3 – Candidate offers: Low – adequate detail on one Mid – some detail on both High – adequate detail on one and some detail on the other</p> <p>To access L2 – Candidate offers: Low – varied limited points Mid – some detail on one High – some detail on both</p> <p>To access L1 – Basic points</p>	AO1 Levels	AO1 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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Question	Answer	Marks	Guidance
	<p>powers under the Lisbon Treaty</p> <p>The European Parliament</p> <p>The Parliament is one of the largest democratically elected bodies in the world and consists of 751 'Members of the European Parliament' (MEPs)</p> <p>The Parliament elects a President (currently Martin Schulz) who acts as 'Speaker'</p> <p>The parliament meets once a month and meetings can last up to a week</p> <p>The MEPs are directly elected through universal suffrage by 500 million EU voters across 28 member states every 5 years</p> <p>The number of MEPs was agreed unanimously and is based on the population and budget contributions of member states so that no member state has fewer than 6 and none has more than 96</p> <p>MEPs are distributed between different political groupings rather than sitting in national groups</p> <p>Although the Parliament does not have the power of legislative initiative, it does have legislative power and acts as an equal a co-legislator with the Council under the ordinary legislative procedure</p> <p>There are also a number of special legislative procedures which only require the Parliament to be consulted or to consent</p> <p>It is also possible in very limited areas for the Parliament (or the council) to decide law alone</p> <p>Credit also any mention that the Parliament also has budgetary powers and/or that the Parliament has the power of oversight over a number of EU institutions (most notably the Commission who can be dismissed by passing a motion of censure)</p> <p>Credit any other relevant point and any relevant references to the Treaties.</p>		

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		<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, spelling and punctuation.</p>	3	<table border="1"><thead><tr><th>AO1 Marks</th><th>AO3 Marks</th></tr></thead><tbody><tr><td>9–12</td><td>3</td></tr><tr><td>5–8</td><td>2</td></tr><tr><td>1–4</td><td>1</td></tr></tbody></table>	AO1 Marks	AO3 Marks	9–12	3	5–8	2	1–4	1	
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Question		Answer	Marks	Guidance												
(b)	(i)	<p>Potential answers may include:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Recognise that the Court 'may' make a referral (accept also would make a discretionary referral or they have a 'power' to make a referral) (CP). Explain the reasoning – that the Chancery Division of the High Court would be 'any court or tribunal' according to Article 267 (WHY). Further, credit any reference to cases which have determined that courts anywhere in the hierarchy of a member state still constitute 'a court or tribunal' - <i>Torfaen Borough Council v B & Q</i> (1990), <i>Pretore di Salo v Persons Unknown</i> (1989) or <i>Dorsch Consult</i> (1997). Credit any relevant discretionary referral case – <i>Van Duyn v Home Office</i> (1974). Credit reference to the source</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 2px;">AO2 Levels</th> <th style="text-align: center; padding: 2px;">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 2px;">For each point i, ii, iii</td> <td></td> </tr> <tr> <td style="text-align: center; padding: 2px;">4</td> <td style="text-align: center; padding: 2px;">5</td> </tr> <tr> <td style="text-align: center; padding: 2px;">3</td> <td style="text-align: center; padding: 2px;">4</td> </tr> <tr> <td style="text-align: center; padding: 2px;">2</td> <td style="text-align: center; padding: 2px;">3</td> </tr> <tr> <td style="text-align: center; padding: 2px;">1</td> <td style="text-align: center; padding: 2px;">1–2</td> </tr> </tbody> </table> <p>To access Level 4 – Identify the CP, explain why and one other relevant factor (LTS, case etc)</p> <p>To access Level 3 – Identify the CP and explain why</p>	AO2 Levels	AO2 Marks	For each point i, ii, iii		4	5	3	4	2	3	1	1–2
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	(ii)	<p>Recognise that there is no need to make a referral (CP). Discuss the reasons why – because the issue has already been decided by a preceding case – it doesn't matter that it was a French case (WHY). Recognise the similarity to <i>R v Secretary of State for Employment ex parte Equal Opportunities Commission</i> (1994). Credit any other relevant case <i>X and van Dijk</i> (C-72/14 and C-197/14). Credit discussion of the Employment Tribunal falling within Article 267. Credit reference to the source</p>	5	<p>To access Level 2 - Identify the CP</p> <p>To access Level 1 – any basic point of relevance such as this will require a court or parliamentary control</p>												
	(iii)	<p>Recognise that the UK Supreme Court (UKSC) 'must' make a referral (accept also would make a mandatory referral or they have a 'duty' to make a referral) (CP). Explain the reasoning – that the UKSC is a court 'from whose decision there is no appeal' and therefore an Article 267 referral must be made (WHY). Recognise the similarity to <i>R v Henn and Darby</i> (1982). Credit any other mandatory referral case <i>R v Secretary of State for Transport Ex p Factortame (No.2)</i> (1991) or <i>Costa v ENEL</i> (1964). Credit reference to the source</p>	5													

Question			Answer	Marks	Guidance									
(c)	(i)	Potential answers may include: Assessment Objective 1 - Knowledge and understanding Treaties The primary sources of EU law are the treaties themselves. These include: The 'founding treaties' (that created the EU) <ul style="list-style-type: none"> • Treaty establishing the European Coal and Steel Community (1951) • Treaty establishing the European Economic Community (1957) • Treaty establishing the European Atomic Energy Community (1957) • Treaty on European Union (1992) The 'accession treaties' (that enlarge the EU to include new member states) like the Treaty of Accession of Denmark, Ireland and the United Kingdom (1972) which allowed for UK membership The 'amending treaties' (that extended the scope of the EU) such as the Single European Act (1986), Treaty of Amsterdam (1997), Treaty of Nice (2001) and the Lisbon Treaty (2007) By signing a Treaty, a member state makes a commitment to create new laws, which meet the principles and aims laid down in the Treaty Treaties are divided into Articles rather than sections and these Articles are directly applicable meaning that they take force within the legal systems of member states without further action by those member states Where Treaty Articles contain rights on which individuals can rely then these rights are said to have direct effect which national courts must protect Where Treaty Articles have direct effect this can be vertical (can be relied on against the state (<i>Van Gend en Loos v Nederlandse Administratie der</i>	15	<table border="1"> <thead> <tr> <th>AO1 Levels</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>To access L4 – Candidate offers: High – adequate detail on one and good detail on at least two Mid – adequate detail on two and good detail on one Low – adequate detail on all three</p> <p>To access L3 – Candidate offers: High – adequate detail on one and some detail on two Mid – some detail on all three Low – some detail on two</p> <p>To access L2 – Candidate offers: High – some detail on two and other limited points Mid – some detail on one and other limited points Low – varied limited points</p> <p>To access L1 – Basic points</p>	AO1 Levels	AO1 Marks	4	13-15	3	9-12	2	5-8	1	1-4
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	<p><i>Belastingen</i> (1963)) or horizontal (can be relied on between individuals – <i>Defrenne v SABENA Airlines</i> (1979))</p> <p>Regulations</p> <p>Regulations are made by the Council, Commission and Parliament acting together under the authority of Article 288</p> <p>According to Article 288 Regulations are 'directly applicable' meaning that they take immediate effect in member states without further action by that member state</p> <p>Thus, Regulations are detailed laws that apply to everyone in all member states</p> <p>Regulations seek to achieve uniformity of laws across all member states</p> <p>Article 288 also refers to Regulations being 'binding in their entirety' meaning that member states cannot pick and choose which elements to follow</p> <p>Examples of Regulations include the much awaited European Union Roaming Regulations which, if approved, will abolish end-user roaming charges throughout the EU</p> <p>If there is a conflict between domestic law and a Regulation, the Regulation will be given primacy <i>Macarthays Ltd v Smith</i> (1979), <i>Re Tachographs: Commission v United Kingdom</i> (1979)</p> <p>Regulations are capable of giving rise to both horizontal (<i>Munoz y Cia SA v Frumar Ltd</i> (2002)) and vertical direct effect (<i>Politi S.A.S v. Ministry for Finance of the Italian Republic</i> (1971))</p> <p>Directives</p> <p>Directives are made by the Council, Commission and Parliament acting together under the authority of Article 288</p>		

Question	Answer	Marks	Guidance
	<p>Directives are harmonising measures which seek to create legislative uniformity across EU member states</p> <p>Directives offer flexibility in that they can be addressed to all member states, a selection or one individual member state</p> <p>A Directive is not a law itself but rather an instruction to a member state to make a law at the domestic level to comply with the Directive</p> <p>The form that the law takes at the member state level is left to the member state. In the UK we might use an Order in Council, a statutory instrument (often referred to as regulations) or an Act of Parliament. For example, the Working Time Regulations (1998) are a piece of UK secondary legislation enacted to implement Council Directive 93/104/EC</p> <p>When a Directive is issued, the Commission gives member states a time scale within which implementation must take place (usually 2 years)</p> <p>Directives are 'binding as to the result to be achieved'. A recent example of a Directive is the Fourth EU Money Laundering Directive (2015)</p> <p>If a Directive is properly implemented any individual rights contained within it become available through the new domestic enabling legislation. However, where the member state fails to implement, the time limit for implementation has passed or the measure has not been implemented correctly, the CJEU has ruled that such if the measure gives rise to rights upon which individuals can rely and it is sufficiently clear and precise then it can have vertical direct effect (<i>Marshall v Southampton and South West Hampshire Area Health Authority</i> (1986)) but it cannot have horizontal direct effect (<i>Macarthys Ltd v Smith</i> (1980))</p> <p>Make relevant reference to the sources.</p>		

Question		Answer	Marks	Guidance										
	(ii)*	<p>Potential answers may include:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Problems</p> <p>Discuss the way that the concepts of horizontal and vertical direct effect have the potential to act very unfairly in that they give rights to individuals in some cases and not in others:</p> <ul style="list-style-type: none"> Vertical direct effect is only available against the state because the obligations in a Directive would fall on the member state Where an individual seeks to rely on the same rights against a private company/individual there is no horizontal direct effect so a remedy may depend on the arbitrary issue of who is the employer – state or private? This, in turn, can raise the consequent problem of identifying what is 'an arm of the state'? Discuss the potential problems in applying the Foster criteria Discuss examples of the inequalities that can result such as Ms Duke in <i>Duke v GEC Reliance</i> (1988) <p>Remedies</p> <p>The ECJ has developed a few solutions to try and overcome the problem of directives having no 'horizontal direct effect':</p> <ul style="list-style-type: none"> A generous approach to defining what is an 'arm of the state'. The Foster criteria have been applied to companies which may well have been public sector in the past but are clearly now private profit-making companies and found them to be arms of the state (<i>Griffin v South West Water</i> (1995)). The CJEU would argue that the criteria are clear and objective but it could be difficult to justify that a private company must be held accountable for the failings of 	12	<table border="1"> <thead> <tr> <th>AO2 Levels</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>To access Level 4 (10-12) a response requires: 3 developed points plus 1 expanded point</p> <p>To access Level 3 (7-9) a response requires: For 9 marks = 3 developed points or 2 expanded points For 8 marks = 2 developed points plus range of points or 1 expanded point plus range points For 7 marks = 1 expanded point or 2 developed points</p> <p>To access Level 2 (4-6) a response requires: For 6 marks – 1 developed point plus a range of points (Range is a minimum of two) For 5 marks - 1 developed point plus a point For 4 marks - 1 developed point or a range of points</p> <p>To access Level 1 (1-3) a response requires: Basic point(s)</p>	AO2 Levels	AO2 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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	<p>the state</p> <ul style="list-style-type: none"> The ‘judicial creation’ of state liability where the state is held liable in damages where it has failed and there would not be any direct effect otherwise (<i>Francovich v Italy</i> (1991)). It can be argued that such rulings can be justified on the basis that members states joined the EU to benefit from membership and must accept the rules as a ‘price to be paid’ for the relative benefits. Whilst this creative solution may seem to offer some flexibility, it should be noted that there are pre-conditions and other limitations on the use of state liability (the European Court of Justice has no mechanism for enforcing its judgements) The creation of ‘indirect effect’ where the court interprets national legal provisions in conformity with EU Law taking its authority from Article 10 (<i>Von Colson v land Nordrhein-Westfalen</i> (1984), <i>Marleasing v La Commercial</i> (1990)). This approach raises issues of sovereignty and the limits on judicial activism; is this within the scope of the CJEU or is it judicial creativity? Discuss other emerging principles developed by the CJEU such as the doctrine of horizontal direct effect since the case of <i>Küçükdeveci</i> (2010). The justification here has been the Charter of Fundamental Rights. Can the CJEU claim that they are simply extending rights in a manner which reflects the changing nature of the EU – in particular the social and welfare agenda with its strong focus on equality <p>Use any relevant cases to illustrate, e.g. <i>Marshall v Southampton and South West Hampshire Area Authority</i> (1986), <i>Duke v GEC Reliance Ltd</i> (1988), <i>Foster v British Gas plc</i> (1990) and <i>Griffin v South West Water Services</i> (1994)</p> <p>Credit references to the Sources.</p>		

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2	(a)*	<p>Potential answers may include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Explain that the literal rule involves giving the words their plain, ordinary, grammatical and literal meaning as it would appear in a dictionary</p> <ul style="list-style-type: none"> Identify that the literal rule involves the judge applying the literal rule even if it results in absurdity – Lord Esher in <i>R v Judge of the City of London</i> (1892) Describe how the rule can rely on the use of a dictionary – particularly one which is relevant to the time of the Act Describe the way the rule can lead to absurd, harsh and ridiculous outcomes Describe the way that cases decided under this rule can lead to amending legislation where a loophole has been exposed (<i>Fisher v Bell</i>) Describe the historical dominance of the literal rule - developed in the 19th century and became the main rule until the recent advent of a more purposive approach Describe how this rule respects parliamentary supremacy Describe the Law Commission's report of 1969 which was critical of the rule Describe the way that the rule demands an impossible level of accurate legislative draftsmanship <p>Use cases to illustrate its use:</p> <p><i>Fisher v Bell</i> (1960), <i>Whiteley v Chappell</i> (1868), <i>LNER v Berriman</i> (1946), <i>Cutter v Eagle Star</i> (1998), <i>Cheeseman v DPP</i> (1990), <i>IRC v Hinchee</i> (1960), <i>R v Harris</i> (1836), <i>R v Munks</i> (1964), <i>R v Goodwin</i> (2005), <i>R v Maginnis</i> (1987) (limited credit as it is in the source), <i>Bromley LBC v GLC</i> (1983), <i>Vacher v London Society of Compositors</i> (1913)</p> <p>Credit any relevant reference to the source.</p>	12	<table border="1"> <thead> <tr> <th>AO1 Levels</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>To access Level 4 (10-12) a response requires:</p> <p>A good definition of the rule plus 3 explained cases (an explained case will refer to the appropriate mischief and what the court's resolution was) and, for full marks, a LTS</p> <p>To access Level 3 (7-9) a response requires:</p> <p>An adequate definition of the rule plus 2 explained cases</p> <p>To access Level 2 (4-6) a response requires:</p> <p>A definition plus 1 explained case or 2 undeveloped cases</p> <p>To access Level 1 (1-3) a response requires:</p> <p>Basic point(s)</p>	AO1 Levels	AO1 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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(b)	(i)	<p>Potential answers may include:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Recognise that the most appropriate aid to interpretation here would be Hansard (CP). Explain that this is because Hansard contains an account of the debate that took place when the Bill was passed and will disclose Parliament's intention (WHY). Describe any other relevant point – that access to such reports has only become possible since the case of <i>Pepper v Hart</i> (1993), a LTS, a relevant case, that such reports may be unreliable and too political to discern Parliament's intention but that where they do they may prove especially useful with the Purposive Approach or AORP</p>	5	<table border="1"> <thead> <tr> <th>AO2 Levels</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>For each point i, ii, iii</td> <td></td> </tr> <tr> <td>4</td> <td>5</td> </tr> <tr> <td>3</td> <td>4</td> </tr> <tr> <td>2</td> <td>3</td> </tr> <tr> <td>1</td> <td>1–2</td> </tr> </tbody> </table> <p>To access Level 4 – Identify the CP, explain why and one other relevant factor (LTS, case etc)</p> <p>To access Level 3 – Identify the CP and explain why</p>	AO2 Levels	AO2 Marks	For each point i, ii, iii		4	5	3	4	2	3	1	1–2
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3	4															
2	3															
1	1–2															
	(ii)	<p>Recognise that the most appropriate aid to interpretation here would be previous Acts of Parliament on the same subject (but accept also previous decided cases) (CP). Explain that this is because the previous legislation (or the case law interpretations of key terms) may still be valid unless the new Act has introduced different terms (WHY). Describe any other relevant point – that previous legislation and/or case law may make it obvious why the new legislation was necessary and this may be helpful, any specific example such as the Sale of Goods Act 1979; Supply of Goods and Services Act 1982; Unfair Terms in Consumer Contracts Regulations 1999 or AORP</p>	5	<p>To access Level 2 - Identify the CP</p> <p>To access Level 1 – any basic point of relevance</p>												
	(iii)	<p>Recognise that the most appropriate aid to interpretation here would be a Law Commission Report (CP). Explain that this is because (a) the only full-time, permanent law reform body set up by Parliament is the Law Commission or (b) the report would contain detailed discussion of the problems that required or led to the legislation (WHY). Describe any other relevant point – (a) or (b) from above, a LTS, AORP (e.g. other Acts enacted following a Law Commission Report, relevant details about the Law Commission etc).</p>	5													

Question			Answer	Marks	Guidance									
(c)	(i)	<p>Potential answers may include:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Identify that the mischief rule has its origins in Heydon's case (1584) "Four things are to be discussed and considered:</p> <p>What was the common law before making the Act? What was the mischief and defect for which the common law did not provide? What remedy hath Parliament resolved and appointed to cure the disease of the commonwealth? What is the true reason for the remedy? Judges shall make such construction as shall suppress the mischief and advance the remedy"</p> <p>Thus, in less obtuse language, the rule has four elements:</p> <p>What was the common law before the making of the Act? What was the problem for which the common law did not provide? What solution did Parliament create to solve the problem? The courts should interpret the statute to make the solution as effective as possible</p> <p>However, a working definition might be that words are interpreted in such a way as to give effect to the intention of Parliament in the light of some pre-existing problem (or 'mischief') for which the common law did not provide a remedy</p> <p>Explain that mischief rule is similar to the purposive approach except that it does require identification of a problem or 'mischief' before it can be used</p> <p>Explain that the mischief rule may often rely on the use of extrinsic aids to help discern the intention of parliament and/or the mischief that preceded</p>	15	<table border="1"> <thead> <tr> <th>AO1 Levels</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>To access Level 4 (10-12) a response requires: A good definition of the rule plus 3 explained cases (an explained case will refer to the appropriate mischief and what the court's resolution was) and, for full marks, a LTS</p> <p>To access Level 3 (7-9) a response requires: An adequate definition of the rule plus 2 explained cases</p> <p>To access Level 2 (4-6) a response requires: A definition plus 1 explained case or 2 undeveloped cases</p> <p>To access Level 1 (1-3) a response requires: Basic point(s)</p>	AO1 Levels	AO1 Marks	4	13–15	3	9–12	2	5–8	1	1–4
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4	13–15													
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Question		Answer	Marks	Guidance
		<p>the Act</p> <p>In <i>Re Sussex Peerage</i>, it was held that the mischief rule should only be applied where there is ambiguity in the statute</p> <p>Use any relevant case in illustration: <i>Jones v Wrotham Park Settled Estates</i> (1979); <i>Smith v Hughes</i> (1960); <i>Royal College of Nurses v DHSS</i> (1981); <i>DPP v Bull</i> (1994); <i>Corkery v Carpenter</i> (1951); <i>Gardiner v Sevenoaks RDC</i> (1950); <i>Elliott v Grey</i> (1959); <i>Alphacell v Woodward</i> (1972); <i>Whittaker v Campbell</i> (1983); <i>Bradford v Wilson</i> (1983); <i>R v Chief Constable of Kent (ex parte the Police Federation)</i> (1999)</p> <p>Make any relevant reference to the source.</p>		

Question		Answer	Marks	Guidance										
	(ii)*	<p>Potential answers may include:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>A discussion of the following advantages:</p> <p>The rule helps to avoid the absurdity and injustices associated with more literal approaches and 'repairs' bad laws quickly</p> <p>The rule promotes 'flexibility' and allows judges to put into effect the remedy Parliament chose (ie gives expression to Parliament's true intention) ... thus also saving Parliament time in not having to legislate afresh</p> <p>Leads to reforming and improving law as each case is interpreted to try and prevent the specific mischief which allows the law to develop and adapt to changing economic, social and physical conditions (<i>RCN v DHSS</i>)</p> <p>Blackstone justified his support for the mischief rule by stating that '[T]he fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time the law was made'</p> <p>The rule offers an alternative to the literal and golden rules but one which is narrower than the purposive approach allowing judges to show more respect for parliamentary sovereignty and separation of powers</p> <p>Credit any other relevant advantage</p> <p>The mischief rule contrasted with the literal rule:</p> <p>It cannot have been parliament's intention to create legislation that leads to blatantly absurd results (<i>Whitely v Chappel</i>), harsh or unjust results (<i>LNER v Berriman</i>) or plainly goes against their true intentions (<i>Cheeseman v DPP</i>) – the mischief rule avoids this and provides obviously necessary flexibility</p> <p>The literal rule provides certainty where the mischief rule can create an offence 'after the event' (eg <i>Smith v Hughes</i>) which undermines the certainty and predictability of law (note possible impact on the rule of law)</p> <p>Judges using the literal rule can claim to be respecting the sovereignty of parliament where the mischief rule allows for potential judicial law-making</p>	12	<table border="1"> <thead> <tr> <th>AO2 Levels</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>To access Level 4 (10-12) a response requires: 3 developed points plus 1 expanded point</p> <p>To access Level 3 (7-9) a response requires: For 9 marks = 3 developed points or 2 expanded points For 8 marks = 2 developed points plus range of points or 1 expanded point plus range points For 7 marks = 1 expanded point or 2 developed points</p> <p>To access Level 2 (4-6) a response requires: For 6 marks – 1 developed point plus a range of points (Range is a minimum of two) For 5 marks - 1 developed point plus a point For 4 marks - 1 developed point or a range of points</p> <p>To access Level 1 (1-3) a response requires: Basic point(s)</p>	AO2 Levels	AO2 Marks	4	10–12	3	7–9	2	4–6	1	1–3
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Question	Answer	Marks	Guidance								
	<p>(eg <i>RCN v DHSS</i>) which goes against sovereignty of parliament and/or the theory of the separation of powers</p> <p>The literal rule is certain and predictable but the mischief rule offers less consistency as different judges reach different conclusions and bring their own views, moral values and prejudices to bear (<i>DPP v Bull</i>)</p> <p>The literal rule requires few, if any, extrinsic aids. It relies primarily on a dictionary whereas the mischief rule can rely heavily on extrinsic aids in order to discern parliament's intention and the pre-existing problem(s) with the common law</p> <p>The mischief rule dates back to the 16th century when there were far fewer Acts of Parliament and those that were passed would have been less complex with intentions that were easier to work out. This makes the rule less suited to the quantity and complexity of modern legislation. However, the literal rule has its origins in the 19th century and is more suited to the type of legislation that started becoming ubiquitous during the industrial revolution and since</p> <p>The mischief rule reforms and improves the law as each case is interpreted so as to avoid the mischief behind the Act whereas the literal rule can produce harsh, absurd and repugnant outcomes</p> <p>The literal rule allows lawyers to advise clients confidently as it provides predictability and can therefore reduce litigation whereas the mischief rule can operate unpredictably</p> <p>The literal rule encourages Parliamentary draftsmen to be precise – legislation which is clear, precise and plainly written can be read, understood and determined by anyone who can read English where the mischief rule is more flexible and forgiving</p> <p>Credit any other relevant comparison Make relevant reference to the source.</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, spelling and punctuation.</p>	3	<table border="1"> <thead> <tr> <th>AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>9–12</td> <td>3</td> </tr> <tr> <td>5–8</td> <td>2</td> </tr> <tr> <td>1–4</td> <td>1</td> </tr> </tbody> </table>	AO2 Marks	AO3 Marks	9–12	3	5–8	2	1–4	1
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S GCE Law Levels of Assessment

There are **four** levels of assessment of AOs 1 and 2 in the AS units. Level 4 is the highest level that can reasonably be expected from a candidate at the end of the first year of study of an Advanced GCE course. Similarly, there are **three** levels of assessment of AO3 in the AS units.

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

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