



GCE

Law

Unit **G152**: Sources of Law

Advanced Subsidiary GCE

Mark Scheme for June 2018

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

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

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

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

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

© OCR 2018

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:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Note that ideas for new laws may come from a variety of sources and that these include:</p> <p>Pressure Groups Pressure groups campaign for or against a proposed change in the law Pressure groups serve as an example of the Government taking note of public opinion and sometimes bowing to it Some pressure groups have a high profile but, arguably, have little success in changing the law (Fathers for Justice) where some claim a good deal of credit for changes brought about following their actions (Stonewall who would claim they have much legislation on homosexuality, equality and civil marriage including the repeal of Section 28 and the equalising of the age of homosexual consent under the The Sexual Offences (Amendment) Act 2000) Other examples include the League Against Cruel Sports and the Countryside Alliance who had conflicting interests around the Hunting Act 2004 Other examples include Liberty and Justice who campaign for or against changes that might affect human rights Also accept sectional interest groups such as the TUC, CBI, RAC, Electoral Reform Society, RSPCA etc</p> <p>The Law Commission Identify legislation relevant to the Law Commission's role: the Law Commission Act 1965 and the Law Commission Act 2009 What they do: systematically keep all English law under review; receive and consider proposals for law reform and consult relevant parties; put forward proposals for reform Repeal – to remove out of date statutes (the Statute Law (Repeals) Act 1998 repealed over 150 complete Acts of Parliament, which were outdated) Consolidation – to draw all the existing provisions together in one Act</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 all three Mid – adequate detail on two and good detail on one High – adequate detail on one and good detail on at least two</p> <p>To access L3 – Candidate offers: Low – some detail on two Mid – some detail on all three High – adequate detail on one and some detail on two</p> <p>To access L2 – Candidate offers: Low – varied limited points Mid – some detail on one and other limited points High – some detail on two and other limited points</p> <p>To access L1 – Basic points</p>	AO1 Levels	AO1 Marks	4	10–12	3	7–9	2	4–6	1	1–3
AO1 Levels	AO1 Marks													
4	10–12													
3	7–9													
2	4–6													
1	1–3													

Question	Answer	Marks	Guidance
	<p>where it is currently found in a number of smaller provisions (Family Law Act 1996)</p> <p>Codification – bringing together all the law on one topic into one source (The Theft Act 1968 was an attempt at codification of property offences where the draft Criminal Code 1985 and the full Code 1989 were an attempt to codify all criminal law)</p> <p>There are five full-time Commissioners (experienced judges, barristers, solicitors or teachers of law) who are appointed by the Lord Chancellor and Secretary of State for Justice for up to five years</p> <p>How they work:</p> <p>Referral: topics may be referred by the Lord Chancellor on behalf of the Government, or it may itself select areas in need of reform</p> <p>Research: LC researches the area of law in need of reform and publishes a consultation paper seeking views on possible reform</p> <p>Consultation: a consultation paper will describe the current law, set out the problems and look at options for reform</p> <p>Proposals for reform: these will be presented in a report which will also set out the research that led to the conclusions. There will often be a draft Bill attached to the report.</p> <p>Examples of successes of the Law Commission – the Occupier's Liability Acts 1984, the Land Registration Act 2002, the Fraud Act 2006 and the Corporate Manslaughter and Corporate Homicide Act 2007 are all seen as successes.</p> <p>Private Members (of Parliament)</p> <p>An individual MP proposes a new law without Government support</p> <p>Introducing a Private Member's Bill is done through a ballot, presentation or a ten minute rule</p> <p>A Private Member's Bill can be introduced in either House and must go through the same stages as a normal Bill</p> <p>Proposals tend to be non-party political and may be pragmatic, moral or of concern to an MP's constituency</p> <p>Sometimes the proposal may not succeed as a Bill in its own right but it may influence another Government Bill</p> <p>Examples include: Michael Colvin and the Computer Misuse Act 1991, David Steel and the Abortion Act 1967, Stephen Pound and the Anti-</p>		

Question		Answer	Marks	Guidance								
		<p>Social Behaviour Act 2003 and Sidney Silverman and the Murder (Abolition of Death Penalty) Act 1965</p> <p>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>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
AO1 Marks	AO3 Marks											
9–12	3											
5–8	2											
1–4	1											

Question		Answer	Marks	Guidance												
(b)	(i)	<p>Potential answers may:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Identify that Betty's concerns would be addressed by ensuring that regulations made under the new Act are subject to the control of an affirmative resolution procedure (CP). This is because there will need to be an approval through a motion in both Houses of Parliament, with a debate and vote (WHY). Any additional point such as a LTS, recognition that the Parent Act will dictate the method of approval, such matters are usually considered in Standing Committee or that few SIs are approved by this method and that it is the stronger form of approval.</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, remedy 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
AO2 Levels	AO2 Marks															
For each point i, ii, iii																
4	5															
3	4															
2	3															
1	1–2															
	(ii)	<p>Identify that the best control for Mr Smith to rely on would be substantive ultra vires for unreasonableness (CP). This is because the Minister has made a decision that no reasonable minister in the same circumstances would make (WHY). Any additional point such as a LTS, a relevant case (<i>Associated Picture Houses v Wednesbury Corporation</i> (1948)) or speculation on an appropriate remedy.</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>Identify that the best control for Mr Khan to rely on would be procedural ultra vires (CP). This is because Mr Khan believes that the Minister has acted beyond his powers by not consulting with interested parties (such as himself) – a requirement of the enabling Act (WHY). Any additional point such as a LTS, a relevant case (<i>Agricultural Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd</i> (1972)) or speculation on an appropriate remedy.</p>	5													

Question			Answer	Marks	Guidance										
					<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>	AO1 Levels	AO1 Marks	4	13-15	3	9-12	2	5-8	1	1-4
AO1 Levels	AO1 Marks														
4	13-15														
3	9-12														
2	5-8														
1	1-4														
(c)	(i)	Potential answers may: Assessment Objective 1 - Knowledge and understanding Resolution Procedures:	<ul style="list-style-type: none"> Describe the 'negative resolution' procedure that allows any MP to put down a motion to annul the delegated legislation within a specific time period (usually 40 days) Either House (or both) may object (except finance matters which are Commons only) Most common form of control (eg all EU Regulations are passed this way) Describe the 'affirmative resolution' where Parliament is required to vote its approval of the delegated legislation when delegated legislation is laid before one or both Houses, and becomes law only if a motion approving it is passed within a specified time (usually 28 or 40 days) Approval of both Houses normally required so it is a stricter form of control although less delegated legislation is scrutinised this way Describe the 'super-affirmative resolution' under the Legislative and Regulatory Reform Act 2006 which gives Ministers power to make any provision by order if it will remove or reduce a legislative burden. Such burdens might include a financial cost, an administrative inconvenience, an obstacle to efficiency, productivity or profitability or a sanction which affects the carrying on of any lawful activity. Ministers can even change Acts of Parliament Enabling Acts: <ul style="list-style-type: none"> Enabling Acts lay down the nature and scope of the delegated powers Enabling Acts may be repealed, revoked or amended at any time Enabling Acts may set down strict procedures and limitations Parliament may be required to vote its approval of the enabling legislation Publication of all SIs is required under the Statutory Instruments Act 1946 	15	To access L4 – Candidate offers: Low – adequate detail on all three Mid – adequate detail on two and good detail on one High – adequate detail on one and good detail on at least two To access L3 – Candidate offers: Low – some detail on two Mid – some detail on all three High – adequate detail on one and some detail on two To access L2 – Candidate offers: Low – varied limited points Mid – some detail on one and other limited points High – some detail on two and other limited points To access L1 – Basic points										

Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"> Consultation with Government Ministers, those with relevant expertise (e.g. the police and local authorities) and the public is often a requirement of the enabling legislation <p>Substantive Ultra Vires</p> <ul style="list-style-type: none"> The courts can control delegated legislation through the doctrine of judicial review This process takes place in a special Administrative Court within the Queen's Bench Divisional Court Judicial Review is based on the doctrine of <i>ultra vires</i> which means 'beyond their powers' The process allows parties to challenge the lawfulness of administrative decision-making The court can determine whether a decision-maker has gone beyond their powers in four broad categories <p>Substantive <i>ultra vires</i> – is where an administrative person/body has acted beyond the remit of the powers granted to him/her/them in the Enabling Act as seen in <i>R v Secretary of State for Social Security ex parte Joint Council for the Welfare of Immigrants</i> (1996)</p> <p>Make relevant reference to the sources.</p>		

Question		Answer	Marks	Guidance										
	(ii)*			<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>	AO2 Levels	AO2 Marks	4	10–12	3	7–9	2	4–6	1	1–3
AO2 Levels	AO2 Marks													
4	10–12													
3	7–9													
2	4–6													
1	1–3													
		<p>Potential answers may:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>PC more effective than JC</p> <p>Parliament can re-legislate, revoke or amend Enabling Acts to overcome any criticisms from the judiciary making it more effective</p> <p>Judicial Review relies on an individual bringing an action in the first place – it cannot 'choose' to review a decision unlike Parliament which has complete discretion making it more effective</p> <p>Judicial Review has stringent legal tests which must be satisfied before a case can be heard (<i>locus standii</i>) making Parliamentary controls more effective</p> <p>Some may argue that judges who respect the doctrine of Separation of Powers are reluctant to 'go against' or criticise the Executive leaving court controls less effective</p> <p>Some judges may be similarly reluctant where they feel that declaring legislation <i>ultra vires</i> defies the doctrine of Parliamentary Supremacy or draws them into making overtly 'political' declarations making them similarly less effective</p> <p>Legal Aid shortages deny many litigants access to the courts and make parliamentary controls more accessible and effective than court controls</p> <p>Delegated legislation which gives ministers wide discretionary powers make it hard for the courts to review or find <i>ultra vires</i> whereas Parliament retains the power to control such ministers making it more effective</p> <p>PC less effective than JC</p> <p>As per the source, court controls have the advantage of dealing with detailed problems based on legislation that is 'in force' whereas Parliamentary controls are premised on best estimates of potential future problems</p> <p>Parliament has limited time and resources to scrutinise delegated legislation which, in combination with the sheer volume of delegated legislation, limits proper scrutiny whereas the courts are obliged to deal</p>	12	<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>										

Question	Answer	Marks	Guidance								
	<p>with all viable cases brought before them making Parliament less effective</p> <p>The resolution procedures rarely result in actually stopping delegated legislation whereas Parliament will usually respect the decisions of the courts especially the Supreme Court (see detention for terror suspects) making them more effective than Parliament</p> <p>Parliamentary controls such as the various scrutiny committees have little or no real power and can usually only refer matters whereas decisions made by the courts are generally respected and observed by the executive making them more effective</p> <p>The Constitutional Reform Act (2005) gave the Supreme Court (where judicial review appeals are heard) greater independence and underscored the doctrine of separation of powers. Consequently, the court has been 'confident' in using its powers to hold Parliament to account making it more effective. However, some would argue that conservative judges who respect the doctrine of supremacy of parliament are reluctant to use their powers against Parliament.</p> <p>Reach any reasonable and supported conclusion about which is more effective</p> <p>Credit references to the Sources.</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 Mark</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 Mark	9–12	3	5–8	2	1–4	1
AO2 Marks	AO3 Mark										
9–12	3										
5–8	2										
1–4	1										

Question		Answer	Marks	Guidance										
2	(a)*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Overruling This is where a court in a later case state that the legal principle or precedent decided in an earlier (different) case is wrong. Overruling may occur when a higher court overrules a decision made in an earlier (different) case by a lower court or, if it has the power, one of its own previous decisions. Examples might include: the UKSC overruling a decision of the Court of Appeal in a different case on the same legal point; where the Court of Justice of the EU overrules a past decision it has made in a different case but on the same legal point; or where the UKSC uses the Practice Statement 1966 to overrule a past decision of its own (e.g. in <i>Pepper v Hart</i> (1993) overruled the earlier decision in <i>Davis v Johnson</i> (1979) regarding the use of Hansard)</p> <p>Reversing This is where a court higher up the hierarchy overturns the decision of a lower court on appeal in the same case. For example, the UKSC may disagree with the Court of Appeal when the same case gets appealed up to the UKSC. The higher court 'reverses' the decision of the lower court Examples include: <i>Sweet v Parsley</i> (1970), <i>R v Kingston</i> (1984) and <i>Fitzpatrick v Sterling Housing Association Ltd</i> (2000) In <i>Re: Pinochet</i> (1999) the House of Lords reversed its own previous decision for the first time Note that where a superior court changes the ruling of a lower court this is called reversing. A decision is only 'overruled' when the court is saying that the legal principle or precedent was wrong and should not be followed</p> <p>Differences Overruling is about the legal principle where reversing is about the decision Thus, it is possible for a higher court to overrule the ratio for a decision of</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: High - good explanation of both AND explicit reference to both differences Mid – good explanation of both AND explicit reference to one difference Low - good explanation of both AND implied reference to both differences</p> <p>To access L3: High – adequate explanation of both AND some reference to difference(s) Mid – adequate explanation of both without reference to difference(s) Low – limited explanation of both with some reference to difference(s)</p> <p>To access L2: Limited explanation of at least one</p> <p>To access L1 – basic points</p>	AO1 Levels	AO1 Marks	4	10–12	3	7–9	2	4–6	1	1–3
AO1 Levels	AO1 Marks													
4	10–12													
3	7–9													
2	4–6													
1	1–3													

Question	Answer	Marks	Guidance
	<p>a lower court yet still reach the same decision for a different reason Whilst any higher court can reverse a lower court, not any court can overrule its own previous decisions</p> <p>Ratio decidendi Precedent operates because the legal reasons for past decisions are recorded in judgments These judgments have two parts the <i>ratio decidendi</i> and the <i>obiter dicta</i> The <i>ratio decidendi</i> (reason for deciding) is the part of the judgment in which the judge explains the principles of law upon which his decision is based This is what creates a precedent for judges to follow in future, similar cases Judgments made by a higher court are binding on all courts beneath them Examples of well-known <i>ratios</i> include: <i>Donoghue v Stevenson</i> (1932), <i>Carlill v Carbolic Smoke Ball Co Ltd</i> (1892) & <i>R v Dudley & Stevens</i> (1884)</p> <p>Obiter dicta The judgment will also include other material known as <i>obiter dicta</i> (other things said). For example, a judge may comment on what his decision would have been if the facts of the case had been different <i>Obiter dicta</i> are not binding in future cases <i>Obiter dicta</i> may be a form of persuasive precedent It is sometimes difficult to separate the <i>ratio decidendi</i> from the <i>obiter dicta</i> An example of <i>obiter dicta</i> which became important in a subsequent case is <i>R v Howe</i> (1987) which was followed as a persuasive precedent in <i>R v Goffs</i> (1992)</p> <p>Differences <i>Ratio</i> is binding, <i>obiter</i> is only persuasive The <i>ratio</i> contains the legal principle(s) where <i>obiter</i> may contain a variety of material</p> <p>Make relevant reference to the source.</p>		

Question		Answer	Marks	Guidance									
		<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 Mark</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 Mark	9–12	3	5–8	2	1–4	1	
AO1 Marks	AO3 Mark												
9–12	3												
5–8	2												
1–4	1												

Question		Answer	Marks	Guidance												
(b)	(i)	<p>Potential answers may:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Recognise that beyond the Young's exceptions the Court of Appeal (Criminal Division) has a method of avoidance contained in an extra power where the law has been misapplied or misunderstood (CP). This is the best method because the decision has been made in ignorance of the law and has therefore been misapplied and/or misunderstood (WHY). Any additional relevant point such as a LTS, a case (<i>R v Gould (1969)</i>), that this is because the liberty of the individual is at stake. Credit the possibility of using distinguishing only as a L4 point as there is insufficient information to suggest this is the most valid route.</p> <p>Also credit the alternative route of <i>per incuriam</i>:</p> <p>Recognise that the best method of avoidance in this situation would be for the Court of Appeal (Criminal Division) to employ the '<i>per incuriam</i>' Young's exception (CP). This is because the previous decision had been made in ignorance of a relevant authority (WHY). Any additional relevant point such as a LTS, a relevant case (<i>Rickard/Williams</i>) or that <i>per incuriam</i> is rarely used</p>	5	<table border="1" data-bbox="1471 223 2061 430"> <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> <p>To access Level 2 - Identify the CP</p> <p>To access Level 1 – any basic point of relevance</p>	AO2 Levels	AO2 Marks	For each point i, ii, iii		4	5	3	4	2	3	1	1–2
AO2 Levels	AO2 Marks															
For each point i, ii, iii																
4	5															
3	4															
2	3															
1	1–2															
	(ii)		5													

Question		Answer	Marks	Guidance
	(iii)	Recognise that the best method of avoidance in this situation would be distinguishing (CP). This is because the previous decision involved similar but materially different facts (WHY). Any additional relevant point such as a LTS, a relevant case pair such as <i>Balfour v Balfour</i> (1919) and <i>Merritt v Merritt</i> (1971) or <i>Stilk v Myrick</i> (1809) and <i>Williams v Roffey</i> , (1990)	5	

Question			Answer	Marks	Guidance										
					<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>	AO1 Levels	AO1 Marks	4	13–15	3	9–12	2	5–8	1	1–4
AO1 Levels	AO1 Marks														
4	13–15														
3	9–12														
2	5–8														
1	1–4														
(c)	(i)	Potential answers may: Assessment Objective 1 - Knowledge and understanding Supreme Court & Practice Statement/Directions 3 & 4 Recognise that when the UK Supreme Court (UKSC) (rarely) makes a mistake or realises that the law needs to be changed they can use the House of Lords Practice Statement (1966) as approved for the UKSC in Practice Directions 3 & 4 and the 2010 case of <i>Austin v Southwark LBC</i> Can only be used sparingly to avoid uncertainty. The judicial functions of the House of Lords were transferred to the UK Supreme Court (UKSC) in 2009 and make it clear that the Practice Statement continues to apply in the UKSC. Describe any of the content of the Practice Statement (e.g. conditions for its careful use in crime, contract and fiscal matters). Use any relevant pair of Practice Statement cases to illustrate its use: <i>Conway v Rimmer</i> (1968) overruling <i>Duncan v Camel Laird</i> (1942); <i>Herrington v BR Board</i> (1972) overruling <i>Addie v Dumbreck</i> (1929); <i>Miliangos v George Frank Textiles</i> (1976) overruling <i>Re United Rlys of the Havana and Regla Warehouses Ltd</i> (1961); <i>Shivpuri</i> (1986) overruling <i>Anderton v Ryan</i> (1985); <i>R v Howe</i> (1987) overruling <i>DPP v Lynch</i> (1975), <i>Murphy v Brentwood DC</i> (1991) overruling <i>Anns v Merton LBC</i> (1978); <i>Pepper v Hart</i> (1992) overruling <i>Davis v Johnson</i> (1978); <i>Arthur JS Hall v Simons</i> (2000) overruling <i>Rondel v Worsley</i> (1969); <i>R v G and R</i> (2003) overruling <i>Caldwell</i> (1982); <i>Horton v Sadler</i> (2006) overruling <i>Walkley v Precision Forgings</i> (1979); <i>A v Hoare</i> (2008) overruling <i>Stubbins v Webb</i> (1993) Describe any use of the Practice Directions 3 & 4 in the UKSC such as: <i>Kanuer v Ministry of Justice</i> (2016) overruling <i>Cookson v Knowles</i> (1979) or <i>R v Jogee</i> (2016) overruling <i>R v Powell & English</i> (1999) Make relevant reference to the source.	15	To access L4 – Candidate offers: Low – adequate detail on all three Mid – adequate detail on two and good detail on one High – adequate detail on one and good detail on at least two To access L3 – Candidate offers: Low – some detail on two Mid – some detail on all three High – adequate detail on one and some detail on two To access L2 – Candidate offers: Low – varied limited points Mid – some detail on one and other limited points High – some detail on two and other limited points To access L1 – Basic points											

Question		Answer	Marks	Guidance										
	(ii)*	<p>Potential answers may:</p> <p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>The advantages of judges being able to develop the law through precedent include:</p> <p>It allows judges to promote fairness. Cases such as <i>Central London Properties v High Trees</i> (1947) and <i>Balfour v Balfour</i> (1919) being distinguished in <i>Merritt v Merritt</i> (1971) are examples of judges trying to do justice in the instant case. Fairness is also promoted by like cases being treated alike which is fair, just and rational</p> <p>It enables judges to develop the law and protect our civil liberties in changing political and constitutional circumstances. Cases like <i>AG v Guardian Newspapers</i> (1987) demonstrate the judges upholding the right to free speech in the face of excessive use of executive power. A range of judicial review cases can be cited on similar grounds (<i>R v Secretary of State for Home Department ex parte Fire Brigades Union</i>)</p> <p>It enables the judges to move the law forward in response to changing social and moral standards <i>Airedale NHS Trust v Bland</i> (1993), <i>Gillick v West Norfolk AHA</i> (1985) and <i>R v R</i> (1991), or hold the moral line <i>R v Brown</i> (1994)</p> <p>It enables the law to be updated according to shifting standards <i>R v Ireland & Burstow</i> (1997), <i>R v Dica</i> (2003), <i>Herrington v BRB</i> (1972)</p> <p>It allows judges to correct mistakes <i>R v Shivpuri</i> (1986) correcting <i>Anderton v Ryan</i> (1985); <i>R v G & another</i> (2003) correcting <i>R v Caldwell</i> (1982)</p> <p>It allows judges to draw issues to parliament's attention where amending law is required <i>C v DPP</i> (1995)</p> <p>It allows the law to be developed in a way that reflects prevailing public</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
AO2 Levels	AO2 Marks													
4	10–12													
3	7–9													
2	4–6													
1	1–3													

Question	Answer	Marks	Guidance
	<p>policy <i>Donoghue v Stevenson</i> (1932), <i>Anns v Merton LBC</i> (1978), <i>Caparo Industries plc v Dickman</i> (1990), <i>White & others v CC of South Yorkshire Police</i> (1998)</p> <p>It allows the law to deal with individual cases in a unique way <i>Re: A (conjoined twins)</i> (2000)</p> <p>Also accept arguments such as:</p> <ul style="list-style-type: none"> • Certainty ... enables lawyers to advise clients accurately and individuals to plan their affairs according to likely outcomes. Also provides stability for business and other fiscal arrangements to be founded on • Fairness & consistency ... like cases are treated alike which is fair, just, certain and rational. The law is not subject to whims of individual judges which lends greater credibility • Flexibility ... despite a fairly rigid system overall, the system allows room for development through distinguishing, overruling and so on which means judges can develop the law to meet changing social , political or moral conditions • Precision ... in a system which has been refining law over hundreds of years the law becomes very precise as minor variations on the same principles arise • Time - saving ... because we have such a vast body of precise law to rely on cases do not have to be constantly re-argued from first principle saving lawyers, the court and client's time and money. <p>In order to have a discursive response candidates may include counter-arguments such as:</p> <ul style="list-style-type: none"> • Rigidity ... precedent can make the law too inflexible with bad decisions being perpetuated Complexity ... with hundreds of thousands of reported cases it is difficult to identify and locate relevant case law • Illogical distinctions ... practices such as 'distinguishing' lead to 'hair- 		

Question		Answer	Marks	Guidance								
		<p>splitting' which, in its turn, can lead to certain areas of law becoming over-complex</p> <ul style="list-style-type: none"> • Slowness of growth ... unless parliament legislate, there is nothing the judges can do to reform the law – their hands are tied until suitable cases come along • Judicial law-making ... there is a strongly held view that judges can and do use precedent to 'make law' and that they do not have the mandate to do so. <p>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
AO2 Marks	AO3 Marks											
9–12	3											
5–8	2											
1–4	1											

AS GCE Law Levels of Assessment

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

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

OCR (Oxford Cambridge and RSA Examinations)
The Triangle Building
Shaftesbury Road
Cambridge
CB2 8EA

OCR Customer Contact Centre

Education and Learning
Telephone: 01223 553998
Facsimile: 01223 552627
Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations
is a Company Limited by Guarantee
Registered in England
Registered Office: The Triangle Building, Shaftesbury Road, Cambridge, CB2 8EA
Registered Company Number: 3484466
OCR is an exempt Charity

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

© OCR 2018

 **Cambridge
Assessment**

