

Combined Mark Schemes And Report for the Units

January 2007

H124/H524/MS/R/07J

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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.

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Any enquiries about publications should be addressed to:

OCR Publications
PO Box 5050
Annersley
NOTTINGHAM
NG15 0DL

Telephone: 0870 870 6622
Facsimile: 0870 870 6621
E-mail: publications@ocr.org.uk

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MARK SCHEMES FOR THE UNITS

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Mark Scheme G141
January 2007

This mark scheme must be used in conjunction with the Advanced Subsidiary Assessment Grid.

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme. Answers, which contain no relevant material at all, will receive no marks.

Overall marks for the paper should be allocated among the assessment objectives as follows:

Assessment Objective 1	72 marks
Assessment Objective 2	36 marks
Assessment Objective 3	12 marks

Overall marks for each question should be allocated among the assessment objectives as follows.

Assessment Objective 1	18 marks
Assessment Objective 2	9 marks
Assessment Objective 3	3 marks

- 1 (a) Describe the powers of the police to stop and search a person on the street.

[18]

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

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

Demonstrate knowledge of powers to stop and search set out under the Police and Criminal Evidence Act 1984, the codes of practice, the Criminal Justice Act 2003 and other relevant legislation

- S 1 of PACE — police have the power to stop and search a person in a public place if they have reasonable suspicion that prohibited articles, stolen goods or articles made, adapted or intended for use in burglary or criminal damage are in their possession (prohibited fireworks were added in the Serious Organised Crime and Police Act 2005)
- Police officer must give his name, station + reason for the search
- Only a request to remove outer coat, jacket and gloves is permitted
- Code of Practice A sets out guidance for police on stop and search
- Meaning of reasonable suspicion
- Abolition of “voluntary search” there must be a statutory power for any search
- Written report required for every stop and search
- Identify other statutes that give power to the police to stop and search eg Misuse of Drugs Act 1971 and Terrorism Act 2000
- S60 Criminal Justice and Public Order Act 1994 and the different rules that apply when that is in force

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss whether or not the rights of the individual are adequately protected during a stop and search. [9]

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

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Discuss the safeguards that have been put in place for the individual

- Fact that the police officer has to identify himself and give a reason for the search protects the individual from random searches illustrated by *Osman* (1999)
- Code of Practice A setting out what is not reasonable suspicion should protect individuals from harassment because of their appearance or previous record.
- Abolition of "voluntary search" so that now all searches are in accordance with the current law
- Written report protects individual from arbitrary searches
- Problems however -
- Reasonable suspicion still very open ended and easy to justify
- Stop and search has increased tenfold since 1986
- Only 10 - 13% of people stopped are then arrested
- Many people do not know their rights - Tottenham leaflet experiment led to 50% reduction in stop and search but increases in burglary and street robbery
- Misuse of S60 CJPOA to deal with street robbery or other crimes rather than its original purpose of dealing with riots

Credit any other relevant comments

Assessment Objective 3

[3]

Marks are awarded holistically for the whole question

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate terminology accurately and demonstrate few, if any, errors of grammar, punctuation and spelling

Total Marks [30]

- 2 (a) Describe the qualifications and selection procedure for jurors. [18]

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

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either depth or breadth of knowledge.

Assessment Objective 1

Demonstrate knowledge of the selection procedure:

- Chosen at random from the electoral registers for a court area by central office every fortnight
- Only those aged between 18 and 70, on the electoral register and resident in UK for 5 years since age 13 can sit
- Must sit unless disqualified or excused

Demonstrate knowledge of those who cannot or need not sit.

- Cannot sit if disqualified: for life if convicted of a serious offence, for 10 or 5 years for some lesser offences: also if on bail
- Cannot sit if ineligible: mental disorder
- Can be excused if serving in the armed forces and commanding officer certifies needed
- Can be excused or have service deferred for "good reason" - application has to be made to Jury Central Summoning Bureau

Demonstrate knowledge of selection once at Crown Court

- 15 chosen at random from the jury pool to go into the court room
- 12 chosen at random in court by the clerk

Demonstrate knowledge of challenges

- Challenge to the array, by prosecution or defense on way jury selected
 - Challenge for cause, by prosecution or defense, because of connection with case or incapacity
 - Right of stand by, by prosecution, usually following vetting
- Credit any reference to vetting

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss the arguments for abolishing juries. [9]

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

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Discuss arguments for abolishing juries

- No selection, no minimum educational standards (Naman PC)
- Those in administration of justice may have too much influence
- Trials may be too difficult to understand, 10% jurors admit having difficulty understanding case
- 12 too many for productive discussion
- Time consuming and costly
- Inconvenient for jurors, who may also lose money
- Research shows doubts about 5% of jury convictions
- Possibility of bias, more dubious convictions when defendant black
- Possibility of media influence (West, Taylor, Huntley)
- No way of knowing whether a reasoned decision was reached (Young)
- Government concerns about high acquittal rates

Credit knowledge of Auld report and changes in the Criminal Justice Act 2003

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3 [3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate terminology accurately and demonstrate few, if any, errors of grammar, punctuation and spelling.

Total Marks [30]

- 3 (a) Describe the qualifications, selection and training of judges. [18]

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

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either depth or breadth of knowledge.

Assessment Objective 1

Demonstrate knowledge of the qualifications of judges

- Set out in the Courts and Legal Services Act
- Law Lords: 2 years high judicial office or 15 years supreme court qualification
- Lords Justices of Appeal-Recorders: 10 years relevant qualification
- District judges: 7 years general qualification
- Also High Court judges - 2 years as a Circuit judge, Circuit judge - 3 years as a District judge or Tribunal Chair
- Demonstrate knowledge of the selection of judges
- Law Lords and Lords justices of Appeal selected by the Prime minister and appointed by the Queen
- Heads of Division selected by the Lord Chancellor and appointed by the Queen
- All other Judges selection is organized by the Judicial Appointment Commission
- Selection by a mixed panel of judges lay people and lawyers
- Mainly by application with references
- Interviews assess attitude and aptitude
- Lord Chancellor has limited power to object to selection
- Applicants for higher appointments are expected to show competence at a lower level (appointment at assistant recorder level is usually used to try out potential judges for more permanent positions)

Demonstrate knowledge of the training of judges

- Conducted by the Judicial Studies Board
- For superior judges - training is voluntary
- For an inferior judge training is compulsory mainly for newly appointed assistant recorders and consists of a one week course which deals with sentencing, running a criminal court and human awareness.
- Inferior judges also to spend a week shadowing an experienced judge before sitting themselves
- One day courses are run from time to time to update judges on major changes in the law some of which are compulsory eg Human Rights Act 1998.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss the ways in which judicial independence is maintained. [9]

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

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Discuss some of the ways in which judicial independence is maintained

- Cannot be sued for what is said or done in court. Gives judge freedom to come to an unpopular decision
- By convention keep free of politics: cannot become MPs (except for Recorders), avoid making political comments, Law Lords can only take part in relevant debates - LCJ and MR have felt the need to publicly voice concerns about issues such as sentencing
- Judges do sometimes have to take decisions which may be critical of the government eg judicial review
- The vast majority of judges are independently appointed on merit, past record, tests and references.
- Secure tenure - need a motion of Parliament to remove superior judges and good reason for inferior judges. Recorders' contracts must be renewed except for good reason
- Financially secure - salary set independently and have pension provision
- Judges must not have any personal interest in a case they are hearing - Pinochet case

Credit any reasonable conclusion eg Judicial appointments commission should lead to more independence.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate terminology accurately and demonstrate few, if any, errors of grammar, punctuation and spelling.

Total Marks [30]

- 4 (a) Describe the various types of publicly funded advice and representation available in criminal cases. [18]

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

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either depth or breadth of knowledge.

Assessment Objective 1

Demonstrate knowledge of the Duty Solicitor scheme at the police station.

- Run by local contracted solicitors with relevant qualification (Police Station qualification)
- Available to anyone questioned at the police station but may only be by telephone for many cases
- Covers advice and attending interviews
- Free to all no means or merits testing

Demonstrate knowledge of Duty Solicitor scheme at the Magistrates' Court

- Contracted solicitor with relevant qualification (Magistrates' Court qualification)
- Under the Advocacy Assistance Scheme
- Free
- Covers representation some cases eg bail and fine defaulters where risk of going to prison

Demonstrate knowledge of Advice and Assistance Scheme

- Franchised solicitor (Quality Marked)
- Covers advice and some preparatory work for someone charged with an offence and help with their application for legal representation
- Means tested with abrupt cut off point - assessed by solicitor

Demonstrate knowledge of Legal Representation

- Franchised solicitor or independent barrister
- Covers representation and all steps in preparation of a case.
- Merits tested (interests of justice) by legal advisor at Magistrates' Court
- Convicted defendant may be ordered to pay costs at end of case in Crown Court
- Means test

Assessment Objective 3

Marks are awarded holistically the end of the question.

(b) Discuss the problem of publicly funded criminal advice and representation. [9]**Mark Levels AO2**

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

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Discuss the problems associated with publicly funded criminal advice and representation

- Demand led - a significant drain on the public purse
- Attendance at the police station now limited to situations which “materially progress the case” - most advice now by phone. Seen as a defect with the scheme in the past but to save money phone advice is now more common
- Limited advice and assistance in Magistrates’ Courts - now need a representation order for trials in this court - leads to more cases being adjourned incurring added costs and delay
- Means testing for criminal legal funding for representation was abolished but the government reintroduced it in 2006. Aimed at tightening the granting of legal funding and save money. This could disadvantage some defendants
- Introduction of Public Defender Service to some parts of the country - aim to cut costs but early indications are that costs per case have been increased so far. Choice of representation now more limited in those areas
- Credit any reference to difficulty of finding solicitors who offer the service. Discuss whether there should be a finite funding for Criminal legal funding or whether it should remain demand led.
- Discuss the advantages and disadvantages of means testing

Knowledge of the recent reintroduction of the means test is not required for this session.

Credit any reference to reforms.

Assessment Objective

Marks are awarded holistically at the end of the question.

Assessment Objective 3**[3]****Mark levels AO3**

Level 3	3
Level 2	2
Level 1	1

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate terminology accurately and demonstrate few, if any, errors of grammar, punctuation and spelling.

Total Marks [30]

- 5 (a) Describe the jurisdiction of both the High Court and the County Court in civil cases, including the track system. [18]

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

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either depth or breadth of knowledge.

Assessment Objective 1

Identify the County Court and the High Court as the main civil trial courts. Show good knowledge of the main types of case that can be heard in each court.

- County Court - contract, tort, recovery of land, partnerships, trusts, and inheritance up to £30,000, personal injury up to £50,000
 - Small Claims Court - Actions involving up to £5,000
- High Court
 - Queen's Bench Division - contract and tort over £50,000 and some from £15,000. Includes Commercial Court, Admiralty Court and Technology and Construction Court
 - Chancery Division - insolvency, mortgages, trust property disputes, copyright and patents, intellectual property and probate disputes
 - Family Division - Children Act 1989 cases, and other family matters

Show clear understanding of the allocation of cases to different tracks:

- Allocation questionnaire
- Small claims for cases up to £5,000 (£1,000 for personal injury cases),
- Fast track for cases from £5,000 to £15,000,
- Multi track cases over £15,000 or in cases involving complex points
- All tracks usually heard in County court only claims over £25,000 or very complex claims heard in the High court
- Explain time limits for each track
- Limit on number of witnesses

Credit will be given for any other details.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Discuss the problems of using the civil courts to solve disputes. [9]

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

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Discuss the problems of using the civil courts

- Time taken to get to trial still fairly long
- Civil procedure rules very lengthy
- Small claims are slower to get listed than before the Woolf reforms due to priority being given to fast track cases
- Costs are very front loaded, wasted if settle early.
- Claims that case management adds extra time and cost with little advantage.
- County Courts under resourced leading to delays.
- The court may come to a decision that neither party agrees with.

Credit should be given for any other relevant points

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate terminology accurately and demonstrate few, if any, errors of grammar, punctuation and spelling.

Total Marks [30]

- 6 (a) Describe the aims of sentencing and the factors that are taken into account when sentencing an individual. [18]

Marks levels	AO1
Level 4	15-18
Level 3	11-14
Level 2	6-10
Level 1	1-5

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either depth or breadth of knowledge.

Assessment Objective 1

- Explain the main aims of sentencing as set out in the Criminal Justice Act 2003
- Punishment - retribution for wrongdoing, society's revenge for the offence. 'Let the punishment fit the crime'. Based on proportionality or 'just desserts' it contains an element of denunciation - society's outrage at the offence committed
- Reduction of crime - this includes both deterrence and rehabilitation
 - Deterrence has two types - individual and general:
Individual - aimed at particular offender to put him off re-offending by either a very severe sentence eg custodial sentences or a fine, or by the threat of imprisonment eg a suspended sentence or conditional discharge General - put society off committing crimes by exemplary sentences or minimum sentences not concerned with fairness and may be harsher than the usual tariff for the offence so can lead to injustice in particular case eg very severe sentences for the theft of mobile phones on the street
 - Rehabilitation - aims to reform the offender to stop them re-offending. It is focused on the longer term looking at the potential of the offender to reform. It is now accepted that custodial sentences only have very limited rehabilitative effect
- Protection of the public by preventing the offender from re-offending.
Reparation - considers the victim when sentencing the offender. Compensation orders used to make offender make amends to the victim

Other factors that would be taken into account include:

- the seriousness of the crime,
- antecedents of the offender including any reports on them
- motive
- early guilty plea (this reduces the sentence by up to a third)
- sentencing guidelines/tariff (guidelines on robbery are to be finalised shortly but would not be needed for maximum marks)

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Jade (aged 25) is convicted in the Crown Court of the serious offence of robbery. She has several convictions for theft.

Explain which would be the main aims and other factors likely to be used when deciding a sentence for Jade. [9]

Mark Levels AO2

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

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Explain the criteria that would be most important in deciding the sentence for Jade.

- Punishment is likely to be a great factor in the sentencing of Jade as hers is a very serious offence
- Protection of the public will be important as an aim as Jade's crime is seen as a violent crime which the public need protection from
- As Jade is a repeat offender deterrence and rehabilitation may not be regarded as likely to work if previous sentences involved either aim
- Her previous sentences would need to be considered as her offending has become more serious
- Her background and the reason for committing the crime would be taken into account and a pre sentencing report would need to be prepared by the probation service
- Reparation could be considered as an aim depending on the circumstances of the crime

It is likely that Jade would receive a custodial sentence.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

[3]

Mark levels AO3

Level 3	3
Level 2	2
Level 1	1

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate terminology accurately and demonstrate few, if any, errors of grammar, punctuation and spelling.

Total Marks [30]

- 7 (a) Describe the process used to decide in which court a person should be tried. [18]

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

A Level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either depth or breadth of knowledge.

Assessment Objective 1

Describe the categories of offence:

- Summary offences - less serious offences always tried in the Magistrates' Court eg driving offences and common assault
- Triable either way offences - middle range offences which can vary in the degree of harm caused. Can be tried in either the Magistrates' Court or the Crown Court eg theft and assault occasioning actual bodily harm
- Indictable offences - more serious crimes which must be tried in the Crown Court eg murder, manslaughter and rape

Describe the process of deciding which court a triable either way offence will be heard in.

- Plea before venue - the defendant is asked whether he pleads guilty or not guilty, if guilty the case is automatically heard by the Magistrates' Court but they retain the option of sending the defendant to the Crown Court for sentencing if necessary
- If the defendant pleads not guilty a mode of trial procedure must take place
- The magistrates first consider whether they think the case is suitable for trial in the Magistrates' Court. If they feel it is not they will transfer the trial to the Crown Court
- If the magistrates feel they are prepared to accept jurisdiction the defendant is given the choice of which court he wishes to be tried in

Assessment Objective 3

Marks are awarded holistically at the end of the question.

- (b) Scott has been charged with the theft of a laptop computer worth £800 and has decided to plead not guilty to the charge.

Explain the factors which may determine the court in which Scott would be tried. [9]

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

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Identify Scott's as a Triable either way offence. So could be tried in either the Crown Court or the Magistrates' Court
Comment on the factors the magistrates would take into account in deciding whether they should take the case.

- The value of the goods taken
- The circumstances of the theft.
- Point out it is likely that they will give Scott the choice as they would feel able to take the case.

Comment on the reasons that Scott may choose either court
Magistrates' Court trial

- Likely to be dealt with more quickly
- Lower possible penalties
- Less publicity
- Magistrates may be less daunting than Crown Court
- But much higher chance of being convicted (80%)

Crown Court trial

- Lower conviction rate, (40 %)
- Juries less case hardened and more likely to believe Scott's story
- More likely to get legal funding for representation
- Better advocates
- But there may be a long wait before trial and the possible penalties are higher.

Assessment Objective 3

Marks are awarded holistically at the end of the question.

Assessment Objective 3

[3]

Mark levels	AO3
Level 3	3
Level 2	2
Level 1	1

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate terminology accurately and demonstrate few, if any, errors of grammar, punctuation and spelling.

Total Marks [30]

AS GCE Law Levels of Assessment

There are **four** levels of assessment of AOs 1 and 2 in the AS units. Level 4 is the highest level that can 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 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.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There may be some errors of grammar, punctuation and spelling.
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.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
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.	Limited ability to organize relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.

Mark Scheme G142
January 2007

Exercise on Statutory Interpretation

- 1 (a) **Source A** at line 10 the literal rule.

Explain the literal rule using **Source A** and cases to illustrate your answer. [12]

Mark Levels AO1

Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

- Explain that the literal rule involves giving the words their plain, ordinary literal meaning.
- Identify that the literal rule involves the judge applying literal rule even if it results in absurdity - Lord Esher in *R v Judge of the City of London* (1892).
- Describe the historical dominance of the literal rule.
- Describe how this rule respects parliamentary supremacy.
- Use cases to illustrate its use - *Fisher v Bell*, *Whiteley v Chappel*, *LNER v Berriman*.
- Use of Source
- Make use of absurdity / injustice / lack of flexibility

Assessment Objective 3

Marks will be awarded holistically at the end of this question.

- 1 (b) Using Source B, identify and explain the most suitable extrinsic aid that could be used in these situations.
- (i) The House of Lords is considering an ambiguous word. The meaning of this word was discussed by Parliament during the passage of the Bill. [5]
 - (ii) The House of Lords is trying to cover a gap in the law left by an Act. This Act was based on the Law Commission's recommendations. [5]
 - (iii) The House of Lords is trying to find the plain, ordinary, literal meaning of a word. The word is not defined in the Act. [5]

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

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

- (i) Recognise that the appropriate extrinsic aid is Hansard. Explain it is a record of Parliamentary debates. Explain that it can only be used if it satisfies the conditions laid down in *Pepper v Hart* (1993). Explain that if it does not satisfy these conditions it cannot be used.
- (ii) Recognise that the most appropriate extrinsic aid would be law reform reports as the Law Commission is a law reform agency. Refer to the *Black Clawson* case which relaxed the rules regarding the use of law reform reports.
- (iii) Recognise that the most appropriate extrinsic aid would be a dictionary of the time. Explain that it allows a judge to find appropriate meanings for words. Explain that dictionaries of specific time periods can be used. Refer to *DPP v Bull* (1994) or *R v Allen* (1887, *Cheeseman*).

Assessment Objective 3

Marks will be awarded holistically at the end of this question.

- 1 (c) (i) Source A refers to the mischief rule.

Using Source A and other cases explain how this rule is applied. [15]

Mark Levels AO1

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

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

- Identify that the mischief rule was developed in *Heydons case (1584)*. Outline the four conditions discussed in that case.
- Explain that the judge should look at the gap or mischief that the Act was intended to cover and interpret the Act to cover that gap.
- Explain that mischief rule is similar to the purposive approach.
- Use cases to illustrate the use of the mischief rule eg *Smith v Hughes (1960)* and *Corkery v Carpenter (1950)*

Assessment Objective 3

Marks will be awarded holistically at the end of this question.

- 1 (c) (ii) Discuss the strengths and weaknesses of the mischief rule. [12]

Mark Levels AO2

Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Discuss the strengths and weaknesses of the following:

- the fact that the judge has greater flexibility with this rule.
- the fact that this rule helps achieve Parliamentary intent.
- the reliance on extrinsic aids and their associated problems.
- that the use of this rule is limited due to the purposive approach.
- the fact that this rule can be seen as unconstitutional.

Assessment Objective 3

Marks will be awarded holistically at the end of this question.

Assessment Objective 3

Marks are awarded holistically for the whole question

[6]

Mark Levels AO3

Level 3	5-6
Level 2	3-4
Level 1	1-2

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate legal terminology and demonstrate few, if any, errors of grammar, punctuation and spelling.

Total marks [60]

Exercise on EC Law

- 2 (a) The Source at line 13 refers to the EC Treaty. Briefly explain how the EC Treaty is part of UK law. [12]

Mark Levels AO1

Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

- Identify that treaties are primary legislation.
- Identify relevant treaties - Treaty of Rome, Treaty of Amsterdam, Treaty of Nice etc.
- Describe (1) European Communities Act 1972 which provides that a treaty has effect in the UK without enactment.
- Discuss the concept of direct applicability
- Use cases to illustrate its use - *Van Duyn v Home Office* (1974), *Macarthys Ltd v Smith* (1980).

Assessment Objective 3

Marks will be awarded holistically at the end of this question.

2 (b) In the following situations, consider whether there is a need to make an Article 234 referral to the ECJ.

- (i) Jacques, a French worker, has been denied entry to the UK. The House of Lords is considering his case. The case concerns free movement of workers under the EC Treaty. [5]
- (ii) Pam is paid less than male employees for the same work. She has brought an equal treatment claim against her employer. An Employment Appeals Tribunal is deciding the case. A reference to the ECJ in *Macarthy Ltd v Smith (1980)* concerned a similar issue. [5]
- (iii) Carla has brought a claim in an Employment Tribunal against her employer because he refuses to give her any holiday entitlement, as required under EC law. [5]

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

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

- (i) Recognise that under Article 234 that the referral should be mandatory as it is the highest appeal court in our system. Use any relevant case. Credit candidates who discuss discretionary due to criteria, eg. *Acte clair*
- (ii) Consider that since there is already a European Court of Justice ruling on a similar matter, there is no need to refer. Recognise the similarity with *Macarthy Ltd v Smith (1980)* and *Hallam v Connaughton (1994)*
- (iii) Recognise that this is discretionary referral under Article 234. Apply the conditions laid down in *Bulmer v Bollinger (1974)* as outlined in the source. Discuss the issue of *Acte clair* as a relevant condition

Assessment Objective 3

Marks will be awarded holistically at the end of the question.

- 2 (c) (i) Lord Denning in the Source discusses the effect of membership of the European Union on English law.

Describe the effect of European membership on English law using cases to illustrate your answer.

[15]

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

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

- Describe the new sources of law, treaties, regulations and directives.
- Describe the supremacy of EU law - *Van Gend en Loos* (1963).
- Describe that Acts of Parliament will be declared void by the courts if they conflict with EU law *R v Secretary of State for Transport ex parte Factortame*.
- Describe the change in the role of the courts. Interpretation is purposive, they can seek guidance from the ECJ under Article 234.
- Describe the effect on the court structure - new courts and new court procedures (Article 234).
- Describe the approach on the ECJ to Member States who fail to implement European obligations eg *Brasserie du Pecheur v Federation of Republic of Germany* (1996), *Francovich v Italian Republic* (1991).

Assessment Objective 3

Marks will be awarded holistically at the end of this question.

- 2 (c) (ii) Discuss the benefits of European membership to English law. [12]

Mark Levels AO2

Level 4	10-12
Level 3	7-9
Level 2	4-6
Level 1	1-3

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

- Discuss the increase in power of the judiciary - they now have greater freedom regarding the interpretation of statutes.
- Discuss the benefits European legislation for certain groups - females, part-time workers and employees.
- Discuss Lord Denning's view that the supremacy of Europe will only be accepted by the courts until Parliament pass an Act to repudiate the treaties - *R v Secretary of State for Transport ex parte Factortame*.
- Discuss the benefits of Article 234. There is clear guidance from the ECJ to all courts and tribunals.
- Discuss that the UK still does not operate on an EU legal framework - the judge as an activist/inquisitor and a greater reliance on statute.

Assessment Objective 3

Marks will be awarded holistically at the end of this question.

Assessment Objective 3

Marks are awarded holistically for the whole question.

[6]

Mark Levels AO3

Level 3	5-6
Level 2	3-4
Level 1	1-2

A Level 3 response is likely to present relevant material in a planned and logical sequence, using appropriate legal terminology and demonstrate few, if any, errors of grammar, punctuation and spelling.

Total marks [60]

AS GCE Law Levels of Assessment

There are **four** levels of assessment of AOs 1 and 2 in the AS units. Level 4 is the highest level that can 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 Objectives 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.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few errors of grammar, punctuation and spelling.
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.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
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.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.

Report on the Units

January 2007

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Advanced GCE Law (H524)

Advanced Subsidiary GCE Law (H124)

REPORT THE UNITS

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Chief Examiners' Report

The January 2007 exam session was an exciting one for the Law team marking, as it did, the beginning of the new 4-unit specification. Inevitably, as with all new things, there was a sense of expectation as to how the new AS would perform by contrast with the previous specification. I am happy to report that it was as successful as we had anticipated.

The session was also a busy one for the AS teams, particularly the senior teams, as it incorporated resit exams in 2568 (Machinery of Justice), 2569 (Legal Personnel) and 2570 (Sources of Law), as well as the first sittings of G141 (English Legal System) and G142 (Sources of Law). There were around 1500 in each of the legacy resits. Although some teachers at INSET Training days had expressed concern at being, in effect, locked into entering Sources of Law in January under the new AS, and not feeling comfortable about teaching those topics first, G142 performed, as expected, comparably with the former 2570, and the size of the entry for G142 compared with the former entry for Machinery of Justice. Surprisingly, since it has much the larger specification content, a number of centres entered candidates for G141.

The individual Principal Examiners' reports and the statistical evidence show that the exams, both old and new, were generally successful for the majority of candidates who entered and that high grades were achievable in good numbers. As usual grades were overall at a higher level than might be expected from the June cohort. The spread of marks also points to good differentiation between candidates of different capabilities but that the papers were also accessible to all candidates.

Both G141 and G142 performed well. Although the Principal Examiner for English Legal System (G141) reported that some candidates showed signs of lack of knowledge and attributed this to the June sitting being more appropriate for the volume of content to be covered, nevertheless, candidates on the whole performed as well as candidates on average would do in Machinery of Justice and Legal Personnel in a January sitting. Candidates also responded well to the Section B questions, although the style of question in itself is not new. Candidates for G142 (Sources of Law) performed comparably with a June sitting of 2570 and well up on a normal January sitting of that paper. In general then it is hard to say other than the new AS has been successful at this sitting.

On Sources of Law, both papers (2570 and G142) candidates did well on a very popular statutory interpretation question despite the (b) questions being slightly different to the norm. It was very disappointing for the examiners that the numbers attempting the question on EU Law was even lower than usual, probably only around 1%. For sittings from January 2008 onwards candidates might expect papers without either statutory interpretation or judicial precedent, the usual favourites. It is therefore important that candidates should be well prepared for EU Law sources and questions in order to give themselves a real choice in the exam.

At A2, option papers on the 6-unit specification performed as usual for the sitting. There were some reports of better problem solving skills on certain papers and some of weaker evaluative skills on others but as usual the papers produced good differentiation and some very good individual scripts. The Special Study papers were generally done well and performance was similar to January 2005, the last time a theme was in its fourth sitting. This variation in performance over the duration of a theme on the Special Study was noted by the Awarding Team. While candidates are not considered to be disadvantaged at the start of a theme, because of the support given in the Special Study Materials and the narrow focus of the content, it was felt that teachers had a greater level of familiarity with the materials and with the style and content of questions towards the end of a theme. In order to prevent any unfair advantage being given to candidates at the end of a theme the favoured change is to maintain the materials and theme for one academic year only, January and June. This modification is likely to commence in January 2010 and so it is probable that the new theme commencing in January 2008 and

Report on the Units Taken in January 2007

currently due to end in January 2009 will be held over for another sitting in June 2009 and a resit in January 2010.

Other than that as usual I hope your candidates achieved what they deserved in the individual exams sat, and congratulate them all for their successes, particularly those that scored high UMS marks. I hope they continue to enjoy their study of the law and wish them all success in their June papers.

G141 English Legal System

General comments

This was the first sitting for this paper and there were more candidates than expected as the specification covers two thirds of the AS material. It was a very large volume of information to have covered in a term.

Different centres appeared to have varying success with the paper. Some centres had obviously prepared their candidates very well and they were able to answer four questions fully and to a high standard many gaining over 100 marks. However some centres had obviously had problems covering all the material and some candidates found it hard to find a fourth question they could answer competently and tended to use common sense or just make up the last answer.

There were no major problems with time management as almost all candidates managed to complete four questions although bullet points were sometimes used in the last question in order to finish in time.

Candidates should be reminded to use the mark allocation to help them work out their time management and spend twenty minutes on the part a) of each question and ten minutes on the part b). Many candidates wrote as much for part b) answers as they did for part a) answers.

It is disappointing that so many candidates still fail to enter the question numbers on the front of their scripts especially the large centres where this creates extra work for the examiner.

Comments on individual questions

1. This was by far the most popular question on the paper. Done very well by some candidates but others only managed a very basic answer with some confusion between stop and search and arrest. Many candidates only described stop and search under PACE although there are several other statutory powers which should also be described.

Part (b) varied from the well discussed balanced argument supported with statistics to a very basic reiteration of the description of stop and search with a final comment " this protects an individual's rights", which did not score high marks.

2. The question on juries also proved to be very popular. It was done very well by some candidates who explained the qualifications and selection procedure right up to trial very well. The majority of candidates however, were not clear on the selection procedure once the jurors had reached court and did not reach beyond low Level 3.

In part (b) although there were some excellent answers, many candidates had not really read the question and wasted time discussing why juries should be retained rather than just why they should be abolished.

3. Only candidates from a few centres attempted this question. Some were very good with a good grasp of the qualifications and appointment procedure of both superior and inferior judges and were also able to differentiate the training. Many missed out the qualifications or the manner of appointment.

Part (b) was either answered very well or rather poorly there were very few mid level answers.

4. This question was very rarely attempted and not usually done well if it was. A very few candidates had a good grasp of criminal legal funding and could describe the different both advice and representation well. Most candidates managed to describe the duty solicitor scheme at the police station but could not go any further.

Part (b) was disappointing as few candidates discussed anything more than the expense of the schemes.

5. Popular with some centres. Done very well by candidates from a couple of large centres but generally candidates were fairly good at explaining the track system but had no real understanding of the jurisdiction further than a division of work based on the amount of the claim.

Part (b) tended to be answered better with good comment on cost complexity and delay.

6. There were some very good answers to this very popular question. Part a and part b were equally well done with many candidates managing to score full marks on this question. The weaker candidates were confused about the aims of sentencing or did not describe them well. They often managed a better description of the factors.

Most candidates were able to identify at least the factors that would be relevant to the sentencing of Jade so very few candidates only reached level one or two in part b.

7. Most candidates could identify the different types of offence and give examples but few were able to describe the mode of trial process well for triable either way offences, which put most answers to part at top level 2 or bottom level 3. A few candidates answered the question very well with a good description of the mode of trial process. And gained high level 4 marks.

Part b was on the whole rather poorly done with good answers a rarity. Many of the weakest candidates in fact were very confused with and applied the factors in sentencing to deciding the court of trial.

G142 Sources of Law

General Comments

The overall standard of performance was good with a number of candidates achieving full marks. Candidates were well prepared for the exam, especially given the number of weeks they had to study; for many, this was a first experience of a law exam.

The vast majority of candidates attempted the statutory interpretation question. The number of candidates attempting the Europe source was disappointing. The responses in this area were also generally poor; in the main, the less prepared students attempted this question. This shows reluctance on the part of centres to focus on Europe. It is important to note that centres are not guaranteed the historical choice of statutory interpretation or precedent. In future, exam-sitting centres should plan accordingly.

Most candidates were able to make some use of the source material and demonstrated strong skills in this area by using it as a comparison or to illustrate and support argument. There were a small number of candidates who exclusively used it and an even smaller number who ignored it completely.

It was noticeable that candidates found question cii) the most challenging and found it difficult to evaluate. It is important that centres address evaluative skills as the questions will always be split for question c).

Nearly all candidates answered the questions within the time specified. A number of candidates attempted both questions, but they tended to give limited responses.

Exercise on Statutory Interpretation.

This was the most popular question. Candidates were well prepared for question a) and ci). Question b) had a range of answers, but cii) was disappointing.

- 1(a)** Most candidates could define the literal rule, but the quality of the definitions was variable. There was good use of citation, and the use of the source as a comparative tool. A number of candidates did not use the source.
- 1(b)** These mini problems were well answered, considering this was a new style of question. Most candidates could identify the most suitable extrinsic aid. A number of candidates hedged their answers by discussing a range of most suitable extrinsic aids. Most candidates found it difficult to link extrinsic aids with appropriate case law.
- 1(c)** There was a significant difference in the answers to ci) and cii). Part i) was answered much better in general.

For part (i), most candidates could define the mischief rule and support it with appropriate case law. A small number of candidates showed confusion in their understanding of the purposive approach. A number of candidates had limited awareness of Heydon's case and a number used the Golden Rule case to illustrate their understanding. The use of the source was inconsistent and this limited marks in this area. Centres should encourage students to use the source as much as possible.

Examiners Tip

Using the source is a skill and it is important to practice this skill with students. As a classroom exercise, try giving students a source without any questions. Get students to identify the most likely questions based on the source material. Alternatively, get them to identify what aspects of the source would be useful for the various questions.

The responses to part (ii) were very disappointing. A significant number of candidates could not discuss the strengths and weaknesses. Answers were undeveloped or did not have a balance.

Exercise on EC Law

Only a limited number of candidates attempted this question. Answers were variable. Despite there being some excellent answers in this area, the standard of responses was generally poor.

2(a) The standard of response was poor. There was little or no use of the source or citation. A number of candidates wrote about directives and regulations, or other aspects of Europe.

2(b) A number of candidates had no awareness of referrals, despite the information in the source. Most candidates were not able to distinguish between mandatory and discretionary referrals. A better appreciation of source-based skills would have supported candidates in their responses.

2(c)(i) Although there were some excellent answers, the majority of candidates could not reach above a Level 2 answer.

A number of candidates repeated directly the material in question a) or discussed general issues regarding Europe.

2(c)(ii) This was the worst attempted question on the paper. A significant proportion of candidates discussed Europe in the context of alcohol/tobacco or free movement. Answers had little or no development and relied purely on common sense. A number of candidates also discussed the disadvantages.

Advanced GCE Law (H124/H524)
January 2007 Assessment Series

Unit Threshold Marks

Unit		Maximum Mark	a	b	c	d	e	u
G141	Raw	120	91	80	69	58	47	0
	UMS	120	96	84	72	60	48	0
G142	Raw	60	54	48	43	38	33	0
	UMS	80	64	56	48	40	32	0

Specification Aggregation Results

Overall threshold marks in UMS (i.e. after conversion of raw marks to uniform marks)

	Maximum Mark	A	B	C	D	E	U
H124	200	160	140	120	100	80	0
H524	400	320	280	240	200	160	0

The cumulative percentage of candidates awarded each grade was as follows:

	A	B	C	D	E	U	Total Number of Candidates
H124	0	0	0	0	0	0	0
H524	0	0	0	0	0	0	0

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

OCR Customer Contact Centre

(General Qualifications)

Telephone: 01223 553998

Facsimile: 01223 552627

Email: helpdesk@ocr.org.uk

www.ocr.org.uk

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Head office
Telephone: 01223 552552
Facsimile: 01223 552553

