

GCSE

Law

Unit **B141**: The Nature of Law. Criminal Courts and Criminal Processes

General Certificate of Secondary Education

Mark Scheme for June 2015

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

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

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

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Annotations

Annotation	Meaning
	Not relevant or the response given is 'Unclear' to the marker. Or to indicate all or part blank answer pages have been seen by the marker.
NAQ	Not answered question
L1	Level 1
L2	Level 2
L3	Level 3
BOD	Benefit of Doubt
	Response is incorrect, no credit given
	Unclear
REP	Repeat
	Correct point or answer given
VG	Vague – credit cannot be given
	Omission mark

MARK SCHEME

Question	Answer	Mark	Guidance
1 (a)	<p>Candidates will identify any three of the following:</p> <ul style="list-style-type: none"> • The police are able to hold and question a suspect for specific periods of time; • The police can delay the suspect's right to have someone informed of their detention. (This can be for up to 36 hours if the police believe such notification could hamper their investigation); • The police have the power to refuse a suspect's request to speak to someone on the telephone; • The police can delay the suspect's right to legal advice. (This can be for up to 36 hours. But only if the police believe such notification could hamper their investigation. This delay would have to be in exceptional circumstances); • The police have the power to record the suspect's interview in a permanent format e.g. tape or video; • The police are able to carry out three different types of searches on suspects depending upon the situation e.g. a strip search; • The police can take fingerprints / intimate / non-intimate body samples / Non-intimate samples can be taken without consent, but intimate samples cannot. <p>Credit any other relevant response.</p>	3	<p>ASSESSMENT OBJECTIVE 1</p> <p>1 mark for each power identified.</p> <p>(Maximum 3 marks)</p> <p>Treat each bullet in the answer column as a separate point.</p> <p>Do not credit, for example, the three different searches as separate points.</p>

Question		Answer	Mark	Guidance						
1	(b)	<p>Candidates will successfully match any or all of the following:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>A</td> <td>4</td> </tr> <tr> <td>B</td> <td>3</td> </tr> <tr> <td>C</td> <td>1</td> </tr> </table>	A	4	B	3	C	1	3	<p>ASSESSMENT OBJECTIVE 3</p> <p>1 mark for each correct identification</p> <p>(Maximum 3 marks)</p>
A	4									
B	3									
C	1									

Question		Answer	Mark	Guidance
2	(a)	<p>Candidates will explain any of the following:</p> <ul style="list-style-type: none"> • Explain the different purpose of each branch of the law. The civil law is to uphold the rights of the individual or organisation. For example, following a breach of contract. In criminal law it is to protect society and to punish or rehabilitate the offender for committing a crime; • Explain that the person who begins the case is given a different name. In a civil case this person is known as the claimant. For criminal cases this role is taken on by the Crown Prosecution Service on behalf of the state. Sometimes other state agencies will begin a criminal case or a charity like the RSPCA; • Explain that resolution of the matter takes place in different courts. In civil cases the majority take place in the County Court or High Court. Criminal cases will take place in the Magistrates' or Crown Court. There are some civil matters dealt with in the Magistrates' Court, but this is mainly a criminal court; • Explain the person ultimately deciding the outcome is different. In civil cases it is the judge. In criminal cases it is three magistrates or a jury in the Crown Court or a superior judge if an appeal is made to them; 	3	<p>ASSESSMENT OBJECTIVE 2</p> <p>3 marks – develops an explanation on one difference 2 marks – explains one difference with some elaboration 1 mark – identify a difference between civil and criminal law 0 marks - no response or nothing worthy of credit</p> <p>(Maximum 3 marks)</p> <p>Candidates can be credited with both breadth and depth</p>

Question	Answer	Mark	Guidance
	<ul style="list-style-type: none"> • Explain that the language and terminology used is different. Particularly the resolution of the case. In civil cases a defendant is found liable or not liable. In a criminal trial the defendant is found guilty or not guilty; • Explain the judge's ultimate role is different. In a civil case this will be to provide a remedy for the injured party which is usually damages or an injunction. In a criminal case the judge's role is to sentence the defendant. This is usually a fine, community service/order or a custodial sentence; • Explain that the standard of proof is different. In civil cases this is on a balance of probabilities. In criminal cases it is much higher as it needs to be beyond all reasonable doubt (or recently 'if you are sure'). <p>Credit any other relevant response</p>		

Question			Answer	Mark	Guidance
2	(b)		Candidates will insert source, common and elected in this order.	3	<p>ASSESSMENT OBJECTIVE 1</p> <p>1 mark for each correct word identified</p> <p>(Maximum 3 marks)</p>

Question			Answer	Mark	Guidance
2	(c)	(i)	<p>Candidates will identify any three from the following stages in any order:</p> <ul style="list-style-type: none"> • First Reading • Second Reading • Committee Stage • Report Stage • Third Reading. 	3	<p>ASSESSMENT OBJECTIVE 1</p> <p>1 mark for each correct stage identified</p> <p>(Maximum 3 marks)</p> <p>Do not credit Green or White Paper, House of Lords or Royal Assent.</p>

Question	Answer	Mark	Guidance
2	<p>(c) (ii) Candidates will explain any two of the following criticisms:</p> <ul style="list-style-type: none"> • The lengthy process (to pass laws). Since a bill has to go through many stages it is generally a slow process. A bill's passage through Parliament can be slowed by debating the bill, considering any amendments or through the delaying tactics of Members as well as debating any amendments. • The complicated language used. In many cases the language used is complex and obscure leaving the reader confused. This could therefore potentially result in misunderstanding by the legal profession and the judiciary. • The European influence on British domestic legislation. Since all Acts must be compliant with EU legislation, it means that Parliamentary sovereignty has been removed from the legislative process. This is arguably therefore undemocratic. • Contradictory existing Acts of Parliament. There is little evidence of a systematic approach to passing legislation in the same area of law. Many Acts deal with the same area of law but with contradictory results. This is particularly true with amendments to Acts. • The sheer volume of Acts of Parliament. As there are hundreds of separate Acts it may be difficult to find the one covering a specific area. This could lead to overlooked laws and injustice. This is arguably undemocratic. • Impact of the Human Rights Act 1998. Since all Acts must be compliant with this Act, it means that Parliamentary sovereignty has been removed from the legislative process. This is arguably therefore undemocratic. <p>Credit any other relevant response.</p>	6	<p>ASSESSMENT OBJECTIVE 2</p> <p>For <u>each</u> criticism explained:</p> <p>3 marks – develops a explanation on one relevant criticism 2 marks – explains one relevant criticism with some elaboration 1 mark – identify a relevant criticism or makes any valid point 0 marks - no response or nothing worthy of credit</p> <p>Maximum 3 marks for each criticism</p> <p>(Maximum for question: 6 marks)</p>

Question			Answer	Mark	Guidance
2	(c)	(iii)	<p>Candidates will explain any of the following advantages:</p> <ul style="list-style-type: none"> • Allows laws to be passed quickly. They avoid the necessity of going through the bill stages in Parliament. Since the Parliamentary process is lengthy this means delay can be avoided. • Orders in Council are rarely used when compared with other forms of delegated legislation. This allows for democracy to be respected. Since it does not involve the full Parliamentary process. • They can be passed in emergency situations. This is particularly useful when Parliament is not sitting. Since it would be difficult to recall a full Parliament. • This type of delegated legislation still involves a lot of the parliamentary process. They are passed by the Queen and the Privy Council. This is mainly a small number of members of the government ensuring the democratic process is observed. <p>Credit any other relevant response.</p>	3	<p>ASSESSMENT OBJECTIVE 3</p> <p>3 marks – develops a explanation on one relevant advantage 2 marks – explains one relevant advantage with some elaboration 1 mark - identify a relevant advantage or makes any valid point 0 marks - no response or nothing worthy of credit</p> <p>(Maximum 3 marks)</p> <p>Candidates can be credited with both breadth and depth</p> <p>Only credit specific advantages contextualised for Orders In Council and not generalised advantages of delegated legislation.</p>

Question	Answer	Mark	Guidance
3 (a)	<p>Candidates will identify any three of the following:</p> <ul style="list-style-type: none"> • Duty solicitors will advise clients through interviews • The scheme is a free service provided by the state • They represent citizens who do not have, nor have requested a specific solicitor. • This service is provided by the Legal Aid Agency (which replaced the Legal Services Commission in 2013). • They, on occasion, will represent citizens in court if they have had their case sent to court. • Advice will generally be over the telephone especially where the offence is one which would not carry a prison sentence. • Where a non-custodial sentence is involved the duty solicitor can attend the police station if the citizen is described as 'vulnerable'. <p>Credit any other relevant response.</p>	3	<p>ASSESSMENT OBJECTIVE 1</p> <p>1 mark for each feature identified</p> <p>(maximum 3 marks)</p> <p>Do not credit the right to free initial advice at the police station as this is in the stem of the question.</p>

Question	Answer	Mark	Guidance
3 (b)	<p>Candidates will discuss any of the following</p> <ul style="list-style-type: none"> • Prosecution begins by outlining the case by explaining the crime the defendant is accused of. • The prosecution can call, if necessary, their witnesses, for example, police officers or store detectives, and question them about the alleged crime. This is called the 'examination in chief'. • The prosecution can call in evidence that has been uncovered, for example, items of property, to help prove the prosecution case. • If the defence feel that there is insufficient evidence to prove guilt they can submit a 'no case to answer' and the case to be dismissed. If the magistrates feel that there is sufficient evidence, then the case will proceed. • The defence are entitled to cross-examine the prosecution witnesses. • The defence then call, if necessary, their own witnesses and question them about the alleged crimes. • The prosecution are entitled to cross-examine the defence witnesses. • The magistrates, having heard both sides of the argument, decide whether the defendant is guilty or not guilty. • If they decide they are not guilty, then they are free to go. • If they decide the defendant is guilty then they will sentence the defendant and possibly ask for reports about the defendant before they pass sentence. <p>Credit any other relevant response.</p>	6	<p>ASSESSMENT OBJECTIVE 3</p> <p>Level 3: good discussion (5–6) Level 2: adequate discussion (3–4) Level 1: limited discussion (1-2) 0 marks = no response or nothing worthy of credit</p> <p>Level 3 = 5-6 marks Good discussion covering the process. At least one developed point for bottom Level 3, two or more developed points for top Level 3. If well developed point then bottom Level 3.</p> <p>Level 2 = 3-4 marks Adequate discussion covering the process. At least one developed point to reach Level 2.</p> <p>Level 1 = 1-2 marks Identifies part of the process. One point for bottom Level 1 two or more limited points for top Level 1.</p> <p>Credit should be given for both breadth and depth</p> <p>(Maximum 6 marks)</p>

Question			Answer	Mark	Guidance								
3	(c)	(i)	<p>Candidates will successfully identify any or all of the following:</p> <table border="1"> <thead> <tr> <th>Statement</th> <th>Aggravating or Mitigating Factor</th> </tr> </thead> <tbody> <tr> <td>The use of homophobic language by the defendant.</td> <td>Aggravating</td> </tr> <tr> <td>The victim of an assault was elderly and disabled.</td> <td>Aggravating</td> </tr> <tr> <td>The defendant pleaded guilty at the beginning of the trial.</td> <td>Mitigating</td> </tr> </tbody> </table>	Statement	Aggravating or Mitigating Factor	The use of homophobic language by the defendant.	Aggravating	The victim of an assault was elderly and disabled.	Aggravating	The defendant pleaded guilty at the beginning of the trial.	Mitigating	3	<p>ASSESSMENT OBJECTIVE 1</p> <p>1 mark for each correct factor identified</p> <p>(Maximum 3 marks)</p>
Statement	Aggravating or Mitigating Factor												
The use of homophobic language by the defendant.	Aggravating												
The victim of an assault was elderly and disabled.	Aggravating												
The defendant pleaded guilty at the beginning of the trial.	Mitigating												

Question	Answer	Mark	Guidance
3	<p>(c) (ii) Candidates will explain any of the following:</p> <p><u>Punishment of offenders:</u></p> <ul style="list-style-type: none"> • Punishment is more likely to be aimed at adult offenders who are older and should be aware of their actions and be held responsible for these. It is less likely that a young offender is to be punished in the true sense, since they are young and less likely to understand the true impact of their actions. • Punishment's aim is to provide retribution or revenge against the offender. This is the primary aim for sentencing an adult to imprisonment. This is not the primary consideration of sentencing for young offenders even though their liberty is to be removed. • Adult offenders are more likely to be sent to prison than young offenders. This follows traditional right-wing attitudes that they should pay the ultimate debt to society: that of their loss of freedom. Whereas, sending young offenders to an institution would be less likely. This would certainly be as a last resort and be most likely be punished by community work orders rather than an institution. <p>Credit any other relevant response.</p> <p><u>Reform of offenders:</u></p> <ul style="list-style-type: none"> • Reformation is more likely to be aimed at young offenders who are less likely to be aware of their actions and to be held responsible for these. It is less likely that a persistent adult offender is to be given a sentence where reformation in the true sense, will be its primary aim. The idea with adult offenders is that they may be too old to change their ways. 	6	<p>ASSESSMENT OBJECTIVE 2</p> <p>For <u>each</u> aim in relation to young offender and adult offender explained:</p> <p>3 marks – develops a explanation on one relevant issue 2 marks – explains one relevant issue with some elaboration 1 mark - explains a relevant issue or makes any valid point 0 marks - no response or nothing worthy of credit</p> <p>Maximum 3 marks for each problem discussed</p> <p>(Maximum for question: 6 marks)</p> <p>Candidates cannot achieve full marks for each part without including a comparison.</p>

Question	Answer	Mark	Guidance
	<ul style="list-style-type: none"> • Reformation's aim is to reform the young offender's character and ways to avoid a cycle of crime. This is not the primary consideration of sentencing for adult offenders. There is some reformation of persistent adult offenders but it is less likely to be a primary concern given that they are older and are meant to appreciate the consequence of their actions. • Young offenders are more likely to be given community service/sentence to reform and educate them. This follows traditional liberal attitudes that a forward looking long-term is better than a short term punishment strategy. The young offender should pay their debt to society by becoming a better person through education either via community service/sentence. While in prison adult offenders would be less likely to be able to achieve reformation through education due to a lower emphasis on this aim of sentencing for them. • When deciding a sentence the courts will look at the potential of the defendant to stop committing crimes through reformation. With young offenders the likelihood of ending criminal activities is higher than that of the adult offender. Therefore school reports, teacher or community worker's statements, college or job prospects will be taken into consideration. Whereas with adult offenders those likely to provide real-time references are less likely e.g. an employer's reference. <p>Credit any other relevant response.</p>		

Question		Answer	Mark	Guidance
4	(a)	<p>Candidates will identify any three of the following roles:</p> <ul style="list-style-type: none"> • Magistrates hear the majority of all criminal cases e.g. summary and some triable either way offences. • They hear the first hearing of all indictable offences before they are sent to the Crown Court. • They decide the guilt or not of defendants. • They hear and decide on applications for bail. • They pass sentences on a defendant who is found guilty. • They hear cases in the Youth Court where offenders aged 10-17 are tried. • They sit on appeals in the Crown Court where they sit with a qualified judge. <p>Credit any other relevant response</p>	3	<p>ASSESSMENT OBJECTIVE 1</p> <p>1 mark for each role identified</p> <p>(Maximum 3 marks)</p> <p>Do not credit reference to civil role.</p> <p>Do not credit civil role due to stem of question</p>

Question		Answer	Mark	Guidance												
4	(b)	<p>Candidates will identify as follows:</p> <table border="1"> <thead> <tr> <th>Statement</th> <th>True</th> <th>False</th> </tr> </thead> <tbody> <tr> <td>A person can apply to be a magistrate up to the age of 70 years.</td> <td></td> <td>✓</td> </tr> <tr> <td>A blind person cannot become a magistrate.</td> <td></td> <td>✓</td> </tr> <tr> <td>The Lord Chancellor appoints magistrates on the advice of local advisory committees.</td> <td>✓</td> <td></td> </tr> </tbody> </table>	Statement	True	False	A person can apply to be a magistrate up to the age of 70 years.		✓	A blind person cannot become a magistrate.		✓	The Lord Chancellor appoints magistrates on the advice of local advisory committees.	✓		3	<p>ASSESSMENT OBJECTIVE 1</p> <p>1 mark for each correct tick</p> <p>(Maximum 3 marks)</p>
Statement	True	False														
A person can apply to be a magistrate up to the age of 70 years.		✓														
A blind person cannot become a magistrate.		✓														
The Lord Chancellor appoints magistrates on the advice of local advisory committees.	✓															

Question	Answer	Mark	Guidance
4 (c)	<p>Candidates will explain any of the following:</p> <ul style="list-style-type: none"> • Good character. To become a magistrate an applicant must be able to demonstrate personal integrity. They must also enjoy the respect and trust of others • Understanding and communication. An applicant must be able to understand documents and identify relevant facts. They must also be able to follow evidence and communicate effectively • Social awareness. They must be able to appreciate and accept the rule of law. They must follow this rule of law, understand why it is there and for what purpose it benefits and assists society • Maturity and sound temperament. They must demonstrate an ability to have an awareness and understanding of people and a sense of fairness. They must remain objective, but be able to understand the reality of the situation • Sound judgement. They must be able to think logically. They must demonstrate an ability to weigh up any arguments and to reach a sound decision • Commitment and reliability. Since they provide an important role in society, they must be committed to serving the community and willing to undergo training. They must also be in sufficiently good health to undertake their duties on a regular basis <p>Credit any other valid response under each of the six qualities.</p>	6	<p>ASSESSMENT OBJECTIVE 2</p> <p>For <u>each</u> quality in relation to the appointment of magistrates explained:</p> <p>3 marks – develops a explanation on one relevant quality 2 marks – explains one relevant relevant quality with some elaboration 1 mark - identifies a relevant quality or makes any valid point 0 marks - no response or nothing worthy of credit</p> <p>Maximum 3 marks for each problem discussed</p> <p>Maximum for question: 6 marks</p> <p>Candidates can be credited with both breadth and depth</p>

Question	Answer	Mark	Guidance
4 (d)*	<p>Candidates will discuss any two of the following reasons:</p> <ul style="list-style-type: none"> • Magistrates may not be a true cross-section of society: Magistrates are generally portrayed as middle-class, middle-aged and largely retired. Brendan is a young adult and may fear that he will not get a fair trial from someone who will not understand his situation and feel better served by a jury. He may feel since they come from ‘professional’ classes that they are out of touch with his age group and plight and geographical area • They may have no sound local knowledge: Magistrates can be called from any area to sit in on a case. For example from a rural area to sit in on a court in an urban area. Brendan may feel that magistrates from other areas may not understand or sympathise with his situation • Prosecution Bias: Magistrates have been criticised as being too quick to believe the prosecution over the defendant. There is a higher acquittal rate in the Crown Court. Brendan may wish to elect to go for trial by jury so in his own mind he stands a fairer chance in court in front of a jury. • Inconsistencies in sentencing: There is certainly evidence that different crimes are sentenced in different ways depending upon where, geographically, you are in the country. Brendan may feel that he is more likely to be sentenced to prison or given a lengthy community sentence or large fine in his local magistrates’ court following some research. • Unqualified lay person: Magistrates are not paid any wages or salary other than expenses. They are not legally trained and rely on the advice of a court clerk who is qualified but is not allowed to tell them his opinion or what the sentence should be. Brendan may feel that Magistrates are not best equipped to deal with 	6	<p>ASSESSMENT OBJECTIVE 3</p> <p>Level 3: good discussion (5–6) Level 2: adequate discussion (3–4) Level 1: identifications of reasons (1-2) 0 marks = no response or nothing worthy of credit</p> <p>Level 3 = 5-6 marks Good discussion covering two reasons.</p> <p>Level 2 = 3-4 marks At least one developed discussion to reach Level 2.</p> <p>Level 1 = 1-2 marks Identifies reasons. One point for bottom Level 1 two or more limited points for top Level 1.</p> <p>Maximum 3 marks if only one reason discussed.</p> <p>Credit should be given for both breadth and depth</p> <p>(Maximum 6 marks)</p> <p>Credit can be given if the candidate discusses the benefit of using the Crown Court. For example, potentially greater chance of being found not guilty by a jury.</p>

Question	Answer	Mark	Guidance
	his situation and would feel more comfortable with a judge and jury. Credit any other reasonable response.		

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