

GCE

Law

Unit **G152**: Sources of Law

Advanced Subsidiary GCE

Mark Scheme for June 2014

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

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

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

OCR will not enter into any discussion or correspondence in connection with this mark scheme.

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These are the annotations, (including abbreviations), including those used in scoris, which are used when marking

Annotation	Meaning of annotation
	Blank Page – this annotation must be used on all blank pages within an answer booklet (structured or unstructured) and on each page of an additional object where there is no candidate response.
	Case/Bald case
	Not correct
	Developed point
	Extended developed point/case (WDP)
	Feature
	Definition
	Level 1
	Level 2
	Level 3
	Level 4
	Link to source
	Not Relevant
	Point
	End of section

Question		Answer	Marks	Guidance										
			15	Content										
1	(a)*	<p>Assessment Objective 1</p> <p>Describe binding precedent A precedent which must be followed</p> <ul style="list-style-type: none"> • Usually because it comes from a higher court • Can be due to the doctrine of being bound by a court's own previous decision where no exception applies • To be bound, the case facts will have to be broadly similar • The binding precedent is usually found in the <i>ratio decidendi</i> of the relevant judgment • Recognise that binding precedents operate through the system based on court hierarchy (i.e. higher courts bind lower courts) • Cases are capable of having more than one binding precedent – Read v J Lyons & Co (1947) • Recognise that the obiter of one case can develop into the ratio of another case – R v Ahluwalia (1992) (<i>obiter</i>) into R v Dryden (1995) (<i>ratio</i>) • Give an example of a well-known binding precedent – e.g. that a manufacturer is responsible for the condition of his/her product to the end consumer Donoghue v Stevenson (1932) <p>Describe original precedent A precedent which involves a point of law that has never been decided before</p> <ul style="list-style-type: none"> • Once declared it will become both binding and original – Re:S (adult: refusal of medical treatment) (1992) • Original precedents are often driven by social and technological change • Judges may employ the method of 'reasoning by analogy' in order to deal with a novel situation and produce an original precedent – Hunter v Canary Wharf (1995) [loss of TV reception] reasoned by analogy with Aldred's Case (1611) [loss of a view] • Original precedents can form the basis of the development of new legal principles – in Donoghue v Stevenson (1932), the principles were 	12	<p>L4 – Good range of examples</p> <p>L3 – Adequate range of points</p> <p>L2 – Limited range of points</p> <p>L1 – Basic points</p> <p>Points gained directly from the source to be capped at 3 marks</p> <table border="1"> <thead> <tr> <th>Level</th> <th>Mark range</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10 – 12 marks</td> </tr> <tr> <td>3</td> <td>7 – 9 marks</td> </tr> <tr> <td>2</td> <td>4 – 6 marks</td> </tr> <tr> <td>1</td> <td>1 – 3 marks</td> </tr> </tbody> </table>	Level	Mark range	4	10 – 12 marks	3	7 – 9 marks	2	4 – 6 marks	1	1 – 3 marks
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	<p>followed in <i>Grant v Australian Knitting Mills (1936)</i></p> <p>Describe persuasive precedent This is a precedent which the judge is at liberty to consider. The judge may then decide that it is a correct principle and so be persuaded by it. Persuasive precedents may come from a variety of sources:</p> <ul style="list-style-type: none"> • Courts lower in the hierarchy The judgement from a case decided in a lower court may be adopted and applied by a higher court. In particular, this is sometimes seen between the Court of Appeal and the House of Lords (now the United Kingdom Supreme Court). For example, in <i>R v R (1991)</i> the House of Lords agreed with the Court of Appeal in ruling that a man could be guilty of raping his wife. • Decisions of the Judicial Committee of the Privy Council This 'court' is not a part of our domestic court hierarchy. However, since it is presided over by many of our own Supreme Court Justices ... it is only reasonable to consider their decisions as worthy precedent. Indeed, some of the leading cases in English Law are of PC origin - <i>The Wagon Mound (No.1) (1961)</i>. • Statements made <i>obiter dicta</i> This is especially so where the comment came from a House of Lords case. A clear demonstration of the principle at work can be seen in the two cases of <i>R v Howe (1987)</i> & <i>R v Gotts (1992)</i> where the obiter comment in <i>Howe</i> was followed in <i>Gotts</i>. • A dissenting judgement Where a judge, particularly in the Court of Appeal, disagrees with the majority, he will give his reasons. On appeal to the House of Lords, the Law Lords may be persuaded by the dissenting judgement/reasoning. <i>Rose & Frank Co v JR Crompton & Bros Ltd (1924)</i> 	15	Content

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	<ul style="list-style-type: none"> Decisions of courts in other countries Especially where that country uses the same principles of common law as our own as in, for instance, countries of the former Empire like Australia, New Zealand and Canada. R v Bentham (2003) considered a number of American authorities as the case involved possession of a gun (which is lawful in many parts of the USA). 	15	Content								
	<p>Assessment Objective 3</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 data-bbox="1480 520 1688 552">AO1 scores</th> <th data-bbox="1688 520 1917 584">Add QWC mark of</th> </tr> </thead> <tbody> <tr> <td data-bbox="1480 584 1688 616">9 – 12</td> <td data-bbox="1688 584 1917 616">+3</td> </tr> <tr> <td data-bbox="1480 616 1688 647">5 – 8</td> <td data-bbox="1688 616 1917 647">+2</td> </tr> <tr> <td data-bbox="1480 647 1688 679">1 - 4</td> <td data-bbox="1688 647 1917 679">+1</td> </tr> </tbody> </table>	AO1 scores	Add QWC mark of	9 – 12	+3	5 – 8	+2	1 - 4	+1
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1	(b)	Assessment Objective 2												
	(i)	Recognise that the UKSC is bound (CP). Explain that this is because the UKSC is generally bound by its own previous decisions (' why '). Describe any other relevant point – there has been reluctance to use the Practice Statement, use a relevant case, LTS, and describe any alternative solutions such as distinguishing or AORP. OR Accept the alternative ' not bound ' (CP) provided it is argued and reasoned correctly (i.e. because the PS allows them to overrule where it appears right to do so) (' why ').	5	For Level four – identify the CP + why + one other relevant factor. For Level three – identify the CP and explain why. For Level two - identify the CP. For Level one – any basic point of relevance.										
	(ii)	Recognise that the Court of Appeal is bound in this situation (CP). Explain that this is because the UKSC has clearly asserted that the Court of Appeal must follow the domestic rules of precedent (with one exception which does not apply here) (' why '). Describe any other relevant point – refer to use of fast-track appeals in such situations, use a relevant case – Lambeth LBC v Kay; Price v Leeds City Council (2006); R(GC) (2011), LTS, describe any alternative solutions such as distinguishing or AORP.	5	<table border="1"> <thead> <tr> <th>Level</th> <th>Mark range</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>5 marks</td> </tr> <tr> <td>3</td> <td>4 marks</td> </tr> <tr> <td>2</td> <td>3 marks</td> </tr> <tr> <td>1</td> <td>1 – 2 marks</td> </tr> </tbody> </table>	Level	Mark range	4	5 marks	3	4 marks	2	3 marks	1	1 – 2 marks
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	(iii)	Recognise that the later court is not bound by the earlier court (CP). Explain that this is because the two divisions do not bind each other (' why '). Describe any other relevant point – the two divisions are persuasive upon each other – especially in cases like this where the same legal principles apply, use a relevant case – R v Ireland & Burstow (1998), LTS or AORP.	5											

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1	(c)	(i)	<p>Assessment Objective 1</p> <ul style="list-style-type: none"> Describe how the Court of Appeal is bound by its own past decisions Describe the importance of <i>Young v Bristol Aeroplane</i> (1944) Describe the three exceptions in <i>Young v Bristol Aeroplane</i> – (1) where a previous decision of the Court of Appeal has been impliedly or expressly overruled by the HoL/UKSC they must follow the HoL/UKSC – <i>Family Housing Association v Jones</i> (1990) contrast with <i>Iqbal v Whipps Cross University Hospital NHS Trust</i>; (2) if there are two conflicting decisions (of the Court of Appeal) they can choose between them as in <i>Tiverton Estates Ltd v Wearwell Ltd</i> (1974) [avoiding <i>Law v Jones</i> {1974}], <i>Fisher v Ruislip-Northwood Urban district Council</i> (1945), <i>Starmark Enterprises v CPL Enterprises</i> (2001); (3) if the decision is made <i>per incuriam</i> as in <i>Royal Bank of Scotland v Etridge (No 2)</i> (1998) refusing to follow <i>Royal Bank of Scotland v Etridge (No 1)</i> (1997), <i>Williams v Fawcett</i> (1985), <i>Morelle v Wakeling</i> (1955) Describe how the Court of Appeal (Criminal Division) has additional flexibility eg <i>R v Gould</i> (1969), <i>R v Simpson</i> (2003), <i>R v Rowe</i> (2007) and use of the guidelines laid down in <i>Magro</i> (2010) Describe how the Court of Appeal (Civil Division) does not bind the Court of Appeal (Criminal) and <i>vice versa</i> they merely persuade <i>R v Ireland & R v Burstow</i> (1998), <i>Re A (conjoined twins)</i> (2001) The Court of Appeal has the power to refuse to follow a UKSC decision that has been overruled by the ECJ - <i>Sharp v Caledonia Group Services Ltd</i> (2005) The Court of Appeal can also give primacy to convention rights when interpreting a statute (even where this ignores previous cases) <i>Mendoza v Ghaidan</i> (2002) Credit reference to powers held by all courts such as distinguishing (<i>Balfour v Balfour & Merritt v Merritt</i>) 	15	<table border="1"> <thead> <tr> <th>Level</th> <th>Mark range</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>13 - 15 marks</td> </tr> <tr> <td>3</td> <td>9 - 12 marks</td> </tr> <tr> <td>2</td> <td>5 – 8 marks</td> </tr> <tr> <td>1</td> <td>1 – 4 marks</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without a good description.</p> <p>Responses will be unlikely to achieve level three without an adequate description.</p> <p>Responses will be unlikely to achieve level two without a limited description.</p> <p>Responses will be unlikely to achieve level one without a basic point or points.</p>	Level	Mark range	4	13 - 15 marks	3	9 - 12 marks	2	5 – 8 marks	1	1 – 4 marks
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1	(c)	(ii)*	<p>Assessment Objective 2</p> <p>A discussion of the following reasons in favour:</p> <ul style="list-style-type: none"> Practically it is the final appeal court for most cases as very few cases reach the Supreme Court (House of Lords) It deals with the vast majority of appeals It will stop unnecessary appeal to the UK Supreme Court (House of Lords) It would improve the flexibility of the doctrine of precedent It will allow justice more quickly <p>A discussion of the following reasons against:</p> <ul style="list-style-type: none"> There could be a reluctance to use the power similar to the Supreme Court (House of Lords) It reduces certainty and predictability. This is due to there being two conflicting decisions for the lower courts to choose from. Not only would this be difficult for the lower court it makes legal advice difficult It undermines the power and role of the UK Supreme Court (House of Lords) It could cause the system of precedent to break down It could cause increased appeals Credit reference to the Sources 	15 12	<table border="1"> <thead> <tr> <th>Level</th> <th>Mark range</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10 – 12 marks</td> </tr> <tr> <td>3</td> <td>7 – 9 marks</td> </tr> <tr> <td>2</td> <td>4 – 6 marks</td> </tr> <tr> <td>1</td> <td>1 – 3 marks</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve level four without evidence of ability to produce a range of points and the ability to write an extended point. Furthermore, both sides of the argument will need to be considered for top level four.</p> <p>Responses will be unlikely to achieve level three without a range of points although the argument may be one-sided</p> <p>Responses will be unlikely to achieve level two without a range of points but these may show limited or no development and may be one-sided</p> <p>Responses will be unlikely to achieve level one without basic points</p>	Level	Mark range	4	10 – 12 marks	3	7 – 9 marks	2	4 – 6 marks	1	1 – 3 marks
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2	(a)*	<p>Assessment Objective 1</p> <p>Intrinsic aids Explain that an internal or intrinsic aid is one to be found within the statute itself.</p> <ul style="list-style-type: none"> The long and the short title. The court can consider either. The long title can be used to give clues as the meaning of words used in the Act. An example is the <i>Law of Property Act 1925</i> where the short title gives very little away. The long title is rather more useful in stating that it is, '<i>An act to consolidate the enactments relating to Conveyancing and The Law of Property in England and Wales</i>' The preamble. Older statutes often have a preamble that may provide a useful indication of the purpose or mischief of the Act. Modern statutes do not tend to have them or contain a very brief one and are of very limited use. In these cases the long title may be more helpful, e.g. <i>The Theft Act 1968</i> Interpretation sections set out lists of what meanings are intended for certain words used elsewhere in the Act and are a relatively modern drafting technique Schedules provide additional information or appendices to be considered in relation to an Act. For example, <i>The Postal Services Act 2000</i> contained a schedule describing the composition and appointment procedures relating to the new Postal Services Commission Marginal notes and headings are inserted by the draftsman when the Act goes for printing and are intended as a useful reference to aid interpretation. However, where contradictions exist between the actual wording of the statute and the heading or marginal note, the wording of the Act should be adhered to Punctuation can and should be taken into account by judges in interpreting statutes 	12	<p>L4 – Good range of examples with examples of both intrinsic and extrinsic aids</p> <p>L3 – Adequate range of points</p> <p>L2 – Limited range of points</p> <p>L1 – Basic points</p> <table border="1"> <thead> <tr> <th>Level</th> <th>Mark range</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10 – 12 marks</td> </tr> <tr> <td>3</td> <td>7 – 9 marks</td> </tr> <tr> <td>2</td> <td>4 – 6 marks</td> </tr> <tr> <td>1</td> <td>1 – 3 marks</td> </tr> </tbody> </table>	Level	Mark range	4	10 – 12 marks	3	7 – 9 marks	2	4 – 6 marks	1	1 – 3 marks
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		<p>Extrinsic aids Explain that an extrinsic aid is one to be found outside the Act itself.</p> <ul style="list-style-type: none"> • Identify that a dictionary is an external aid, and explain that it will usually be used to discover the plain meaning of a word. Using a dictionary of the appropriate time would be helpful – DPP v Cheeseman (1990) • Hansard, the report on debates in Parliament during the progress of a Bill eg Pepper v Hart (1992) although this can only be used under special circumstances • Reports of Royal Commissions or law reform bodies such as the Law Commission which led to the passing of the Act • Case law appropriate to the area of law • The Human Rights Act 1998 • Previous or contemporary Acts of Parliament on similar areas of law • The historical setting in which an Act was passed eg RCN v DHSS (1981) • The works of leading academics eg Pollock’s definition of consideration in contracts was used in Dunlop v Selfridge (1915) • Reports of International Conventions eg Fothergill v Monarch Airlines (1980) • The Interpretation Act 1978 – if used beyond the source 										
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2	(b)	Assessment Objective 2												
	(i)	Recognise that the most appropriate aid to interpretation here would be a dictionary (CP). Explain that this is because a dictionary will give an accurate and precise meaning of a word without any ambiguity (' why '). Describe any other relevant point – that a dictionary from 1847 would give a meaning in the context of the Act, a LTS, a relevant case (DPP v Cheeseman (1990)), that dictionaries are often used by judges employing the literal rule of interpretation or AORP	5	For Level four – CP + why + 1 other relevant point For Level three – CP + why For Level two – CP For Level one – any basic relevant point.										
	(ii)	Recognise that the most appropriate aid to interpretation here would be a Law Commission Report (CP). Explain that this is because the Commission's report will contain background information and consultations that will hold vital clues as to the intention behind the Act (' why '). Describe any other relevant point – that access to such reports has only become possible relatively recently, a LTS, a relevant case, that such reports may highlight the problem or fault with the pre-existing law (especially useful with the mischief rule) or AORP	5											
	(iii)	Recognise that the most appropriate aid to interpretation here would be Hansard (CP). Explain that this is because Hansard contains an account of the debate that took place when the Bill was passed and will disclose Parliament's intention (' why '). Describe any other relevant point – that access to such reports has only become possible since the case of Pepper v Hart (1992), a LTS, a relevant case, that such reports may be unreliable and too political to discern Parliament's intention but that where they do they may prove especially useful with the Purposive Approach or AORP	5											
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2	(c)	(i)	<p>Assessment Objective 1</p> <ul style="list-style-type: none"> • Explain that the literal rule involves giving the words their plain, ordinary, grammatical and literal meaning as it would appear in a dictionary • Identify that the literal rule involves the judge applying the literal rule even if it results in absurdity – Lord Esher in R v Judge of the City of London (1892) • Describe how the rule can rely on the use of a dictionary – particularly one which is relevant to the time of the Act • Describe the way the rule can lead to absurd, harsh and ridiculous outcomes • Describe the way that cases decided under this rule can lead to amending legislation where a loophole has been exposed (Fisher v Bell) • Describe the historical dominance of the literal rule - developed in the 19th century and became the main rule until the recent advent of a more purposive approach • Describe how this rule respects parliamentary supremacy • Describe the Law Commission’s report of 1969 which was critical of the rule • Describe the way that the rule demands an impossible level of accurate legislative draftsmanship • Use cases to illustrate its use: • Fisher v Bell (1960), Whiteley v Chappell (1868), LNER v Berriman (1946), Cutter v Eagle Star (1998), Cheeseman v DPP (1990), IRC v Hinchey (1960), R v Harris (1836), R v Munks (1964), R v Goodwin (2005), R v Maginnis (1987), Bromley LBC v GLC (1983), Vacher v London Society of Compositors (1913) 	15	<p>For Level four – A definition, a feature and three well developed cases (excluding the source case). A well developed case must say what word(s) were being interpreted and how the application of the literal rule affected the outcome.</p> <p>For Level three – A definition and two well developed cases (excluding the source)</p> <p>For Level two – A definition and a case.</p> <p>For Level one – Any basic (relevant) point(s) eg definition, features, bald cases</p> <table border="1"> <thead> <tr> <th>Level</th> <th>Mark range</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>13 - 15 marks</td> </tr> <tr> <td>3</td> <td>9 - 12 marks</td> </tr> <tr> <td>2</td> <td>5 – 8 marks</td> </tr> <tr> <td>1</td> <td>1 – 4 marks</td> </tr> </tbody> </table>	Level	Mark range	4	13 - 15 marks	3	9 - 12 marks	2	5 – 8 marks	1	1 – 4 marks
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2	(c)	(ii)*	<p>Advantages</p> <ul style="list-style-type: none"> • Explain that the rule allows lawyers to advise clients confidently as it provides predictability and can therefore reduce litigation • Explain that the rule respects the doctrine of Parliamentary Sovereignty - judges follow the words used rather than attempting to seek the 'intention of Parliament' • Explain that the literal approach in Fisher v Bell (1960) 'punishes' Parliament for producing poor legislation and forces Parliament into producing revised legislation (Registration of Offensive Weapons Act 1961) and, therefore, it helps to close loopholes in the law which might be exploited by the underhand litigant • Recognise that the approach respects the doctrine of the Separation of Powers by recognising the constitutional role of the judge in relation to law-making • Alternative approaches to the literal rule might allow for unpredictable results which would undermine certainty in the law • It encourages Parliamentary draftsmen to be precise – legislation which is clear, precise and plainly written can be read, understood and determined by anyone who can read English <p>Disadvantages</p> <ul style="list-style-type: none"> • Explain that where the rule leads to blatantly absurd results (Whitely v Chappel), harsh or unjust results (LNER v Berriman) or plainly goes against Parliament's intention (Cheeseman v DPP) – it can hardly be said that this was what Parliament wanted • Explain that judges have, in some cases, been accused of over-emphasising the literal meaning of a word without giving due weight to its meaning in the wider context • Explain that the rule expects an impossible level of perfection in Parliamentary draftsmanship • Explain that the rule ignores the limitations of language and is of limited value when interpretation of framework laws requires a judge to look beyond the language 	12	<p>Responses will be unlikely to achieve level four without evidence of ability to produce a range of points and the ability to write an extended point. Furthermore, both sides of the argument will need to be considered for top level four.</p> <p>Responses will be unlikely to achieve level three without a range of points although the argument may be one-sided</p> <p>Responses will be unlikely to achieve level two without a range of points but these may show limited or no development and may be one-sided</p> <p>Responses will be unlikely to achieve level one without basic points</p> <table border="1"> <thead> <tr> <th>Level</th> <th>Mark range</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10 – 12 marks</td> </tr> <tr> <td>3</td> <td>7 – 9 marks</td> </tr> <tr> <td>2</td> <td>4 – 6 marks</td> </tr> <tr> <td>1</td> <td>1 – 3 marks</td> </tr> </tbody> </table>	Level	Mark range	4	10 – 12 marks	3	7 – 9 marks	2	4 – 6 marks	1	1 – 3 marks
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			<ul style="list-style-type: none"> Consider the fact that the Law Commission's report of 1969 was critical of the rule and that many academics have also been highly critical of its limitations 												
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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.

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