

**GCE**

**Law**

Unit **G152**: Sources of Law

Advanced Subsidiary GCE

**Mark Scheme for June 2015**

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

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

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

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

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

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## Annotations

Annotation	Meaning of annotation
	Blank Page – this annotation <b>must</b> 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

**Subject-specific Marking Instructions**

**Before** you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria \*<sub>1</sub> (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column\*<sub>2</sub>
- question specific guidance given in 'Guidance' column\*<sub>3</sub>
- the 'practice' scripts\*<sub>4</sub> provided in Scoris and accompanying commentaries.

\*<sub>1</sub> The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.

\*<sub>2</sub> The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.

\*<sub>3</sub> Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes the 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.

\*<sub>4</sub> The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

**may still** achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

**Awarding Assessment Objectives 1 and 2**

To award the level for the AO1 or AO2 (some questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest\*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided in point 10 of the above marking instructions, with the key point being that you start at the **middle\*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, will receive no marks.

**\* Remember: when awarding the level you work from top downwards, when awarding the mark you work from the middle outwards.**

**Awarding Assessment Objective 3**

AO3 marks are awarded based on the marks achieved for either AO1, AO2 or in some cases, the total of AO1 and AO2. You must refer to each question's mark scheme for details of how to calculate the AO3 mark.

**Rubric****What to do for the question the candidate has not answered?**

The rubric for G152 instructs candidates to answer one question all parts, eg question 1(a) – 1(c)(ii) **or** question 2(a) – 2(c)(ii). So each script you look at should have a response for **either** question 1 **or** question 2. For the question the candidate has not answered you should record a NR (No Response) in the mark column on the right-hand side of the screen. Do not record a 0.

**What to do for the candidate who has 'violated' the rubric and attempted to answer question 1 and question 2?**

You should mark both questions (all parts). Scoris will then work out the total mark for Question 1 and the total mark for Question 2 – it will award the candidate the highest mark of the two totals.

**Blank pages and missed answers**

Sometimes candidates will skip a few pages in their answer booklet and continue or add to a response. To be sure you have not missed any candidate response when you come to mark the part (c)(ii) question you must check every page of each script and annotate any blank pages with



You must also check any additional items eg A1, A. This will let your team leader, OCR and the centre know that you have seen every page.

Question		Answer	Marks	Guidance										
				Content										
1	(a)*	<p><b>Assessment Objective 1</b></p> <p>Describe the possible stages of the legislative process <b>BEFORE</b> the committee stage:</p> <ul style="list-style-type: none"> <li>Describe the way that ideas for new laws may come from a variety of sources</li> <li>Describe the role of a <b>Green Paper</b> – a consultation document from which amendments may be made in the light of feedback</li> <li>Describe the role of a <b>White Paper</b> – a set of firm proposals drafted by parliamentary draftsmen in the form of a Bill</li> <li>Describe the different kinds of Bill (private, public and hybrid) although this is not a key part of the question.</li> <li>A Bill may start in either the House of Commons or the House of Lords (except Money Bills etc)</li> <li><b>First Reading</b> - a formality – the short title of the Bill is read out and an order for the Bill to be printed)</li> <li><b>Second Reading</b> – not strictly required by the question although the candidate may comment that this stage <b>would have needed a successful vote unlike the Animals Act (Amendment) Bill</b>: <i>this represents the main debate on the Bill. The Minister or MP responsible describes the aims of the Bill and will field questions. There is a formal debate conducted via the Speaker. They will usually focus on the larger principles as opposed to specific detail. At the end of the debate a vote will be taken and a majority will be required in order for the Bill to proceed)</i></li> </ul> <p>Describe the possible stages of the legislative process <b>including and after</b> the committee stage:</p> <ul style="list-style-type: none"> <li><b>Committee Stage</b> - this stage allows for the detailed scrutiny of the Bill for the first time. Most Bills are considered by small Committees of between 15 to 60 MP's known as Public Bill Committees. Membership of these committees is always roughly in proportion to the number of seats a Party holds in the Commons. Members will</li> </ul>	12	<p>For Level four – accurate reference to each stage (<b>FSCRTRR</b>) including something from the pre-legislative process in the correct order with supporting detail. At level 4 answers must also isolate the Committee Stage for full marks.</p> <p>For Level three – all stages (can miss <b>one</b> stage) in correct order with explanations but without necessarily isolating the Committee Stage.</p> <p>For Level two – some stages with some explanation - a bare list will be no higher than top of the level</p> <p>For Level one – basic points - recognition of one/few stages</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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Question	Answer	Marks	Guidance Content
	<p>often be chosen because of expertise or interest in a particular field. A separate committee is formed for the consideration of each individual Bill. The committee are entitled to scrutinise every detail and make any amendments necessary for the Bill to reflect the intention discussed in second reading. Sometimes, if the Bill is an important one, the whole House will sit as a Committee (eg Finance Bills)</p> <ul style="list-style-type: none"> <li>• <b>Report Stage</b> - after scrutiny by the Committee they will 'report' back to Parliament - to inform the House of any amendments (if there are no amendments at Committee Stage the Bill can go straight to the next stage). Amendments will be debated and voted on being either accepted or rejected. Further amendments may also be suggested from the House. This stage is often referred to as a safeguard against a small Committee 'hijacking' a Bill and amending it beyond recognition/original purpose.</li> <li>• <b>Third Reading</b> - if approved, the Bill will get its Third Reading. This gives the House a final chance to look at the Bill again as a whole, with all its amendments, and decide whether they want it to go further. The Bill cannot be changed substantially at this stage as it is, more or less, a formality. It will often go through without much attention at all (need 6 MP's for a debate). If there are no challenges to the general theme of the Bill, it will be passed to the other place to start the whole process again.</li> <li>• <b>Repeat Process</b> in the other place (House) - if the Bill started in the Commons, it will now pass to the Lords (and <i>vice versa</i>) for consideration and amendments and then passes back to the Commons to consider any amendments.</li> <li>• Possible '<b>ping-pong</b>' between the Houses could arise at this stage which may be resolved through the use of the Parliament Acts 1911 &amp; 1949 (eg War Crimes Act 1991; European Parliamentary Elections Act 1999; Sexual Offences (Amendment) Act 2000; Hunting Act 2004)</li> </ul>		

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		<ul style="list-style-type: none"> <li> <b>Royal Assent</b> - this is where the Monarch of the day gives consent and the Bill finally becomes an Act of Parliament. This is very much a formality. The Monarch will not even have the text of the Bill's present when assenting. The short title will be read out and assent automatically given. Although the Monarch retains the theoretical power to withhold assent, no Monarch has done so since Queen Anne in 1707 with the Scottish Militia Bill. Her lack of assent was overridden. On the day assent is given, the Bill comes into force at midnight or the date of commencement if specified (except budget arrangements which may be made from time to time).         </li> </ul> <p>Make relevant reference to the source.</p>												
1	(b)	<p><b>Assessment Objective 2</b></p> <p>(i) In the case of Bonnie, credit recognition that she is unfit to drive (although it is questionable whether this is a drug) and/or is driving a MPV (L1 1-2); recognise that she will (route a) not be liable under the literal rule as a legal high is not literally a drug (the whole point of a legal high is that it is not covered by the Misuse of Drugs Act), or (route b) be liable as a legal high is still a drug (in terms of the effect it produces and the fact that the Act doesn't mention legal or illegal drink/drugs (L2); recognise the appropriate relevance of the golden rule: to avoid an absurdity in route a) or no application for route b); recognise that Bonnie will be guilty under the mischief rule/purposive approach as she is doing what the Act was intended to deal with (L4)</p> <p>(ii) In the case of Andrew, credit recognition that he is unfit through drink and/or attempting to drive a motor propelled vehicle (MPV) (L1 1-2); recognise that he will be liable under the literal rule as he is literally unfit through drink whilst attempting to drive a MPV (L2); recognise there is no absurdity caused by this application of the literal rule and therefore the golden rule has no application (L3); recognise that Andrew will still be liable under the mischief rule/purposive approach as he is doing what the Act was intended to deal with (L4)</p>	<p>5</p> <p>5</p>	<p>For Level four – Identify the correct application of a third rule of SI or any other relevant point</p> <p>For Level three – Identify the correct application of a second rule of SI</p> <p>For Level two - Identify the correct application of one of the rules of SI</p> <p>For Level one – any basic point of relevance as indicated by the content.</p> <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)	In the case of Craig, credit recognition that he is unfit to drive (albeit not through [alcoholic] drink or drugs) and/or is driving a MPV (L1 1-2); recognise that (route A & B) Craig will be not guilty under the literal rule as he is literally not unfit to drive through (alcoholic) drink or drugs (L2); recognise that (route A) there is no absurdity in this outcome and so the golden rule has no application or (route B) this might be considered an absurd outcome and that the golden rule would find him guilty (L3); recognise that Craig would be found (route A) not guilty under the mischief rule/purposive approach as he is not doing the kind of thing (driving whilst impaired by alcohol/drugs) the Act envisaged or (route B) Craig may be guilty under the mischief rule/purposive approach as he is driving whilst impaired which is broadly what the Act is aimed at (provided the reasoning/argument is supported/explained).	5	

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1	(c)	(i)	<p><b>Assessment Objective 1</b></p> <p>Define the golden rule:</p> <ul style="list-style-type: none"> <li>• A general definition like: The golden rule of statutory interpretation may be applied where an application of the literal rule would lead to an absurdity. The courts may then apply a secondary meaning. (<i>River Wear Commissioners v Adamson</i>)</li> <li>• A definition of the narrow golden rule – where a word or words have two possible meanings but one would produce an unwanted or absurd outcome the court may chose between them (<i>Jones v DPP</i> (1962), <i>R v Allen</i> (1872))</li> <li>• A definition of the wide golden rule – where the meaning of a word is not ambiguous but to give it its literal meaning would produce a repugnant outcome (<i>Re: Sigsworth</i> (1935))</li> <li>• The golden rule is thought to have its origins in the dictum of Parke B in <i>Becke v Smith</i> (1836)... that the words of an Act should be taken literally but they can be modified or varied to avoid inconsistency with the Act or a repugnant outcome</li> </ul> <p>Address the 'how it is different' point:</p> <ul style="list-style-type: none"> <li>• The golden rule is different to the literal rule in that it goes beyond the literal meaning of words – or similar point</li> <li>• The golden rule is different to the literal rule because it cannot be used independently – it must be used in response to a failing of the literal rule</li> <li>• The golden rule presents judges with a challenge which the literal rule does not – namely, the identification of when a result is or is not absurd or repugnant</li> <li>• Unlike the literal rule, the golden rule might rely on extrinsic aids (wide version) above and beyond a dictionary</li> <li>• 'Difference' may be highlighted by using a comparison of what the outcome in a case would have been had the literal rule been used</li> </ul>	15	<p>For Level four – a definition of both versions with 3 developed cases and the 'how different' point</p> <p>For Level three – a definition of both and 2 developed cases (top) or 1 developed case (bottom)</p> <p>For Level two – a limited range of points including a reasonable attempt at a general definition or limited attempt at both definitions and/or bald cases</p> <p>For Level one – a range of basic points or a single point with a little development</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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			<p>Use appropriate cases to illustrate:  <i>Jones v DPP</i> (1962); <i>Re: Sigsworth</i> (1935); <i>R v Allen</i> (1872); <i>Adler v George</i> (1964); <i>Ruther v Harris</i> (1876); <i>River Wear Commissioners v Adamson</i> (1877); <i>Grey v Pearson</i> (1857); <i>Meah v Roberts</i> (1977); <i>Maddox v Storer</i> (1963); <i>R v Pawlicki</i> (1992); <i>R v Samuel</i> (1988); <i>R v National Insurance Commissioner (ex p Connor)</i> (1981); <i>INCO Europe v First Choice Distribution</i> (2000).</p> <p>Make relevant reference to the source.</p>		

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1	(c)	(ii)*	<p><b>Assessment Objective 2</b></p> <p><b>Disadvantages:</b></p> <p>Discuss the <b>key identified disadvantage:</b></p> <ul style="list-style-type: none"> <li>• an absurdity may mean different things to different judges (source)</li> <li>• there is no guidance on how or when the golden rule is to be used (source)</li> <li>• it means the case outcome is determined by a judge rather than the law (source)</li> <li>• any other relevant criticism</li> </ul> <p>Also discuss <b>other</b> disadvantages:</p> <ul style="list-style-type: none"> <li>• it is unpredictable in terms of when it is used making it hard for lawyers to advise clients</li> <li>• the rule is limited in its use and is, therefore, only used on rare occasions</li> <li>• the golden rule has not been an effective check on the literal rule</li> <li>• the golden rule may give a judge too much discretion and lead to accusations of judicial law-making</li> <li>• words can be ‘added’ (INCO Europe)</li> <li>• the rule is undemocratic based on judicial discretion</li> <li>• Zander’s criticisms of the golden rule may be justified — ‘an unpredictable safety valve’</li> </ul>	12	<p>Responses will be unlikely to achieve level four without a range of points including at least one WDP. Cannot be one – sided (i.e. must consider both sides of the argument) and must consider the key identified point.</p> <p>Responses will be unlikely to achieve level three without a range of points including two DPs.</p> <p>Responses will be unlikely to achieve level two without a range of points including one DP.</p> <p>Responses will be unlikely to achieve level one without basic points, advantages and/or disadvantages.</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><b>Advantages:</b></p> <p>Discuss how the golden rule:</p> <ul style="list-style-type: none"> <li>• can prevent the problems of the literal rule eg injustice</li> <li>• avoids absurdities caused by poor draftsmanship (Allen)</li> <li>• can put into practice what Parliament really intended (Re Sigsworth)</li> <li>• provides a check on the strictness of the literal rule</li> <li>• still respects parliamentary supremacy as it does not give judges complete freedom</li> <li>• upholds Parliament's will more than the literal rule, as it assumes Parliament never intends to pass absurd law</li> <li>• allows the judge to choose the most sensible meaning where there is more than one meaning to the words in the Act or Statute (narrow)</li> </ul> <p>Candidates will be unable to achieve level 4 marks without discussion of <b>both</b> advantages and disadvantages. Full marks also requires consideration of the key identified critical point.</p>												
		<p><b>Assessment Objective 3</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	3	<table border="1"> <thead> <tr> <th>AO1 scores</th> <th>Add QWC mark ...</th> </tr> </thead> <tbody> <tr> <td>...</td> <td></td> </tr> <tr> <td>9 – 12</td> <td>+3</td> </tr> <tr> <td>5 – 8</td> <td>+2</td> </tr> <tr> <td>1 - 4</td> <td>+1</td> </tr> </tbody> </table>	AO1 scores	Add QWC mark ...	...		9 – 12	+3	5 – 8	+2	1 - 4	+1
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2	(a)*	<p><b>Assessment Objective 1</b></p> <p>Describe the way directives may give rights to individuals:</p> <ul style="list-style-type: none"> <li>• Directives are issued by the EU under the authority of Article 288 TFEU and rights become available through local implementation into UK law:</li> <li>• Article 288 allows for a degree of local discretion in terms of how and when the directive is implemented</li> <li>• UK implementation is provided for by s.2 European Communities Act 1972 and will usually be through statutory instruments or Orders in Council although it can be through primary legislation</li> <li>• Explain that directives are binding on Member States but it is left to the Member State to use their own laws to implement the directives and that such laws have to be implemented within a time limit set by the European Commission</li> <li>• Explain that the standard way in which a directive should be enforced is through domestic legislation which correctly implements it within the time allowed. Any rights outlined in the directive are then available through the relevant ordinary domestic legislation.</li> <li>• Explain direct effect - where the UK either fails to implement a directive or implements it incorrectly then the rights contained within that directive may still be available to a UK citizen (directly effective) provided the directive gave individuals rights and was sufficiently clear and precise through the doctrine of direct effect</li> <li>• Explain horizontal direct effect – that unincorporated directives do not give rise to horizontal direct effect (<i>Paola Faccini Dori v Recreb Srl</i>; <i>Duke v GEC Reliance</i>) save in the possible circumstances laid out in <i>Kucukdeveci v Swedex</i> or <i>Mangold v Helm</i></li> <li>• Explain vertical direct effect – that unincorporated directives may give rise to vertical direct effect provided they are relied upon as against the state or an emanation of the state (<i>Marshall v Southampton &amp; SW Hants Health Authority</i> (1986))</li> </ul>	12	<p>For Level four – a good explanation of how directives become available – will explain at least H&amp;VDE and use two cases.</p> <p>For Level three – an adequate description of how directives become available – will explain at least one of either HDE or VDE as well as using at least one case.</p> <p>For Level two – a limited response based on either implementation and/or direct effect</p> <p>For Level one – any basic (relevant) point(s)</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"> <li>Explain that the potential injustice of the lack of availability of direct effect has led the CJEU to develop some creative solutions such as the concept of compensation for state liability (<i>Francovich</i>), indirect effect (<i>Von Colson</i>), duties to interpret domestic legislation in the light of EU obligations (Article 10) and horizontal direct effect where fundamental rights are concerned (<i>Kucukdeveci/Mangold</i>)</li> </ul>												
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2	(b)	<p><b>Assessment Objective 2</b></p> <p>(i) In the case of Claudia, recognise that she will not have rights under the unincorporated directive (<b>CP</b>). This is because the time limit for implementation has not been reached (<b>why</b>). Credit any additional relevant factor such as a LTS or a relevant case (<i>Ratti v Publico Ministero</i>) or AORP</p> <p>(ii) In the case of Boris, recognise that he will not have rights under the unincorporated directive (<b>CP</b>). This is because the garage is stated (quite clearly) to be privately owned (<b>why</b>). Recognise also that the implementation date has passed or recognise any additional relevant factor including a LTS, a relevant case (<i>Doughty</i>) or the possibility of using the <i>Foster</i> criteria to confirm that the garage is not an emanation of the state or AORP</p> <p>(iii) In the case of Anna, recognise that she will not ordinarily have rights under the unincorporated directive (<b>CP</b>). This is because the hospital is stated (quite clearly) to be 'private' (<b>why</b>). Recognise however, the possibility of horizontal direct effect based on <i>Kucukdeveci</i> applying here as Anna's fundamental rights (not to be discriminated against on the basis of age) has been affected or AORP</p> <p>* Credit, where appropriate, at L4, any recognition of the alternative remedy of using indirect effect (if injured or out of pocket) and suing the state for damages (<i>Francovich</i>)</p>	<p>5</p> <p>5</p> <p>5</p>	<p>For Level four – CP + 'why' + 1 other relevant point</p> <p>For Level three – CP + 'why'</p> <p>For Level two – CP</p> <p>For Level one – any basic relevant point.</p> <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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2	(c)	(i)	<p><b>Assessment Objective 1</b></p> <p><b>Composition</b> Following a new Article 19 TEU, the Court of Justice of the EU consists of three courts:</p> <p><b>The Court of Justice</b></p> <ul style="list-style-type: none"> <li>• 28 judges (one per member state) appointed under Article 253 TFEU (accept 27 as not all texts are presently up-to-date)</li> <li>• Assisted by 8 Advocates general who assist the court by producing reasoned opinions (not binding but highly persuasive)</li> <li>• Both appointed for renewable six year term with staggered appointments</li> <li>• Under Art 253 they appoint a president from among their number – he/she holds office for renewable three year term</li> <li>• CJEU sits in chambers of 3 or 5 judges or in Grand Chamber (13 judges) or in plenary session</li> <li>• Organisation and procedures are set out in the Statute of the Court (annexed to the TFEU)</li> </ul> <p>Credit any reference to the General Court and/or the Civil Service Tribunal although these are not necessary for full marks</p> <p><b>Functions</b></p> <ul style="list-style-type: none"> <li>• Article 19 TEU sets out the role of the CJEU – to ensure that ‘in the application and interpretation of the Treaties, the law is observed’.</li> <li>• Judicial review of EU institutions – under Article 263 the CJEU can review the legality of an act of the Council or Commission</li> <li>• Failure to act – under Article 265 the CJEU can challenge a failure to act by both the Council and the Commission</li> <li>• Direct actions against member states – member states can be challenged directly in court for a failure to fulfil their EU obligations by either another member state (Article 263) or by the Commission (Article 258) (<i>Commission v France</i> [2001], <i>Commission of the European Communities v UK: Re Tachographs</i> (1979))</li> </ul>	15	<p>For Level four – a good description of <b>both</b> the composition <b>and</b> functions of the ECJ</p> <p>For Level three – an adequate description of the composition and/or functions of the ECJ</p> <p>For Level two – a limited description of the composition and/or functions</p> <p>Lists and bullet points = max 6 marks.</p> <p>For Level one – Any basic (relevant) point(s)</p> <p>(Full marks may be achieved without mention of the General Court and/or the Civil Service Tribunal)</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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			<ul style="list-style-type: none"> <li>• Liability for damages – Articles 268 and 272 give the CJEU jurisdiction over disputes regarding damages caused by the EU institutions and their servants</li> <li>• References for a preliminary (or authoritative) ruling – Article 267 allows the CJEU to give preliminary rulings on the interpretation of points of EU law. Such references are raised by the courts of member states and may be either mandatory or discretionary referrals (<i>Torfaen BC v B&amp;Q</i>, <i>Bulmer v Bollinger</i>, <i>Van Duyn v Home Office</i>)</li> </ul>		

Question			Answer	Marks	Guidance										
					Content										
2	(c)	(ii)*	<p><b>Assessment Objective 2</b></p> <p><b>The decisions of the ECJ have impacted on the sovereignty of the UK in a number of ways including the following:</b></p> <ul style="list-style-type: none"> <li>• They have challenged the very concept of the Sovereignty of Parliament: <ul style="list-style-type: none"> <li>○ Discuss the extent of the role of the ECJ regarding the assertion of supremacy through decisions such as <i>Van Gend en Loos</i>, <i>Costa v ENEL</i>, <i>Internationale Handelsgesellschaft &amp; Factortame</i></li> <li>○ Discuss the reaction of UK courts to supremacy: interpretation of section 2 ECA 1972, <i>Bulmer v Bollinger</i>, <i>Garland v BR Engineering</i>, <i>Pickstone v Freemans plc</i>, <i>Factortame</i> and the Merchant Shipping Act 1988 and <i>R v S of State for Employment ex parte EOC</i></li> <li>○ Discuss the implications of challenges to the concept of supremacy – a limited suspension of sovereignty for a limited period? Entrenchment? Repeal or departure?</li> </ul> </li> <li>• They have, arguably, created a new law-making body with the addition of new legal principles, laws and/or the ability to amend existing laws. For example: <ul style="list-style-type: none"> <li>○ Direct applicability challenges supremacy by making law applicable to the UK which requires no authority from Parliament but may have had limited UK support in the EU legislative process</li> <li>○ The introduction of new methods of statutory interpretation (like the purposive approach) ‘allow’ judges to place their own interpretation on the will of parliament</li> </ul> </li> <li>• They have created a new mechanisms and forums for interpreting UK law which is not answerable to parliament</li> <li>• They have added another (superior) court to the domestic hierarchy</li> <li>• They have added another ‘source’ of law to the common law system which cannot be legislated against (<i>Factortame</i>)</li> </ul>	12	<p>Responses will be unlikely to achieve level four without a range of points including at least one WDP.</p> <p>Responses will be unlikely to achieve level three without a range of points including two DPs</p> <p>Responses will be unlikely to achieve level two without a range of points including one DP</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"> <li>• They have created a new source of individual rights and a forum in which to challenge the UK over access to such rights (e.g. Article 267 referrals)</li> <li>• Direct effect has challenged UK supremacy by providing rights to individuals even where the state has failed to do so <i>Van Gend en Loos</i>, <i>Marshall v SW Hants HA</i>, <i>Defrenne v SABENA Airlines</i>, <i>Macarthays v Smith</i></li> <li>• Discuss the legitimacy of interpreting the Treaty Articles in order to develop indirect effect through cases such as <i>Von Colson v Land Nordrhein-Westfalen (1984)</i> and <i>Marleasing</i></li> <li>• Discuss the importance of State Liability where the state are liable for compensation for breaches of Community law <i>Francovich</i></li> <li>• Discuss the activist role of the CJEU in developing doctrines such as horizontal direct effect of provisions that may affect fundamental rights (<i>Kucukdeveci</i>)</li> <li>• Credit reference to the source.</li> </ul>												
		<p><b>Assessment Objective 3</b></p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	3	<table border="1"> <thead> <tr> <th>AO1 scores</th> <th>Add QWC mark</th> </tr> </thead> <tbody> <tr> <td>...</td> <td>...</td> </tr> <tr> <td>9 – 12</td> <td>+3</td> </tr> <tr> <td>5 – 8</td> <td>+2</td> </tr> <tr> <td>1 - 4</td> <td>+1</td> </tr> </tbody> </table>	AO1 scores	Add QWC mark	...	...	9 – 12	+3	5 – 8	+2	1 - 4	+1
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**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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