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# GCSE

# LAW

Unit 1 The English Legal System  
Mark scheme

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41601  
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Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts: alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Assessment Writer.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this Mark Scheme are available from [aqa.org.uk](http://aqa.org.uk)

## GCSE Law

Suggested answers are neither prescriptive nor exhaustive.

Within the exam paper as a whole, questions are set involving a varying number of marks. In general, marks can vary between a minimum of 3 marks up to a maximum of 12 marks. All of these questions, irrespective of the number of marks, are to be marked according to the following banded types of response. Marks are to be awarded for identifying the legal issue(s) involved, together with the quality of the explanation, showing the application of knowledge and understanding of the legal issues involved and/or the level of critical awareness displayed. All answers must be judged according to the standard one would expect from a notional 16-year-old.

### Banded Mark Scheme

<b>Band 0</b>	<b>Inappropriate answer showing no understanding</b>	The number of marks will reflect the marks appropriate to the individual question
<b>Band 1</b>	<b>Basic awareness</b>	
<b>Band 2</b>	<b>Answer based on limited understanding</b>	
<b>Band 3</b>	<b>Appropriate answer showing sound understanding</b>	

In addition to the above banded mark scheme, the mark scheme for some questions will include marks for specific points. Such questions will clearly be identified in the detailed Mark Scheme which follows.

While it is not expected that alternative answers to such questions will attract credit, candidates may, on occasions, interpret questions in an unexpected way and produce answers which, though not expected, should still be credited. Answers such as these will be discussed during the pre-standardisation process in the period following each new examination and credited where appropriate.

Quality of Written Communication is to be assessed in certain questions within each paper. The relevant questions are clearly identified on the front cover of the question paper, and, within the body of the paper, it also carries the instruction 'Answer in continuous prose'. The mark bands for these questions indicate the criteria which examiners should use to decide which band to place a candidate in, looking at both legal content and QWC to arrive at a band of 'best fit'.

**Section A**

**1** Carefully read the descriptions of **each** of the people below. Look at the people set out in the box above and identify **which person** is being described. Write your answer in the space provided.

**[4 marks]**

**1 (a)** I hear mainly criminal cases.  
I am not paid for my time in court.  
I only work part-time in court.

**Potential Content**

lay magistrate

**1 mark**

**1 (b)** I am a full-time, professional judge.  
I hear both civil and criminal cases.  
I sit in both the County Court and the Crown Court.

**Potential Content**

Circuit Judge

**1 mark**

**1 (c)** I am a barrister.  
I also sit as a part-time judge.  
I sit mainly in the Crown Court.

**Potential Content**

Recorder

**1 mark**

**1 (d)** I am a full-time, professional judge.  
I hear both civil and criminal cases.  
I deal with appeals on a point of law of general public importance.

**Potential Content**

Justice of the Supreme Court

**1 mark**

[AO1:0, AO2:0, AO3:4]

**2** In the passage below, fill in the gaps **(a)** to **(g)**, choosing the correct word or phrase from the box.

**[7 marks]**

### **Potential Content**

The completed passage should read as follows. Award **1 mark** per correct answer.

A person who wishes to become a magistrate must first apply to the **(a) Local Advisory Committee**. Its job is to make sure that the local Bench has a proper mix of ages, **(b) gender** and occupational backgrounds. The person who has applied to be a magistrate will then be invited for **(c) a two-stage interview**. Here, the interview panel will be deciding which people to **(d) recommend for appointment**. A successful applicant must have the required personal qualities as well as the required **(e) judicial** skills to sit as a magistrate. After appointment by the Lord Chancellor's Department, every new magistrate will be allocated a **(f) mentor**, whose job is to guide the new magistrate during their first year. The last stage in the process is when the new magistrate is **(g) sworn-in**.

[AO1:0, AO2:0, AO3:7]

**3** Read the following situations. State which remedy or remedies would most probably be imposed. Briefly explain **why** you have chosen that remedy or those remedies.

**[8 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1-3 marks</b>
Band 2	Answer based on limited understanding	<b>4-6 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>7-8 marks</b>

**Note:** this question is to be marked out of 8 in total.

Only **one** situation fully correctly answered with no credit for the other two – max **3 marks** for an answer which deals with **all** the potential content

Any **two** situations fully correctly answered with no credit for the other – max **6 marks** for an answer which deals with **all** the potential content

- Alan and Brad were involved in a major road traffic collision. Alan suffered serious injury and his car could not be repaired. After a trial in the High Court, Brad was found liable for negligence.

### Potential Content

Likely remedy: damages (difficult to justify anything else).

**1 mark**

Reason: to compensate Alan for the damage caused by Brad's negligence.

Reference to both the personal injury **and** the damage to property.

**Note:** right reasons, wrong remedy can still get up to 2 marks

- Colin and Diane are next-door neighbours. Colin and Eric, his young son, frequently play football in their garden. Eric's ball often goes into Diane's garden, although no damage has been caused. Diane is annoyed that Eric is entering her garden to fetch his ball and that Colin knows about it and isn't stopping him.

**Potential Content**

Likely remedy: injunction (difficult to justify anything else).

**1 mark**

Reason: to prevent further entry (trespasses) by ball and/or Eric.  
Recognition that in the absence of damage, damages is not a credible remedy.

**Note**: right reasons, wrong remedy can still get 1 mark.

- Faisal owns a chemical factory. The noise from the factory, especially at night, is making it difficult for local residents to sleep. George, who lives closest to the factory, has noticed that fumes from the factory have discoloured the frames of his new double-glazed windows.

**Potential Content**

Likely remedies – an injunction and damages.

**1 mark each**

Reason – Recognition that the residents want the noise at night to stop/be controlled and that George will want compensation for the damage to his windows.

**Note**: only one remedy recognised – max 2 marks.

**Note**: right reasons, wrong remedies can still get up to 2 marks.

**Note**: recognition of public nuisance based on particular damage is creditworthy, but criminal sanctions are not creditworthy.

[AO1:4, AO2:0, AO3:4]

**4 (a)** Identify **three** aggravating factors which could persuade a criminal court to impose a sentence of imprisonment after the accused has been found guilty.

**[3 marks]**

**Potential Content**

Any three from eg:

- use of a weapon
- vulnerable victim
- excessive violence
- serious injury or high value loss to victim
- group action
- previous (similar/recent) convictions/antecedents, failures to respond to community sentences
- attitude to court/lack of remorse etc.
- pre-meditated

**1 mark each**

**Note:** as indicated above, both offence and offender aggravating factors can be credited.

**Note:** credit any other sensible aggravating factors which the candidate may identify.

**Note:** do not credit serious offence or plea.

**Note:** 'Shopping List' rule applies i.e. if a candidate offers more than three answers, then **all** must be correct for max marks to be awarded. If any answer is wrong, the maximum is two marks.

[AO1:2, AO2:0, AO3:1]



**4 (b)** Identify **three** grounds which might persuade a criminal court to remand an accused person in custody whilst they are awaiting trial.

**[3 marks]**

### Potential Content

**Note:** this question is about **grounds** to potentially remand someone in custody. **Reasons** to support those grounds are different and **not** to be credited. Thus, do not credit eg previous record, nature and gravity of offence/likely sentence, no fixed address.

Under the Bail Act 1976 (as amended) the following are the relevant grounds which can be credited.

Any three from the following:

- a significant fear that the accused may commit further offences
- a significant fear that the accused may abscond
- a significant fear that the accused may interfere with witnesses
- insufficient time to obtain information on accused
- for the accused's own protection
- where the accused is a serving prisoner
- where the accused is already in breach of bail conditions
- where the accused was on bail when the current offence was committed
- where the accused is charged with murder

**Note:** 'Shopping List' rule applies i.e. if a candidate offers more than three answers, then **all** must be correct for max marks to be awarded. If any answer is wrong, the maximum is two marks.

**1 mark each**

[AO1:2, AO2:0, AO3:1]

**5** The following table shows the various different stages in the training of both solicitors and barristers. In the spaces marked **(a)** to **(f)**, write the correct word or phrase to complete the table.

**[6 marks]**

**Potential Content**

Award **1 mark** for each of the following answers:

- (a)** law degree
- (b)** Inn of Court (alternatively, credit the name of any of the Inns of Court identified by the candidate)
- (c)** Legal Practice Course (LPC) (credit also Legal Practice exams)
- (d)** Bar Professional Training course (BPTC) (credit also Bar Vocational course (BVC))
- (e)** pupillage
- (f)** Roll of Solicitors (also credit Rolls of the Supreme Court)

**Note:** to be marked out of a total of 6 marks at the end

[AO1:4, AO2:0, AO3:2]

**6** The legal profession consists of solicitors and barristers. During the conduct of a civil case, both sides of the profession have work to do for a client.

During the conduct of a **civil** case, briefly describe the work of the following:

**[7 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1-2 marks</b>
Band 2	Answer based on limited understanding	<b>3-5 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>6-7 marks</b>

### **Potential Content**

#### **Solicitors**

Eg:

- Legal advice/taking instructions from client
- Preparation of case/seeking specialist opinion from barrister
- Negotiating on behalf of a client with the other side's solicitor/insurance company.
- Instructing a barrister to represent at trial
- Acting as an instructing solicitor in court
- Representing a client at County Court level
- Representing a client at High Court level if qualified as a solicitor advocate
- Possible reference to appeals

#### **Barristers**

Eg:

- Giving of specialist opinion on the instructions of a solicitor
- Preparation of case for trial on the instructions of a solicitor
- Conducting a case conference
- Representation at all levels of court
- Possible reference to appeals
- Possible reference to direct access barristers

**Note:** only one aspect dealt with – max 4 marks for a good answer

**Note:** credit must focus on the **work** of barristers and solicitors in the conduct of a **civil** case.

[AO1:7, AO2:0, AO3:0]

**7** The table below refers to the similarities or differences between the hearing of a civil case through the Small Claims Track and the hearing of a civil case through the Fast Track.

In the spaces marked **(a)** to **(g)**, write the correct word or phrase to complete the table.

**[7 marks]**

**Potential Content**

**(a)** Circuit Judge

**(b)** £10 000

Note: credit also the lower limit for personal injury if identified as such.

Note: credit also £5 000, which is the recently changed old limit for small claims.

**(c)** £25 000

**(d)** solicitor or barrister (only one required) (not lawyer)

**(e)** are not recoverable (or equivalent phrase) (credit also that claim form issue costs are recoverable or that solicitor costs are not recoverable)

**(f)** County Court

**(g)** High Court Judge (ignore venue)

**1 mark for each correct answer**

[AO1:3, AO2:0, AO3:4]

**Section B**

**Question 8**

**8 (a)** Briefly explain the difference between summons and arrest.

**[3 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3 marks</b>

**Potential Content**

Recognition that both are about getting an accused person to court (may be implicit rather than expressly stated).

Summons is a document requiring attendance at a Magistrates Court/associated with minor offences.

Arrest (police or citizens) used for more serious offences.

Suspect taken to police station (questioned, charged and bailed/held in police custody + produced at next available court).

Possible reference to warrants of arrest.

[AO1:2, AO2:0, AO3:1]

**8 (b)(i)** In a criminal case, an accused person may be granted either **unconditional** bail or **conditional** bail. State what is meant by the following terms:  
**Bail**  
**Unconditional bail**

**[3 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3 marks</b>

**Potential Content**

**Bail:**

- understanding that bail is about the release of a suspect/accused person prior to the case being completed in court. **1 mark**
- can be granted by the police or the court.
- possible reference to relevant legislation.

**Unconditional bail:**

- no restrictions on individual (or equivalent wording). **1 mark**
- presumption in all cases (except murder).
- possible reference to relevant legislation.

[AO1:2, AO2:0, AO3:1]

**Note:** the two identified marks above are both required content to achieve sound understanding. The third mark can be obtained with any sensible development (as indicated above) to **either** answer.

**Note:** Do not credit examples of bail conditions as these are credited in the next question.

**8 (b) (ii)** In the case of **conditional** bail, identify any **four** conditions which are commonly imposed on bail by the police or courts.

**[4 marks]**

**Conditions:**

Any four bail conditions from the list below:

**1 mark each**

- residence
- curfew (or tagging)
- restraining order on places
- restraining order on people eg victim or witness
- surrender of passport
- reporting to a police station
- surety
- security
- keeping appointment with Probation Service etc.

**Note:** ‘Shopping List’ rule applies i.e. if a candidate offers more than four answers, then **all** must be correct for max marks to be awarded. If any answer is wrong, the maximum is three marks.

**Note:** credit any other sensible conditions raised.

[AO1:4, AO2:0, AO3:0]

**8 (c) (i)** Describe the role of the Crown Prosecution Service (CPS).

**[4 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3-4 marks</b>

**Potential content**

- Advising the police on potential for prosecution
- Reviewing cases submitted by the police
- Determining charges (or dropping the prosecution)
- Making decision to prosecute based on sufficiency of evidence + public interest (2 marks if complete)
- Preparing and presenting cases in court
- Instructing a barrister for major prosecutions
- Negotiating with the defence.

**Note:** sound understanding would require at least three of the above points to be raised.

[AO1:2, AO2:0, AO3:2]

**8 (c) (ii)** Comment on the advantages **and** disadvantages of the CPS.  
(Answer in continuous prose.)

[5 marks]

**Note: Quality of Written Communication is to be assessed in this part-question. Examiners should place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.**

Band 0	Inappropriate answer showing no understanding. The candidate spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	<b>0 marks</b>
Band 1	Basic awareness. The candidate spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	<b>1 mark</b>
Band 2	Answer based on limited understanding. The candidate spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	<b>2-3 marks</b>
Band 3	Appropriate answer showing sound understanding. The candidate spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	<b>4-5 marks</b>

**Note:** Assess the law content first (up to max of 3 marks), then assess the QWC on the following basis:

- Average performance for a notional 16-year-old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

### **Potential content**

#### **Advantages:**

Eg objective view on whether to prosecute, saves time + costs of ‘hopeless’ cases, reduces the possibility of a ‘biased’ prosecution etc.

#### **Disadvantages:**

Eg the CPS is expensive to administer, lacks independence (too close to the police?), only keen to prosecute when conviction is near certain, criteria for prosecution ignore the victim’s wishes etc.

**Note:** one aspect only – max 2 marks for law and up to 2 marks for QWC ie max 4 marks.

**Note:** credit any other sensible points raised.

[AO1:0, AO2:0, AO3:5]



**8 (d) (i)** Briefly explain the work of Duty Solicitors.

**[4 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 marks</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3-4 marks</b>

**Potential content**

Work at the police station: possible further development eg operates on a local rota etc.  
 Role – based on legal advice only.

Work in the Magistrates Court: possible further development eg first appearance only, qualifying (imprisonable) offence.  
 Role - advice + representation

In either situation – possible reference to the Access to Justice Act 1999.

**Note**: one aspect only – max 3 marks for a good answer.

[AO1:2, AO2:0, AO3:2]

**8 (d) (ii)** In the context of public funding of court cases, briefly explain what is meant by means-tested funding **and** public funding which is not means-tested.

**[3 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 marks</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3 marks</b>

**Potential content**

**Non-means tested funding:**

- ie everyone qualifies irrespective of finances / public funding guaranteed
- eg duty solicitor at police station

**Means-tested funding:**

- ie accused person must qualify financially
- based on income and capital.

Possible reference to Civil or Criminal Legal Representation.

**Note:** credit any other sensible points raised.

**Note:** only one aspect – max 2 marks for a good answer.

[AO1:2, AO2:0, AO3:2]

**8 (d) (iii)** Comment on the advantages **and** disadvantages of public funding for defendants in court cases. (**Answer in continuous prose.**)

**[5 marks]**

**Note: Quality of Written Communication is to be assessed in this part-question. Examiners should place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.**

Band 0	Inappropriate answer showing no understanding. The candidate spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	<b>0 marks</b>
Band 1	Basic awareness. The candidate spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	<b>1 mark</b>
Band 2	Answer based on limited understanding. The candidate spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	<b>2-3 marks</b>
Band 3	Appropriate answer showing sound understanding. The candidate spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	<b>4-5 marks</b>

**Note:** Assess the law content first (up to max of 3 marks), then assess the QWC on the following basis:

- Average performance for a notional 16-year-old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

### **Potential Content**

**Advantages** – eg Ensures ‘balance’ at both the police station and in court (criminal), serves the wider interests of justice (civil and criminal), provides an invaluable service to both the poor and vulnerable (civil and criminal) etc.

**Disadvantages** – eg the large numbers who appear unrepresented before the Magistrates Court because they do not qualify (criminal), costs to the public purse in ‘difficult’ times (civil and criminal) (currently about 1.3 billion per year in criminal cases alone), increased number of ‘technical’ not guilty pleas (criminal), more contested trials (civil and criminal) etc.

**Note:** credit any other sensible points made.

**Note:** unbalanced answer – max 2 marks for law (potentially 4 marks overall with QWC).

**Note:** no relevant law marks, max 1 for QWC

[AO1:0, AO2:0, AO3:5]

**8 (e) (i)** State the maximum prison sentence that can be imposed in a Magistrates Court.

**[1 mark]**

**Potential Content**

Six months (credit also 12 months if associated with multiple (either-way) offences)  
 Also allow 2 x 6 months – **1 mark**

[AO1:1, AO2:0, AO3:0]

**8 (e) (ii)** Outline the roles of the judge **and** jury in a Crown Court trial.

**(4 marks)**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3-4 marks</b>

**Potential Content**

**Judge** – ‘In charge’ of courtroom, legal rulings, summing up for jury, sentencing etc.

**Jury** – Listen to evidence, listen to summing-ups, deliberations, deliver verdict(s) (unanimous or majority).

**Note:** only one aspect dealt with – max 3 marks for a good answer

[AO1:4, AO2:0, AO3:0]

**8 (e) (iii)** Briefly explain how a juror qualifies for jury service.

**[4 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 marks</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3-4 marks</b>

**Potential content**

Basic qualifications ie 18-70, 5 year residence, electoral register (required content).

**3 marks if complete**

Possible statutory reference(s)

Reference to disqualifications, discharges, deferments.

**Note:** credit any other sensible points raised (not selection).

[AO1:4, AO2:0, AO3:0]

**8 (e) (iv)** Comment on the **advantages** of trial by jury.

**[5 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 marks</b>
Band 2	Answer based on limited understanding	<b>2-3 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>4-5 marks</b>

**Potential content**

Advantages can include: eg public involvement, justice is ‘seen to be done’, defendant judged by his peers, wider range of views than single judge or magistrates, shared decision making, public acceptability, jury equity (conscience rather than law).

Possible reference to cases eg **Ponting, Owen, Kronlid, Melchett** etc.

**Note:** credit any other sensible points raised.

**Note:** no balance or conclusions required for max marks.

**Note:** minimum three points with some development for sound understanding.

[AO1:0, AO2:0, AO3:5]

**Question 9**

**9 (a)** Extract 1 refers to legislation being created in Parliament “...by the King’s most excellent Majesty (the Crown) .... with the advice and consent of the Lords .... and Commons ...”.

Describe the role of the Commons, Lords and Crown in the passing of an Act of Parliament.

**[10 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1-3 mark</b>
Band 2	Answer based on limited understanding	<b>4-7 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>8-10 marks</b>

**Potential Content**

**Commons:** Most bills of significance are introduced in the Commons, Readings (debates + voting), Committee stage, relationship with House of Lords.  
Possible reference to Green and White Papers, Parliament Acts 1911 and 1949, elected body.

**Lords:** Revising chamber, process (Readings etc), relationship with House of Commons (power to delay, not overrule (possible example such as the Hunting Bill)).  
Possible reference to Parliament Acts, non-elected body (reform).

**Crown:**  
Royal Assent by or on behalf of the Queen (King).  
Final stage.  
Formal process/Bill to Act of Parliament.

**Note:** notional 4:4:4 split may help (sound understanding therefore just possible with two very good answers) – check Band at end to confirm mark.

**Note:** only one aspect dealt with – max 4 marks for a very good answer.

**Note:** only two aspects dealt with – max 8 marks for two very good answers.

[AO1:10, AO2:0, AO3:0]

**9 (b) (i)** Parliament is said to be supreme under English law. Outline what is meant by the supremacy of Parliament.

**[4 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3-4 marks</b>

### Potential Content

Basic definition of supremacy – legally, Parliament takes priority over other English sources (or equivalent wording).

Any sensible development, eg an example(s) of Parliamentary supremacy such as a relevant Act, or further development of the principle, eg Parliament can undo the work of its predecessors, cannot be bound by earlier Parliament.

Possible case, eg *Cheney v Conn*, *Pickin v British Railways Board*

Possible reference to undermining of supremacy eg delegated legislation.

**Note:** do not credit references to EU law in this question (see below).

[AO1:3, AO2:0, AO3:1]

**9 (b) (ii)** Outline how the principle of Parliamentary supremacy is affected by UK membership of the European Union.

**[3 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 marks</b>
Band 2	Answer based on limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3 marks</b>

### Potential Content

Reference to primacy of EU law over English law.

Effect – where EU and domestic law conflict, EU prevails.

Possible reference to *Factortame* case, EU Treaties, European Communities Act 1972

Possible reference to direct effect of Regulations, indirect effect of Directives, significance of ECJ decisions.

**Note:** credit any other sensible points raised.

[AO1:2, AO2:0, AO3:1]

**9 (c)** With reference to the doctrine of precedent, briefly explain what is meant by the following terms: **(You may find it helpful to refer to Extract 2 on page 18.)**

- Ratio decidendi
- Obiter Dicta
- Binding Precedent and Persuasive Precedent

**[8 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1-3 marks</b>
Band 2	Answer based on limited understanding	<b>4-6 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>7-8 marks</b>

### Potential Content

Ratio decidendi – translation, significance in terms of binding part of judgement/forms the precedent, case or example e.g. Donoghue v Stevenson (neighbour test).

Obiter dicta - translation, significance in terms of persuasive part of judgement/do not create binding precedents, case or example e.g. R v Howe (duress not applying to attempted murder).

Binding and Persuasive Precedent – definitions (must/may be followed), some reference to hierarchy, examples or cases to illustrate eg Supreme Court decisions; textbook writers, foreign judgments/decisions of the Judicial Committee of the Privy Council eg The Wagon Mound (remoteness of damage in negligence).

**Note:** only one aspect dealt with – max 3 marks for a good answer.

**Note:** only two aspects dealt with – max 6 marks for two good answers.

**Note:** no case/example – very unlikely to achieve 8 marks

[AO1:6, AO2:0, AO3:2]



<b>9 (d)</b> Explain how the doctrine of precedent operates through the hierarchy of the courts. <b>[5 marks]</b>
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Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based on limited understanding	<b>2-3 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>4-5 marks</b>

**Potential content**

Recognition of the difference between binding and persuasive precedent.

Understanding that English court structures have an order of precedence.

(Accurate) examples of that hierarchy from civil and/or criminal courts to illustrate the hierarchy.

Specific reference to the precedent position of different courts (in respect of both higher and lower courts and itself) eg Supreme Court (1966 Practice Statement), Court of Appeal (different position of Civil and Criminal Divisions), Court of Appeal outranks High Court etc.

**Note:** the precedent position at least two courts must be explained accurately to achieve sound understanding.

**Note:** diagram only – max 2 marks.

[AO1:3, AO2:0, AO3:2]

**9 (e) (i)** Comment upon the advantages of law-making in Parliament.  
(Answer in continuous prose.)

[5 marks]

**Note: Quality of Written Communication is to be assessed in this part-question. Examiners should place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.**

Band 0	Inappropriate answer showing no understanding. The candidate spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	<b>0 marks</b>
Band 1	Basic awareness. The candidate spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	<b>1 mark</b>
Band 2	Answer based on limited understanding. The candidate spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	<b>2-3 marks</b>
Band 3	Appropriate answer showing sound understanding. The candidate spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	<b>4-5 marks</b>

**Note:** Assess the law content first (up to max of 3 marks), then assess the QWC on the following basis:

- Average performance for a notional 16-year-old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

### Potential Content

The Commons is an elected body so parliamentary law-making is democratic. The Act can be passed when it is needed. The Act will cover exactly what Parliament intends to legislate on. The process is lengthy and detailed and great care is taken to ensure the Act is accurate and fit for purpose.

**Note:** credit any other sensible points raised.

**Note:** no balancing arguments or conclusions required for max.

[AO1:0, AO2:0, AO3:5]

**9 (e) (ii)** Comment on the disadvantages of the operation of the doctrine of precedent.  
(Answer in continuous prose.)

[5 marks]

**Note: Quality of Written Communication is to be assessed in this part-question. Examiners should place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.**

Band 0	Inappropriate answer showing no understanding. The candidate spells, punctuates and uses the rules of grammar poorly: he/she uses a very limited range of specialist terms, perhaps inaccurately.	<b>0 marks</b>
Band 1	Basic awareness. The candidate spells, punctuates and uses the rules of grammar with some accuracy: he/she uses a limited range of specialist terms appropriately.	<b>1 mark</b>
Band 2	Answer based on limited understanding. The candidate spells, punctuates and uses the rules of grammar with reasonable accuracy: he/she uses a good range of specialist terms with facility.	<b>2-3 marks</b>
Band 3	Appropriate answer showing sound understanding. The candidate spells, punctuates and uses the rules of grammar with considerable accuracy: he/she uses a wide range of specialist terms adeptly.	<b>4-5 marks</b>

**Note:** Assess the law content first (up to max of 3 marks), then assess the QWC on the following basis:

- Average performance for a notional 16-year-old under exam conditions – 1 mark
- Better than average – 2 marks
- Significantly below average – 0 marks

Add the two marks (for law and QWC) together. Then place the response in the band which provides the ‘best fit’ in the light of both the legal content and the QWC.

### Potential Content

Disadvantages can include: rigidity/inflexibility (problems with out-of-date precedents - possible case e.g. M’Naghten(1843)), illogical distinctions between cases (judges trying to get round a bad precedent – possible case e.g. Smith(1959) and Jordan(1956)), bulk and complexity (well over 500 000 officially reported cases and the plethora of databases), random process of legal development (laws only made as cases arise), expense involved with the case having to be appealed, process depends on the (variable) skills of individual judges etc.

**Note:** credit any other sensible points raised.

**Note:** no balancing arguments or conclusions required for max.

[AO1:0, AO2:0, AO3:5]

**9 (e) (iii)** Briefly comment on **both** of the following:

Whether Parliament improved the law by passing the Law Reform (Contributory Negligence) Act 1945. (**See Extract 1 on page 18.**)

Whether the appeal court judges made a good decision in **Froom v Butcher**. (**See Extract 2 on page 18.**)

**[5 marks]**

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1-2 marks</b>
Band 2	Answer based on limited understanding	<b>3-4 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>5 marks</b>

**Potential Content**

**Act** – recognition of the change in the law (from complete defence to apportionment of damages). Commentary based on that change (either way, but probably suggesting that the change was an improvement based on the levels of fault of both parties).

**Note:** credit any other sensible points raised.

**Case** – recognition of the effect of the decision ie that the claimant’s damages were reduced because of contributory negligence.

Commentary based on that change (either way eg based on a suggestion that the damages reflected the contribution made to the loss and/or the claimant’s damages were reduced even though he was not breaking the law).

**Note:** credit any other sensible points raised.

Conclusions based on both arguments above.

**Note:** only one aspect addressed – max 3 marks.

[AO1:0, AO2:0, AO3:5]

**ASSESSMENT GRID UNIT 1**

	Maximum Mark	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3
Question 1	4	0	0	4
Question 2	7	0	0	7
Question 3	8	4	0	4
Question 4	6	4	0	2
Question 5	6	4	0	2
Question 6	7	7	0	0
Question 7	7	3	0	4
Question 8	45	a) 2 b) 6 c) 2 d) 5 e) 9	0 0 0 0 0	1 1 7 7 5
Question 9	45	a) 10 b) 5 c) 6 d) 3 e) 0	0 0 0 0 0	0 2 2 2 15
<b>SUB-TOTAL</b>	90	46	0	44

**ASSESSMENT GRID OVERALL**

<b>AO1</b>	<b>Target</b>	<b>30-40%</b>	<b>Achieved</b>	<b>36.6%</b>
<b>AO2</b>	<b>Target</b>	<b>20-30%</b>	<b>Achieved</b>	<b>27.8%</b>
<b>AO3</b>	<b>Target</b>	<b>35-40%</b>	<b>Achieved</b>	<b>35.6%</b>

Note – Achieved targets take into account that Paper 2 matches same assessment pattern as the Specimen Paper and previous examinations.