



Cambridge Assessment
International Education

Example Candidate Responses

Paper 2

Cambridge International AS & A Level

Law 9084

For examination from 2017

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Introduction

The main aim of this booklet is to exemplify standards for those teaching Cambridge AS & A Level Law 9084, and to show how different levels of candidates' performance (high, middle and low) relate to the subject's curriculum and assessment objectives.

In this booklet candidate responses have been chosen from June 2018 scripts to exemplify a range of answers.

For each question, the response is annotated with a clear explanation of where and why marks were awarded or omitted. This is followed by examiner comments on how the answer could have been improved. In this way, it is possible for you to understand what candidates have done to gain their marks and what they could do to improve their answers. There is also a list of common mistakes candidates made in their answers for each question.

This document provides illustrative examples of candidate work with examiner commentary. These help teachers to assess the standard required to achieve marks beyond the guidance of the mark scheme. Therefore, in some circumstances, such as where exact answers are required, there will not be much comment.

The questions and mark schemes used here are available to download from the School Support Hub. These files are:

June 2018 Question Paper 22
June 2018 Paper 22 Mark Scheme

Past exam resources and other teacher support materials are available on the School Support Hub:

www.cambridgeinternational.org/support

How to use this booklet

This booklet goes through the paper one question at a time, showing you the high-, middle- and low-level response for each question. The candidate answers are set in a table. In the left-hand column are the candidate answers, and in the right-hand column are the examiner comments.

Example Candidate Response – high		Examiner comments
Question	Part	
Q1	<p>Misrepresentation is where an untrue statement of fact induces a party to enter into a contract. 1</p> <p>There are 3 requirements to show that a contract is actionable for misrepresentation. This includes that there must be an untrue statement, it must be a statement of fact, and the statement must have induced the party to enter the contract.</p>	<p>1 A good start. A brief definition of misrepresentation, which is clear (this is often better than a very long and sometimes less accurate one). This is followed by the main elements of misrepresentation without being over lengthy and wasting time on unnecessary matters.</p>

Answers are by real candidates in exam conditions. These show you the types of answers for each level. Discuss and analyse the answers with your learners in the classroom to improve their skills.

Examiner comments are alongside the answers. These explain where and why marks were awarded. This helps you to interpret the standard of Cambridge exams so you can help your learners to refine their exam technique.

How the candidate could have improved their answer

This was an excellent response, which used a wide range of illustrative detail and sound definitions. Three maxims were identified and explained, each remedy was explained with a relevant case, including the more recent Anton Pillar and Mareva injunctions.

This section explains how the candidate could have improved each answer. This helps you to interpret the standard of Cambridge exams and helps your learners to refine their exam technique.

Common mistakes candidates made in this question

Candidates who fared less well in this response often made the mistake of offering responses based on custom and the Anglo Saxon system of law, rather than concentrating on the creation of Common Law and the way in which Equity was formed to solve problems. Poorer responses also contained far too few example citations for the maxims and particularly the remedies. Concepts such as trust, mortgages and deserted wives' equity could also have been used.

Often candidates were not awarded marks because they misread or misinterpreted the questions.

Lists the common mistakes candidates made in answering each question. This will help your learners to avoid these mistakes and give them the best chance of achieving the available marks.

Question 1

Example Candidate Response – high

Examiner comments

Question Part

Question	Part
1	a)

jerome has been previously acquitted of bulgary and is now being tried for murder, the Criminal Justice Act 2003 section 44 will take into consideration of Jerome's murder trial should be carried out with or without jury.

s44(c) states that section 44 would be applied if the trial is for more than one offence. Jerome is currently being tried for murder but previously held accountable for jury tampering however it was a summary offence. However under s44(b) there will be a danger of jury tampering taking place if a case where in criminal proceedings jury tampering took place which is true for Jerome. These are the subsections that will be applied to Jerome's trial in deciding whether trial should be conducted with jury or without jury. Having forward the prosecution lawyer in Jerome's murder trial thinks that jury tampering would take place again which applies to s44(a) as it was applied to the Crow (Court judge for a trial without jury. following this s44(c) also applies as the judge does feel that s44(c) and s44(d) are sufficiently met for a trial without a jury. The question statement also mentions that the judge feels even with police protection the jurors may feel intimidated that satisfies the second condition in s44(c) that even with police protection it will be essential to conduct a trial without

- 1 The candidate identifies the part of the source material which is relevant for this question.
- 2 Link to the offence of murder but does not specifically say it is an indictable offence.
- 3 The candidate accurately references the relevant part of the source material.
- 4 Here is a clear link to the scenario facts.
- 5 There is a clear link here to the application by the prosecution lawyer.
- 6 This is logical application of the relevant subsections.
- 7 Here is another reference to the scenario.

Example Candidate Response – high, continued

Examiner comments

Question Part

jury to preserve justice.
 Even though there is no sufficient evidence of jury tampering but according to the question statement. Section 44 that places conditions at a trial without jury are sufficiently satisfied and the Criminal Justice Act 2003 s44 should be in favour of the prosecution where James's trial is conducted without a jury. ⁸ and also because it was held in R v Twomey [2009] that once the conditions in section 44 are fulfilled the trial must go ahead without a jury. ⁹

⁸ Here the candidate has applied the law to the scenario facts and reached a logical conclusion.

⁹ The candidate has applied the relevant case provided in the source materials.

Mark for (a) = 9 out of 10

Example Candidate Response – high, continued

Examiner comments

Question Part

1	b)	<p>The discharge of jury because of jury tampering has been placed in section 46 of the Criminal Justice Act 2003.</p> <p>s46(2)(b) ¹⁰ applies where a judge is convinced that jury tampering has taken place where one has been charged with an offence ¹¹ In Freddie's case the judge received a note being informed about jury tampering however the judge did not listen or watch but believe the note ¹² that a juror was bribed. However s46(2)(a) states that the judge should inform the parties that he/she is convinced to discharge the jury which the judge in Freddie's case ¹³ did but s46(2)(b) and s46(2)(a) s46(2)(c) do not apply as the lawyers were not told about the reasoning behind the discharge of jury and was were not consulted or given a chance to represent their side. ¹⁴ s46(3) states that the trial shall continue without jury if after considering what the two parties have to say the judge discharges the jury but in Freddie's case the trial was not conducted and Freddie was directly convicted of robbery without any explanation to the lawyers and any solid evidence. ¹⁵ The Criminal Justice Act 2003 can be used by Freddie to appeal against conviction based on the subsections subsections at s46 that were not satisfied. ¹⁶ In <i>R v Towner</i> two trials had</p>
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- ¹⁰ The candidate accurately selects the relevant part of the source material based on the scenario facts.
- ¹¹ The candidate is using (a) but does not comment on the fact that Freddie is being tried for an indictable offence.
- ¹² Here is the application of (b).
- ¹³ There is an accurate link to the relevant law.
- ¹⁴ The law is applied accurately to the scenario facts.
- ¹⁵ Some good application of the scenario facts to the law which has been given.
- ¹⁶ Here is some logical application.

Example Candidate Response – high, continued Examiners comments

Question Part

been collapsed just the Freddie and it was believed that two jurors had been approached however the two jurors were discharged and the trial conducted with a jury which could be a precedent for Freddie 17

The Criminal Justice Act 2003 will be considered in Freddie's case to decide if the jury should be fairly discharged. 18

- 17 The reference to Twomey is not needed but it does not detract from what is a good answer.
- 18 This closing sentence is not a clear conclusion.

Mark for (b) = 9 out of 10

Example Candidate Response – high, continued

Examiner comments

Question Part

Question	Part
1	e)
	In Katrina's case section 44 on 46 ¹⁹ both would be considered at the Criminal Justice Act 2003 in seeing the prospects of jury discharged and trial without a jury.
	Katrina is having a second trial for manslaughter and accordingly to s44(a) the prosecution has applied for a trial without a jury placing sufficient evidence of jury tampering in previous cases ^{challenges} ²⁰ . However as the defence says that Katrina's brother was in prison so jury tampering could not be possible ²¹ the judge does not seem to be satisfied that jury tampering had taken place and so s44(c) would not apply to Katrina's trial. s44(b)(c) ²² puts right onto a case example where intimidation or attempted intimidation of any person who is likely to be a key witness has taken place which applies to Katrina's case but still the judge orders a trial with jury making section 44 inapplicable and as held in R v Twomey the trial may continue with a jury if section 44 does not apply, which is ²³ the case in Katrina's trial.
	The Criminal Justice Act 2003 will be applied to Katrina's trial in rightly determining the basis on which the trial was conducted with jury. ²⁴

¹⁹ Here the candidate identifies one relevant and one irrelevant area of law.

²⁰ The candidate has selected a relevant piece of law and linked it to the scenario facts.

²¹ There is some accurate analysis of the scenario facts.

²² The accurate part of the source material has been selected based on the scenario facts.

²³ Here the candidate reaches a logical conclusion based on the source material, although the reference to Twomey is not strictly necessary.

²⁴ This is not a clear conclusion.

Mark for (c) = 7 out of 10

Example Candidate Response – high, continued

Examiner comments

Question Part

1 d) Every year according to Jacqueline Martin the jury listens to 20000 cases in the Crown Court that are a mix and match of offences either triable either way or indictable just like the jury is representative of the wider population.

Every law over the jury is placed under the Juries Act 1974²⁵ to begin with an officer is responsible for selecting 15 members for each case for a two week period of time and this is done through electoral registers which randomly chooses the people that live in the area where the trial court is. This random allocation of jury removes any possibility of biasness and is supposed to be representative of different sex, colour and birth ground because it is the computer that chooses not the officer. However those who do not have a voter's id will not be eligible to sit on the jury example people on low income and poor people are unlikely to be part of the jury.²⁶

After there are enough amount of people sit on the jury the prosecution or defence could vet the jury to be satisfied of the people who will be hearing their case. Vetting was not allowed long before as it was said that it is invasion of privacy but now where there is a doubt the jury could be vetted in terms of previous criminal records²⁷ this is called disclosure and barred of service where the

²⁵ Reference to the relevant statute governing jury selection.

²⁶ Here is some accurate evaluation of the selection process for juries, which is clearly linked to the question.

²⁷ Relevant information linked to the question, as vetting can impact on the composition of the jury which has been selected.

Example Candidate Response – high, continued

Examiner comments

Question Part

Criminal record bureau checks the background of the juror. This happened in *R v Mason* and it makes sure that none of the jurors is a previous offender otherwise jurors may be and this may lead to an unfair trial. There is also authorised jury checks as a type of vetting that happened in *ABC trial in 1978*.²⁸

Even after vetting the jury may not be fully prepared to sit for trial. The prosecution or defence might challenge a particular juror or the whole jury on being unfair or not fair to sit as a jury or on the jury. There are two types of challenges. 'To the array' and 'for the cause'. 'To the array' is for the whole jury when the whole jury is challenged on being chosen in a bias way. This happened in *R v Fraser* and *R v Ford*, e.g. a black person in present prosecution could challenge the jury as it involves all white people and no one from his/her race or ethnic minority. This gives both the parties an equal right to speak up and through this it is possible to discharge the jury if it is proven to be bias or not representative. Moving forward to challenging a particular juror or jurors. This is called 'for the cause'. This happened in *R v Wilson* and *R v Spason* where both the jurors were proven to be wives of the prison keeper of the offender and both of them were discharged from

²⁸ These are accurate and relevant case examples.

Example Candidate Response – high, continued **Examiner comments**

Question Part

	<p>The jury. ²⁹ The jury's selection is simply based on electoral registers and from there onwards the jury is filtered through vetting and challenges. ³⁰ The article is 'Diversity and fairness in the jury system 2007' said that the jury is not representative of the population in terms of gender, race etc. but not of those on low incomes. ³¹ It can be possible that because the jurors are from the same areas as that offenders they act where the trial will be heard the jurors may know either the prosecution or defence and may emotionally feel for them. In the end on the arguments based above, the jury system is improving towards unbiased and is representative of the population. ³²</p>

29 The paragraph on challenge is accurate information which relates to the question.

30 The candidate does not make reference to any of the basic qualifications relating to jury selection.

31 Here is a comment relating back to the range of people available for jury selection.

32 Although this is an interesting area for discussion it is not relevant to the issue of selection.

Mark for (d) = 14 out of 20

Total mark awarded = 39 out of 50

How the candidate could have improved their answer

- (a) The candidate could have been clearer in picking up that Jerome’s trial was for an indictable offence.
- (b) The candidate could have linked their conclusion clearly to Section 46(4). It would have been helpful to have a more definite conclusion.
- (c) The candidate could have linked clearly to Section 44(4) to support their application of the law to the scenario facts in that Katrina’s trial with a jury was valid. They could also have referenced Section 44(3) to the effect that the judge was right not to grant the prosecution lawyer’s application. It would also have been helpful to have a more definite conclusion.
- (d) The candidate provides good detail on some aspects of jury selection, such as vetting and challenge, but they did not cover the basic qualifications. There was some comment but it was not developed or wide ranging.

Example Candidate Response – middle

Examiner comments

Question Part

Question	Part	Response
1	(a)	<p>The case shows a defendant who was is to be tried for murder. Jerome under went a burglary trial 5 years ago but was acquitted because it was 'ruined' that Jerome had been threatened ¹</p> <p>Criminal Justice Act 2003 Section 44 Subsection 4 ² States 'there is evidence of a real and present danger that very serious violence would take place.' However the case only states rumors that were only proved as evidence which was not substantial and and it was has would be hard to judge the liability of a rumor. ³</p> <p>Although the case satisfies subsection (1) and (2) in section 44 of application by prosecution to be conducted without a jury. ⁴</p> <p>Taking the seriousness of the case the court may protect the jury by the aid of police force despite the burden as similar steps ⁵ were taken up in the case of R v Twomey [2009] where prosecutors alleged that approaches were made to the jurors the judge still continued the case with the protection of the police but it even though this was appealed against the court of appeal held that it had not satisfied the previous subsections of Criminal Justice Act 2003 Section 44. ⁶ Similarly in this case we see that evidence is said to</p>

- ¹ This candidate recaps the facts, which is not necessary.
- ² The candidate selects a relevant part of the source material.
- ³ Applies the scenario facts to the law and makes a valid comment.
- ⁴ The candidate makes reference to relevant subsections but there is no application to the scenario facts.
- ⁵ Here is a good point of comparison to the relevant case in the source materials.
- ⁶ Here is a good summary of Twomey in the candidate's own words.

Example Candidate Response – middle, continued

Examiner comments

Question	Part
	<p>have been recovered the judge may however protect the jury by police ⁷ although it may satisfy subsection 5 of section 44 ⁸ it goes against section 44. Other subsections stated within the act and under section 46 ⁸ of discharge of jury because of jury tampering the judge may consider the case to be serious but didn't mind it.</p>
(b)	<p>We see in this case that a defendant Freddie is being tried on trial for the 2nd time as 2 previous trials collapsed. The judge receives a note which states that the juror has been given £250 ⁹ it not convicted Freddie of the crime he committed. The jury is discharged without being informed and the defendant is convicted ⁹. Under Section 46 ¹⁰ Discharge of jury because of jury tampering, the case satisfies subsection 1 ¹¹ that the judge was misled and she was so misled on the jury tampering due to the note she had received but ¹² this doesn't fulfil subsection (2) that gives a clear statement that the judge is to 'inform' the parties that he is misled to discharge the jury ¹³ (b) inform parties on the grounds on which he is so misled and (c) allow parties to</p>

⁷ Here Twomey is linked to the scenario facts.

⁸ This Section is not relevant in this question.

Mark for (a) = 6 out of 10

⁹ This is a long paragraph recapping the facts which does not gain marks.

¹⁰ Here the candidate accurately selects the relevant section from the source material.

¹¹ The candidate does not separate out the subsections into (a) and (b).

¹² Here is some application of the scenario facts.

¹³ This is accurate law but is not clearly linked to subsection (a).

Example Candidate Response – middle, continued

Examiner comments

Question Part

		<p>in the representation¹⁴ neither had been followed by the judge expect (a)¹⁵ upon receiving the letter the judge calls the lawyer and says states that the trial would continue without a jury. Under subsection (3) it says that when the judge considers such representat (b) states he must continue the trial without jury if it will be fair to defendants, in the case we see the letter is proven to have no such authenticity whether it was received from a witness witness.¹⁶ The judge acts upon impulse and does give either party a chance to make representations and neither does she speak to any of the issues regarding the authenticity of the letter.¹⁷ Therefore we can say that the default can appeal against the judgment of the judge of conducting her on a case that that followed baseless truth.¹⁸</p>
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14 This is rewriting of the source material which is not needed if the subsections are simply referenced accurately.

15 There is no clear link to the scenario facts to show how this conclusion has been reached, although it is valid.

16 Here is another point of application using the scenario facts.

17 Here is more application although it is not linked to relevant law.

18 This is a valid conclusion.

Mark for (b) = 8 out of 10

Example Candidate Response – middle, continued

Examiner comments

Question	Part
	<p>(c). The case tells us that Katrina is to be tried for a trial where the prosecution wishes to for a trial without a jury however this is not granted by the judge and the defendant is tried with a jury and is convicted. ¹⁹ Under Criminal Justice Act 2003 the prosecution application for a trial without jury to take place would be rejected on the grounds of lack of baseless evidence within subsection (4). ²⁰ That evidence of real is provided. The case points out the fact that the tampering had been of a witness although this does does satisfy subsection 6 (c) that a case where there has been intimidation or attempted intimidation of any person who is likely to be a witness. ²¹ The defence state that the evidence was baseless on the grounds that at that time Katrina's brother had been in prison and was there at the time of the trial. If there was remains to be said then police force may be involved given in the case of R v Towmsey 2009. ²² This executive procedural prohibition to the jury. Since the application does not satisfy the judge of jury tampering as it does not bring</p>

¹⁹ Again, a recap of the facts which is not necessary and gains no marks.

²⁰ This is a correct reference to a valid subsection but it is not linked clearly to Section 44 to show fully that the candidate has selected the most appropriate law.

²¹ This is good selection of the most appropriate part of the source material.

²² The reference to Towmsey is not necessary in this question.

Example Candidate Response – middle, continued

Examiner comments

Question Part

Sound evidence. ²³ The case mentions that the defendant was tried by jury and the defendant was then of being guilty. ²⁴

(d) Juries before had been used more of as witness in cases that took place and nothing more but there was expanding expanded through the years and hence they were used to make and give decisions regarding the verdict. Juries are used both in the civil cases where they decide if the defendant has paid his or her case and the amount of damages. ²⁵ Juries are also used in criminal cases where they decide the verdict of a case being guilty or not guilty. They are used in a panel of criminal cases in crown court.

In a panel of 12 it is important that the jury fulfill qualification as a juror as being of sound and moral judgment. His character is looked upon at and how he ²⁶ or she is viewed within the community. A person will not qualify as a juror if they are a member of the forces or if they have a past criminal record. ²⁷ A ~~juror~~ ^{person} can be suspended for

²³ There is some application here but it is not clear or linked fully to the relevant law.

²⁴ There is no clear conclusion here.

Mark for (c) = 7 out of 10

²⁵ The reference to civil juries is unnecessary given the clear direction in the question to consider juries in the Crown Court.

²⁶ This information links to Magistrates and not juries.

²⁷ This is quite vague and is no longer strictly accurate.

Example Candidate Response – middle, continued

Examiner comments

Question Part

10 years to sit on jury if he has committed minor offences and whether if he is on bail. A mentally disabled prisoner may not be able to qualify as a juror although past cases have been made against this point but a jury must only consist of a panel of 12 and ~~any~~ ~~about~~ any request to place a prisoner who has a language barrier or is ~~mentally~~ mentally ill will be disregarded. ²⁸

The selection process of a jury is mostly and usually computerised with the names randomly selected there may be as many as 100+ candidates that are reduced to 12 based on their ~~history~~ criminal history and on factors if they are members of the forces. A juror may be selected to on point by literally choosing 'from the streets' during a trial if any juror has been dismissed regarding any reason. ²⁹ If in case a juror is not able to attend a trial due to any reason such as examinations then he or she is to sit on the next jury trials that will take place. ³⁰ The jurors are then checked in detail by vetting that is done by police to find out their criminal background and political affiliations. Although this practice is disregarded it is stated that

²⁸ This is relevant information.

²⁹ This is not part of jury selection in the English legal system.

³⁰ This is valid information although it is framed in a very general way.

Example Candidate Response – middle, continued

Examiner comments

Question Part

it may authenticate the selection procedure.³¹ When a panel has been selected both defence and prosecution are granted equal powers that prevents the case from being carried out in justice, so they are 'to the array' when the entire bench³² is thought to be biased and would result in injustice of the verdict or thought to have been tainted with. Both prosecutor and defence can even discharge a single juror on the ground of bias or ~~being~~ a have had associated/being a relative of the ~~the~~ defendant. The right to stand by is only given to the prosecution when a juror may be placed on in the end of the name list of jurors who are to sit for the bench. In this way the jurors, a panel of 12 is selected within the crown court.³³

Having a few of their own share of advantages and disadvantages.³⁴ The benefits are that they make the jurors in private and have can't be persuaded by the judge and are common people with no legal knowledge making the less bias but however they can be persuaded by media groups eg in R v Yang and the jurors may sometimes be absurd. But we can not overlook the fact that the jury unbiased jurors around along

31 This is valid information, albeit of a general nature.

32 The use of the word 'bench' is terminology more appropriate to Magistrates.

33 This paragraph does contain relevant information on challenge.

34 This material is general evaluation of juries rather than of the selection process and so it does not attract credit as it is not answering the question which has been posed.

How the candidate could have improved their answer

- (a) There was some relevant law and some application but it lacked detail and precision. The candidate could have referred clearly to Section 44(1) in the first paragraph rather than a general citation later which was not linked to Jerome's offence. It would have been helpful to make a reference to Section 44(3) to reach a specific conclusion. It was also necessary to link to Section 44(6)(b) as that was the relevant subsection dealing with jury tampering, as was rumoured to have happened in Jerome's trial.
- (b) The candidate did focus on the correct section of the source material and made use of some relevant law but the citation was not clear and detailed throughout. There was also valid application but it would have been helpful to see it linked clearly to the law, particularly in relation to Section 46(2)(b) and (c).
- (c) The candidate could have been more precise in their citation and also linked their application more fully to the law they identified. Not all sections were dealt with but there was some accurate application. It would have been helpful to see a clear conclusion.
- (d) The candidate does give some accurate information but it is very general in nature, lacking precision and detail. There was no reference to the Juries Act 1974 or to the basic qualifications needed to be a juror. Some information was incorrect and some suggests an element of confusion with Magistrates. It would have helped the candidate if they had focused clearly on the question set and made comments focused on the selection process.

Example Candidate Response – low

Examiner comments

Question	Part	
1	a	<p>Jerome was on burglary trial. He was acquitted and it was rumoured that jurors had been threatened. The prosecution lawyer applies for trial without jury, judge feels that even with police powers protection, the jurors will feel intimidated. Using the criminal justice Act I shall discuss how it will help apply to the trial of Jerome. ¹</p> <p>For the trial to be conducted without jury two conditions are required to be fulfilled under section 44 ² so that trial to be conducted without jury. The first condition is that there should be evidence that jury tampering and would take place. Second condition is that even with police powers there is a likelihood that jury tampering would take place and then it is necessary for trial to be conducted without a jury. ³ the case of Jerome the judge feels that even with the protection of the police the jury will feel intimidated therefore, fulfilling the second condition of the criminal justice Act section 44. However, for the first condition the judge and the prosecution lawyer don't have any real evidence against the juror, they have just heard rumors which would be lies thus not exactly fulfilling the first condition. ⁴</p> <p>Under section 46 ⁵ sub section 1 it applies where a judge is minded because he feels jury tampering has taken place. Using this section the judge for</p>

¹ This paragraph is repeating the facts which does not gain any marks.

² Here the candidate has selected the correct section from the source material.

³ Here the candidate refers to the relevant sections but does not cite the source of the law, which is Section 44(5).

⁴ Here there is some valid application using the scenario facts but it is not clearly linked to relevant law.

⁵ This section is not relevant as it only deals with the discharge of a jury once a trial has started, which is not the case for Jerome.

Example Candidate Response – low, continued

Examiner comments

Question Part

	<p>Jerome can hold a trial without a jury because he feels that jury tampering has taken place. Also under subsection 3 of the act the judge will have to consider if it would be fair to both the defendant and or dependants.</p> <p>In conclusion the judge for Jerome's case can hold a trial without jury because it fulfill all the conditions under section 44 and also the condition under section 46. The the first condition can be fulfill fulfilled by the use of witness and has being able to hold a trial without jury 6 Also the case of R v Toomey 2009, it was held that once the conditions in section 44 are satisfied the trial must go ahead without a jury. 7 The case of Jerome it does meet all the condition made by section 44 that or the case can happen without a juror. 8</p>

- 6** There is some relevant application.
- 7** This is a valid link to a relevant case.
- 8** Although the candidate has not explored all the relevant law, they have reached a conclusion.

Mark for (a) = 6 out of 10

Example Candidate Response – low, continued

Examiner comments

Question	Part	
1	b	<p>Freddie is being tried for a third time for robbery because the two previous trials collapsed. The judge receives a note saying that the juror has been given £250 not to convict Freddie. The judge calls the lawyers and tells them she is holding a trial without jury and doesn't give a valid reason and convicts Freddie. Using these facts I shall use the criminal justice act and see how it applies to Freddie 9</p> <p>Section 46 10 of the criminal justice act mainly applies to Freddie's case. Sub section 2 of the act applies because the judge received the note saying jurors have been given £250 to not convict Freddie the section requires a judge to be minded because jury tampering appears to have taken place thus fulfilling the requirement 11 The judge also satisfies sub section 3 which states that for a judge to hold a jury without trial he is satisfied that jury tampering has taken place, and that to continue the trial without a jury would be fair to the defendant, or defendants. The judge for Freddie's case after receiving 12 the note she does feel it would be fair for the defendant and defendants to conduct a trial without jury.</p> <p>However, it can be argued that what the judge for Freddie did was not fair and unreasonable. Section 46 (2) requires that the parties are informed that</p>

9 This paragraph is a rewriting of the facts which does not gain marks.

10 The candidate has selected the correct part of the source material in relation to the scenario facts.

11 This is valid application of Section 46(1) although (b) is not cited.

12 This is valid application of Section 46(3) although the text is rewritten, which is not necessary.

Example Candidate Response – low, continued

Examiner comments

Question Part

		he is minded to discharge the jury, inform the parties of the grounds on which he is so minded and allow the parties an opportunity to make representation. The judge for Freddie's case does inform the parties/lawyers that the she is dismissing the jurors and she doesn't state her reason and also doesn't also them allow them to make deeds representation. Thus the conviction could be appealed using section 46(2). 13
		In conclusion Freddie's conviction could be argued but it is valid because the other requirements are fulfilled. It can be argued that the judge didn't allow them to make any representation and even the judge didn't allow to tell them the reason for dismissing the jury. But the requirements by the other subsection are fulfilled and so the conviction is valid. 14

13 There is valid application of Section 46(2) but it is not clearly broken down into the subsections and they are not cited.

14 The conclusion does not match the law which has been applied.

Mark for (b) = 4 out of 10

Example Candidate Response – low, continued

Examiner Comments

Question	Part
1.	C
	<p>Katerina facing second trial for manslaughter of a woman in a fight. The prosecution wanted her to be tried without a jury because the previous trial was abandoned because a key witness was intimidated by Katerina's brother. The judge tried Katerina with a jury and she is convicted with a jury using Criminal Justice Act 2003. I shall see how it applies to Katerina case. ¹⁵</p> <p>Section 44 of the Criminal Justice Act sub section (6) ¹⁶ show that where evidence of a real and present danger that jury tampering would take place it mentions a case where there has been intimidation, or attempted intimidation of any person who is likely to be a witness in the trial. ¹⁷ In the case of Katerina one of the witness complained about being intimidated by her brother and Judge held that the brother was in prison and therefore could not intimidate anyone.</p> <p>In conclusion the Judge had a valid reason ¹⁸ and there was no real evidence against the brother. Section 44 requires there to be evidence for any sort of intimidation of the jury. ¹⁹ For Katerina conviction was valid. ²⁰</p>

- ¹⁵ This is simply rewriting the facts and does not gain credit.
- ¹⁶ Here the candidate has selected the correct part of the source material.
- ¹⁷ The candidate identifies the key issue but does not link to the relevant law, which is (b).
- ¹⁸ Accurate application of the law to the scenario facts here.
- ¹⁹ More application but without clear citation.
- ²⁰ This is a logical and valid conclusion.

Mark for (c) = 7 out of 10

Example Candidate Response – low, continued

Examiner comments

Question Part

1	d	Jurors are selected through a long process but in order to be a juror they are requirements you have to pass in order to sit as a juror. I shall talk about the selection process and the qualification required to be a juror.
		Starting off with the selection process. Through an electronic machine names are randomly selected and they are taken suppose to show up to court for further selection. 21 About 50 people are selected from the electro machine. After they are in court another random call out of names is conducted, they are to state if they have any problem with serving as a jury and the judge will look at the background of that person and also decide if they have given a valid reason to not being able to serve as a juror. 22 Later after the 12 jurors have been selected they are given a date to come to court and listen to the trial. The process is done mainly randomly, this is to ensure that there is no biased juror jury. 23
		Looking at the qualification of a juror. You have to be above the age of 18. 24 You have to be free of any charges. You have to have lived in Ok Channel Island side of Man for more than 5 years since attaining the age of 13. You have to have not been convicted in

21 It would have been helpful to deal with basic qualifications for selection here.

22 This seems to be a reference to vetting but it is not clear or detailed.

23 This seems to link back to the original process of random selection.

24 It would have been helpful to include the upper age limit and to reference relevant statute law.

Example Candidate Response – low, continued

Examiner comments

Question Part

	the part five years or have served any sort of sentencing. ²⁵ They are also a few disqualification such as; if you are related to the a parties you can not serve, if you have any sort of legal knowledge (lawyers, policeman). ²⁶ If you meet the qualification - you can sit on the jury.
	If you are a medical practitioner you can serve as a jury, doctors, nurses, medical students can serve since they can be able to help the juror with any medically related evidence in a case. ²⁷
	In conclusion, the selection process is done at random to ensure that the jury is balanced and fair and a background check is done to on everyone to ensure that they meet the qualification to become a juror. ²⁸

²⁵ This section lacks focused detail.

²⁶ This is out of date.

²⁷ This would have been a good place to deal with discretionary excusal.

²⁸ This is the only evaluative comment in the response.

Mark for (d) = 7 out of 20

**Total mark awarded =
24 out of 50**

How the candidate could have improved their answer

- (a) The candidate could have been more specific in the citation of the law they referred to and they needed to cover all the issues, such as the category of the offence and who was making the application to the judge.
- (b) The candidate was vague in their application and much of the law was rewritten but without focusing on the key sections and subsections. The candidate's conclusion did not match their reasoning and there were several other issues which they needed to discuss, such as the nature of Freddie's offence.
- (c) There were more areas of law the candidate needed to cover but they did focus on the key issue and there was good application using the scenario facts to reach a valid conclusion.
- (d) The candidate demonstrated only basic knowledge and their response lacks detail. It did not cover issues such as challenge and was vague on excusal. There was only one evaluative comment and more was needed to move up the mark bands.

Common mistakes candidates made in this question

- In the scenario questions, the most common mistakes were rewriting sections of the source material when accurate citation would be sufficient and rewriting the scenario facts, which uses time but gains no marks.
- In the essay question, the most common mistakes were not reading the question carefully enough to focus on juries in the Crown Court, not including detailed and accurate factual information and writing evaluation of juries as a whole rather than focusing on what was required by the question, which was the selection process.

Question 2

Example Candidate Response – high

Examiner comments

Question Part

Question	Part	Answer
2	d	<p>The doctrine of precedent is based on the Latin term called 'stare decisis' which means stand by the decision, and do not unsettle the established law. The law has the advantage of being certain and predictable, however, the precedent may affect the development of the law to an extent. Previously, like cases were decided alike and by similarity.</p> <p>Historically, the House of Lords was bound by its own decisions and the lower courts were bound by the decisions of the House of Lords and Supreme Court. Although the law was considered to be certain, it was rigid and technical. This can be seen in the London Street Tramways case where the judge favoured certainty over justice. Failure to focus on providing individuals with justice can lead to them facing hardships.</p> <p>The House of Lords and Supreme Court were bound by their own decisions, and this was a problem. The Lord Chancellor saw this as a problem, and realized the issue at hand which was the fact that there was less room for justice to</p>

1 Some credit is given for identification and a definition of the term 'stare decisis' as this gives context.

2 A historical approach is appropriate in a question such as this.

Example Candidate Response – high, continued

Examiner comments

Question Part

be served. So the Practice Statement could be used and the House of Lords and Supreme Court were not bound by their decisions. However, the Practice Statement could only be used strictly. ³ ⁴

The British Railways case was overruled by the Addie v Dumbreck case as duty of care must be provided to trespassers. The R v Shivpuri case overruled the Anderson v Ryan case as although the crime was impossible to commit, there was an intention to do it. These cases are examples of where the House of Lords and Supreme Court proved to be effective and favoured justice over certainty. ⁵

The Appellate Courts were not bound by their decisions and they could change their decisions according to the changing social conditions. ⁶ The House of Lords and Supreme Court were bound by their decisions unless the Practice Statement could be used and the exceptions of the Young's case were maintained. There are certain judicial tools that can be used to avoid awkward

³ Here the candidate is evaluating the role of the House of Lords/Supreme Court in terms of the restrictions they faced.

⁴ The candidate is brief on what the Practice Statement actually allowed the House of Lords to do and why.

⁵ Relevant examples support the comment on the approach to precedent taken by the House of Lords/Supreme Court.

⁶ This is a valid comment although not strictly linked to the House of Lords/Supreme Court.

Example Candidate Response – high, continued

Examiner comments

Question Part

precedents. This can be seen in the case of *Meritt v Meritt* and *Balfour v Balfour*. In the first case, a wife claimed for ~~be~~ breach of contract against her husband, but the court denied her as the judge thought that this was a private matter and it was not right for them to interfere. However, in *Balfour*, the judge allowed the breach of contract as the couple was separated. These cases are examples of how the Supreme Court has developed the precedent and made it effective. 7

Using the Practice Statement allows the law to change and adapt to the changing social conditions. In the case of *R v R*, marital rape was considered an offence. In the case of ~~R v~~ *Stirling Housing v FitzPatrick*, the partner of a homosexual man was given the contract for the property as he was paralyzed. 8

Theoretically, the doctrine of precedent is very effective and the Practice Statement has proven to be very helpful. However, practically the Practice Statement is not

7 These two cases serve as a good illustration of how the House of Lords/Supreme Court developed precedent effectively.

8 Here the candidate uses House of Lords cases that reflect their evaluative point about changing social conditions.

Example Candidate Response – high, continued

Examiner comments

Question Part

Question	Part	
		used very often. The Supreme Court is bound by its own decisions and if a person were to get his case to court, it would be very time-consuming and expensive. 9
		The Supreme Court has played an important role in developing the precedent and if used, it is very effective. However, the Practice Statement, which allows the House of Lords to and Supreme Court to depart from its decisions is used very strictly, so practically not make judges favour certainty over justice. 10

9 Here are some valid comments on the shortcomings of the House of Lords/Supreme Court and an evaluative comparison between theory and practice.

10 This is a valid conclusion.

Mark for (d) = 16 out of 20

Example Candidate Response – high, continued

Examiner comments

Question Part

2		<p>a Mumtaz, the solicitor of Peter, had appealed to the Supreme Court. The issue at hand is that the document that Mumtaz sent to the court has some issues and it does not follow the pattern that the court requires. ¹¹</p> <p>The Practice Direction 3 states that the court will not consider any application which is excessive in length and crosses the 10 pages length. Section 3(1)(2) also states that any hand writing which is illegible and hard to read will be rejected and not considered. Section 3(1)(7) states that while appealing to the court and sending all documents, the correct fee must be submitted. ¹²</p> <p>Under section 3(1)(3), if an applicant asks the Supreme Court to depart from one of their previous decisions, it should be clearly written in the application. Section 3(1)(4) states that an application to appeal must be signed by the appellant or the agent. ¹³</p> <p>This law can be applied to Peter as the document that Peter drafted was of 30-pages and of</p>
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¹¹ This paragraph is not necessary as it simply rewrites the question in different words.

¹² Here the candidate picks out two relevant pieces of source material although at this point, they are not linked to the scenario facts.

¹³ They do the same thing here although the reference to Section 3(1)(3) is very general.

Example Candidate Response – high, continued

Examiner comments

Question Part

bad hand-writing. under the Practice Direction, such applications are not considered. ¹⁴ However, the ~~appellant~~ application that ~~is~~ Munirah sent clearly stated that her client wanted to go against the decisions that were made by an earlier judge. ¹⁵ and the application also consisted of her sign which is a requirement that needs to be fulfilled before applying. ¹⁶ One of the requirements was not completed as she forgot to add the fees. ¹⁷

Since Peter exceeded the limit of ten pages on his application, and his handwriting was hard to read, and Munirah did not add the fee to the application document, the Supreme court will not accept this appeal application. This could be avoided if during preparing the document, Peter contacted the Registry and followed their guidelines. ¹⁸

¹⁴ Here there is application of Section 3(1)(2).

¹⁵ Here there is application of Section 3(1)(3) although it is general.

¹⁶ Here there is application of Section 3(1)(4)

¹⁷ Here there is application of Section 3(1)(7).

¹⁸ The candidate ends with a valid conclusion.

Mark for (a) = 8 out of 10

Example Candidate Response – high, continued

Examiner comments

Question	Part	
2	b	<p>The issue at of the matter is that Robert is appealing to the Supreme Court for the first time and he has asked the help of the Registry to guide him while filing his application. He takes his statement to the court and is prepared to see how it is dealt with. ¹⁹</p> <p>Under section 3(1)(2) of the Supreme Court Practice Direction, the application for the permission to appeal must be bound towards the left, less than 10 pages long and not excessive in length. The document must consist of the original application with 3 copies and a prescribed fee as stated in section 3(1)(7). ²⁰</p> <p>Section 3(1)(4) states that Section 3(1)(3) states that an application to appeal must seek reference to the Court of Justice of the European Union. And the application that a person would must be signed the person appealing or his client. Section. The application for permission to appeal should also include the neutral citation of the judgement that is being appealed against. ²¹</p>

¹⁹ This paragraph is not needed to gain marks.

²⁰ As before the candidate picks out relevant sections of the source material.

²¹ They do the same thing here although they state rather than cite Section 3(1)(5).

Example Candidate Response – high, continued

Examiner comments

Question Part

As Robert took help from the Registry and fixed his mistakes the document that he is appealing with is accurate. His All papers are bound on the left hand side and are of six pages which are within the limit. His document has been signed by his client and it also contains the original application, the 3 copies, and the correct fees. The judge that they are appealing against have also been cited in the document.

Robert, who is appealing to the court for the first time has fulfilled all the requirements necessary and has followed the pattern that has been stated in the Practice Direction. The Supreme Court will accept Robert's application.

- 22 Valid application of the two relevant issues in Section 3(1)(2).
- 23 Here is application of Section 3(1)(4).
- 24 Here is application of Section 3(1)(7).
- 25 Here is application of Section 3(1)(5).
- 26 Here is a clear and valid conclusion based on the candidate's application of the scenario facts.

Mark for (b) = 8 out of 10

Example Candidate Response – high, continued

Examiner comments

Question Part

2	C	<p>Ellen who is a solicitor, represents ABC Fisheries. She is appealed to the Supreme Court as her clients believe that the law stating on what fish they can catch needs to be more clear. ²⁷</p> <p>Under section 3(1)(1), the Practice Direction states that an application for appeal by must be considered by at least 3 Justices. Section 3(1)(2) and section 3(1)(7) state that the document must be within 10 pages or an A4 paper and it must explain the specific issues that the client is facing. The original application with the necessary copies must also be submitted. ²⁸</p> <p>If an application for permission to appeal seeks reference to the Court of Justice of the European Union, it should be clearly stated in the document as mentioned under section 3(1)(3). The application must be signed by the appellant or his agent as stated in section 3(1)(4). ²⁹</p> <p>Ellen and her client have fulfilled all the documents necessary for appealing to the Supreme Court such</p>
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²⁷ As before, this paragraph is not needed.

²⁸ The candidate picks out several relevant sections of the source material.

²⁹ Here they identify the remaining relevant sections of the source material.

How the candidate could have improved their answer

- (d) This answer was set in the clear context of stare decisis and showed how the House of Lords used to operate before describing the effect of the Practice Statement. To improve the answer, it would have been helpful to see material clearly focused on the Supreme Court as well. There was a good balance of knowledge and evaluation although more recent citation would have supported greater range and depth of evaluation. Note that it is entirely legitimate to answer the questions in a different order.
- (a) Although the candidate identifies all the relevant sections of the source material it would have helped to identify (b) in Section 3(1)(3) and link it clearly to the scenario facts. The application was quite general; it would have been beneficial to state the law in each section and then apply it before moving on. There was a clear and valid conclusion.
- (b) Once again, the candidate identified the relevant sections of the source material, although it would have been helpful to be clear in their citation of Section 3(1)(5). The law was applied although identifying and then applying each section in turn would produce a stronger and more coherent answer.
- (c) The candidate used the same technique as before. To improve their answer there could have been clear citation of Section 3(1)(3)(c) and more detail on the reasons why this section might have been problematic in the context of the overall application. There was a clear conclusion based on Section 3(1)(1).

Example Candidate Response – middle

Examiner comments

Question Part

Question	Part
2:	a:
	In the aforementioned case, Muntaz appeals on the behalf of his client, Peter to the Supreme Court. Peter had been convicted of a murder, and had written a 30-page note, explaining his case, which he wanted Muntaz to include in the appeal application. Muntaz sends an appeal application to Supreme Court, citing that the previous court's judgement went against Human Rights Act 1998. ¹
	Under the Supreme Court of United Kingdom Practice Direction 3 - Applications for Permission, section 3.1.2 states that the grounds of appeal should not normally exceed 10 pages, and also these applications must not be excessive in length, and also legible. In the case of Peter's, the note of his case exceeds the 10-page length, and also described as hard to read. ² However, it is stated in 3.1.3 (b) of the same Practice Direction 3 that if the appeal application seeks on incompatibility under Human Rights Act 1998, the appeal is admissible. Muntaz had stated that the judgement of the previous court was not in line with the Human Rights

¹ This is a long paragraph which simply rewrites the facts and does not gain marks.

² Here the candidate identifies and then accurately applies the relevant aspects of Section 3(1)(2).

Example Candidate Response – middle, continued

Examiner comments

Question Part

3 Act 1998. So to conclude, it can be said that Muntaz's application would be admissible, if he had shortened and re-written Peter's note in a legible style, and if Muntaz is able to fully state the details in which the previous judgement is not compatible with Human Rights Act 1998.

4

2: b: In the aforementioned case, Robert appeals to the Supreme Court. The Registrar sends back his draft application, suggesting some changes to it. He then improves his application, by adding citation of the Court of Appeal decision, the lower Court references and the subject matter catchphrases. Robert then submits the application signed by the applicant appellant.

5

Under the Supreme Court of United Kingdom Practice Direction 3 – Applications for Permission to Appeal, section 3.1.2 states that the application is securely bound on the left, using both sides of paper. In the case of Robert, his application covers six sides of A4 paper and is bound on the left side.

6

3 Here there is accurate identification of Section 3(1)(3) with some valid application although it is not linked clearly to (b).

4 There is some law here and some application of the law to the scenario facts leading to a general conclusion.

Mark for (a) = 6 out of 10

5 As before, this paragraph is simply rewriting the material in the question.

6 This paragraph identifies and applies relevant aspects of Section 3(1)(2), although it does not refer to Robert's application and subsequent improvement as the Practice Direction allows.

Example Candidate Response – middle, continued

Examiner comments

Question Part

Furthermore, according to 3.1.5 of the Practice Direction 3, it is stated that the application should include the neutral citation of the judgement appealed against, the references of the Courts and the subject matter catch phrases. Robert has included the Court of Appeal decision, that he is appealing against and also has included lower court reference and subject matter catch phrases. However it is pertinent to mention that a draft application of Robert was sent back by the Registrar. Section 3.1.7 of the Practice Direction 3, states that if it is available, a copy of order of the court refusing the court permission to appeal must given alongside the original application with 3 copies at the Registry. In the case of Robert, he had submitted the original application with three copies, the fee and had also included the copy of order appealed against. And so it can be said that the application would be admissible if Robert included the order from Registry, which refused the earlier application.

7 Here there is clear identification of Section 3(1)(5) and application to the scenario facts.

8 This would have been better linked to Section 3(1)(2).

9 Here is valid identification and application of Section 3(1)(7).

10 Here the candidate reaches a valid and clear conclusion.

Mark for (b) = 7 out of 10

Example Candidate Response – middle, continued

Examiner comments

Question Part

2: C: In ^{this} particular case, Ellen appeals to the Supreme Court, on the behalf of other client, ABC Fisheries, for a reference to the Court of Justice of the European Union. The application includes a note by the ABC Fisheries, explaining, what according to them is wrong with the European Union. ¹¹

Under the Supreme Court of the United Kingdom Practice Direction 3- Applications for Permission to Appeal, section 3.1.3.(c) states that if the application seeks a reference to the Court of Justice of the European Union, full details must be given. In this case, the application includes a note by ABC Fisheries, explaining, what according to them is not correct with the European Union, and also believe that the law on what fishes to catch, also needs clarification. ¹²

Furthermore, according to the section 3.1.1 at the Practice Direction 3, it is stated that the applications are considered by an Appeal Panel, which is to be consisting of at least 3

¹¹ The candidate rewrites the scenario but this does not gain marks.

¹² Here the candidate clearly identifies Section 3(1)(3)(c) and there is some application although they do not pick up on the potential issue that the application contains irrelevant and unhelpful material.

Example Candidate Response – middle, continued

Examiner comments

Question Part

Three Justices. In this case, it is mentioned that the application is considered by not three but two Justices. ¹³ Furthermore, according to section 3.1.2 of the Practice Direction 3 the application should be produced in the correct form, on an A4 paper, securely bound on the left side of and using both sides of the paper. It is also stated that it should not exceed 10 pages. The application in ABC Fisheries case is 10 pages at A4 paper. ¹⁴

To conclude, it is said that if the application for permission to appeal in the case of ABC Fisheries expressly states the full details of seeking a reference to the Court of Justice of the European Union, the application will be admissible. However, in other situations, it might not be admissible as the application is considered by two not three Justices, as stated in section 3.1.1 of Practice Direction 3. ¹⁵

¹³ Here is valid identification of Section 3(1)(1) and the potential problem it raises.

¹⁴ Here is clear identification of Section 3(1)(2) and valid application to the scenario facts.

¹⁵ There is a valid conclusion although it is somewhat unclear and lacks certainty.

Mark for (c) = 7 out of 10

Example Candidate Response – middle, continued

Examiner comments

Question Part

2: d. The English legal system operates on the basis of precedent. The precedent is operated through the hierarchy system of courts which exists in England and Wales. The Supreme Court, which was formerly known as the House of Lords is the highest court of the country, followed by the Court of Appeal. The decisions of the Supreme Court is binding on all of the lower courts of the country. The Supreme Court is not bound by any court decisions, however its outlook on its own previous decisions have been changing over the time. Earlier, the approach of the Supreme Court was flexible in this regard, however with the ruling in the case of London Street Tramways, the approach also changed. It was stated that the certainty in law was more important than the individual hardships. Then the approach became so inflexible that the Parliament had to pass a new Act to overrule the precedent. This happened in the case of DPP v

16 Here the nature of the court system is explained, and the place of the House of Lords/Supreme Court within it, which gives good context.

17 Here is evaluation on the changing stance of the House of Lords/Supreme Court.

18 Here the candidates use a valid case to illustrate their evaluative point.

Example Candidate Response – middle, continued

Examiner comments

Question Part

Smithy, in which the Parliament overturned the decision through the Criminal Justice Act 1967. ¹⁹ During this time, there was increased call for a change in approach towards the precedent. This resulted in the passing of Practice Statement 1960's by the Lord Chancellor, which changed the approach of the House of Lords towards the precedent, to regard it as normally binding. It mentioned that through the precedent provides a foundation on which to decide the applications of law, it sometimes provides injustice in some cases and also hinders the natural development of law. ²⁰

The passing of the Practice Statement heralded a change in the approach of House of Lords. First, the judges were reluctant to use it, but gradually they started to change their approach. ²¹ In the case of *Milanges Frank*, the House of Lords overturned its previous decision in the case of

¹⁹ Another relevant case illustrates the issue facing the House of Lords.

²⁰ Here is an attempt to explain the significance of the Practice Statement although it does not clearly state how it works in practice.

²¹ Here is an evaluative comment about the speed of change.

Example Candidate Response – middle, continued

Examiner comments

Question Part

Havvenra Railways, regarding the damages and the currency in which it was awarded. Furthermore, in the case of Berrington, the court overruled its decision taken in the case of Dumbreck, ²² stating that as physical and social conditions have changed, the law should also change. The law in that particular case was of the duty of care owed to a child trespasser. Furthermore, the House of Lords has also played an important role in the formation of contract law and the tort law. In the case of Donoghue v Stevenson, the court established a neighbourhood test, which effectively laid ²³ the foundation of tort law.

To conclude, it can be said that the Practice Statement played an important role in the Supreme Court establishing ²⁴ the role of precedent.

²² Case names are not quite accurate here but it is clear what the candidate is referring to.

²³ Here the candidate references the range of the House of Lords's role in developing precedent.

²⁴ This is a valid conclusion.

Mark for (d) = 12 out of 20

Total mark awarded = 32 out of 50

How the candidate could have improved their answer

- (a) The candidate could have improved their answer by citing and applying more relevant sections of the source material. The answer also lacked depth as it is not specific in its citation of Section 3(1)(3)(b). The conclusion was rather speculative and lacks clarity.
- (b) The candidate did not cover all the relevant law as there was no reference to, or application of, Section 3(1)(4). Some of the application was not linked to the most appropriate law. In this instance, the conclusion was clear and valid on their application of the scenario facts.
- (c) The candidate was clear in most of their identification and application, especially in relation to Section 3(1)(3)(c), but they omitted Section 3(1)(4) and lacked clarity in their application of Section 3(1)(1) and so the conclusion is rather vague.
- (d) The candidate gave relevant material on the role of the House of Lords along with some evaluation on the impact of the Practice Statement and the range of areas in which the law has been developed through precedent. To improve the answer, there needed to be a clear focus on the Supreme Court, as identified by the question, and some evaluation of their role since their creation.

Example Candidate Response – low

Examiner comments

Question Part

2	a)	<p>Firstly, it is clearly stated in Applications for permission to Appeal in 3.1.2 that the "grounds of Appeal should not normally exceed 10 pages of A4 size" and Muntaz's client Peter has written 30-page that too handwritten which is clearly not appropriate to the directions of Appeal. Also it is told that the handwritten application is hard to read. ¹ On the other hand, under 3.1.3 If an application for permission to appeal all three points a, b and c are not ^{are} included in his application, in c, it is told that the application must have full details like what the Peter did, in b, seeks a declaration of incompatibility under the Human Rights Act 1998, as Peter claimed that the previous court went against the Human Rights Act 1998. ² Since Muntaz's application did not contain the fee for the appeal. ³ in 3.12. it is stated that Per Amendments to applications are allowed where the Registrar is satisfied that this will assist the Appeal Panel and will not unfairly prejudice the respondents or cause undue delay. Any amendments must be served on the respondents. ⁴ Applications will not be accepted. ⁵</p>
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¹ Here is some valid identification and application of Section 3(1)(2).

² The candidate does cite Section 3(1)(3) but seems confused in their application.

³ This is a reference to Section 3(1)(7) although it is not cited.

⁴ This goes back to Section 3(1)(2) but is not relevant to the scenario facts.

⁵ This is a very simple conclusion and not clearly supported by evidence.

Mark for (a) = 5 out of 10

Example Candidate Response – low, continued

Examiner comments

Question Part

b) Robert's Application Since it is now improved ~~with~~ when the draft application was sent back to make some changes. ⁶ Robert has filled or ticked the boxes of the Direction provided as the original application together with 3 copies as filled and prescribed fee, a copy of the order appealed against are all filled in 3.1.1. ⁷ Also in 3.1.5 Robert has included the citation of the judgement appealed against as well as the lower court references which falls in 3.1.5. ⁸ But Robert has not included anything from the application for permission to appeal, he has merely gathered the required material and not the permission application process. If the case seeks reference to the court of Justice of the European Union or Human Rights Act 1998. Since the reason for appealing is not given, it is hard to measure the process if it's correct or not. ⁹ But with the help of Registry Robert is making his appeal application stronger and the Supreme Court Practice Direction is used by Robert. ¹⁰ Also Robert has not used both sides of the paper

⁶ This is application of Section 3(1)(2), although it is not cited.

⁷ Here is application of Section 3(1)(7).

⁸ Here is application of Section 3(1)(5).

⁹ Here the candidate deals with Section 3(1)(3), although this is not identified as an issue in the scenario facts.

¹⁰ This links back to the earlier discussion on Section 3(1)(2).

Example Candidate Response – low, continued

Examiner comments

Question Part

		<p>instead he used 6 sides, neither did he include a summary of the reason why permission should be granted ¹¹In 3.1.2. Robert as I said prepared the material stuff - but didn't include the reasoning, summary nor application for permission to appeal points ¹²Application if not in required form will not be accepted. ¹³</p>
c)		<p>Ellen is making reference to the Court of the European Union in 3.1.3 of the Supreme court practice Direction as now the application for permission to appeal box has been ticked ¹⁴Under 3.7.4 the appeal must be signed by the appellant or his agent. In Ellen's case, it is Ellen who signed the appeal written by ABC Fisheries ¹⁵"The Application is 10 pages of A4 Paper" but in 3.1.2, it is stated that the the appeal should not normally exceed 10 pages of A4 size, so the appeal pages are of the right amount ¹⁶As Ellen has included the required copies, prescribed fee etc in 3.7.7 ¹⁷ but Ellen has not included any of the required things out of the permission to appeal. "The application for permission to appeal should include the neutral</p>

- ¹¹ The candidate appears a little uncertain as to one of the elements of Section 3(1)(2).
- ¹² This is unnecessary repetition.
- ¹³ This is a conclusion although rather uncertain.

Mark for (b) = 4 out of 10

- ¹⁴ Here the candidate identifies Section 3(1)(3) and applies the correct subsection although it is not cited.
- ¹⁵ Here is identification and application of Section 3(1)(4).
- ¹⁶ Here is identification and application of Section 3(1)(2).
- ¹⁷ Here is identification and application of Section 3(1)(7).

Example Candidate Response – low, continued

Examiner comments

Question Part

Citation of the judgement appealed against; the references of any law report. in the courts below, and the subject matter catchwords for indexing. ¹⁸ Ellen has only included the reference to the Court of Justice of the European Union. In the last line, it is mentioned that the application is considered by two Justices, whereas in 3.2.3 it is stated that the applications for permission to appeal consisting of at least three Justices. ~~so Ellen's~~ ¹⁹ so the Supreme Court Practice Direction is almost applied by the Ellen's case as the application is considered by two Justices. ²⁰

¹⁸ Here the candidate references Section 3(1)(5) which is not relevant based on the scenario facts.

¹⁹ Here is application of Section 3(1)(1) although with a factual inaccuracy.

²⁰ This is a vague concluding sentence.

Mark for (c) = 6 out of 10

Example Candidate Response – low, continued

Examiner comments

Question	Part	
2	d	<p>The Supreme Court is developing precedent. As the Supreme Court being the upper or the "Senior" Courts of the country has the Doctrine of Precedent which operates in the term "stare Decies" stand by what has been decided. 21</p> <p>The law is made to provide justice and give right decisions, in this way, rights of humans are protected along with the strands of courts being superior. The Doctrine of Precedent is there to make the decisions more fair and just. If one case's decision is about "no killing of animals", then the future case about animal rights would have the same decision "no killing of animals" this way the verdict or the decisions are not bias and same for everyone. so there are no questions left for people to say their decisions are not dealt right. 22</p> <p>The precedent has 3 precedents. One, binding precedent that has no reasonings or statement given by the judge saying how or why he has come to this decision as it is binding to previous decisions that is called the Obiter dicta meaning other things.</p>

21 Here is some useful context with a clear statement about the place of the House of Lords/ Supreme Court in the court structure and a definition of stare decisis.

22 This section is not focused on the role of the House of Lords/ Supreme Court as directed by the question.

Example Candidate Response – low, continued

Examiner comments

Question Part

said. The Original precedent is the Original decision of the court, the judge gives reasonings for his decision and a statement of points by which the decision is done. This ²³ decision must be binding to others. And the lower courts are bound by the decision of the Supreme Court. In Donoghue v Stevenson case, a man sued a manufactory company for selling a spoiled beer with a dead snail in. The judge in his reasonings stated that "It is a duty of a person to take care of the health and safety of other person" this became the original precedent and other related cases are bound to follow this reasoning. ²⁴

The binding precedent has no reasonings, it follows the decision of the upper court and is bound by the decision. ²⁵ In Catell v Carol Smoke Ball Co Ltd case, the case was about the lost dog, the judge commented "what is the police doing? sitting there waiting for the dog to be found." The binding precedent is also bound to follow the previous decisions, it does not

²³ This description of the types of precedent is not linked to the role of the House of Lords/Supreme Court.

²⁴ This is a relevant example.

²⁵ This is potentially a reference to the House of Lords being bound by its own decisions but it is not clearly expressed.

Example Candidate Response – low, continued

Examiner comments

Question Part

have to provide reasonings. The binding precedent guarantees justice and unbiased decisions. As the judge gives the same verdict as the judge did before, so everyone is equal and the decisions are well evaluated and well prepared because it follows the previous one. ²⁶

The persuasive precedent is when the judge persuades the parties that the ~~decision~~ previous decision may ~~be~~ have the same facts or grounds ~~for~~ similar to this case so he ~~perpe~~ persuades the person that the decision may have some changes. In R v Woollin the judges ~~changed~~ the ~~decision~~ persuaded the parties from the case R v Howe. ²⁷

Persuasive precedent ensures that that past decision has ~~not~~ ~~not~~ similarities so that decision is a bit changed, the judges convinces the parties to agree onto this decision by giving references to the ~~to~~ past cases. ²⁸

The Judicial tools used in many case. Such as Dismissing, reversing and over ruling. The role of supreme court in developing precedent has given ~~a~~ benefits and ~~just~~ unlawful decisions are made.

²⁶ These comments are general and not linked to the House of Lords/Supreme Court.

²⁷ These cases have the potential to be valid examples but they are not developed or linked to the House of Lords/Supreme Court.

²⁸ The candidate seems unsure how persuasive precedent works.

Example Candidate Response – low, continued

Examiner comments

Question Part

	But in many appeal cases: the judicial tools are used.
	Disagreeing :- Is when the judge does not agree with the past re decisions because the case he is involved in has different reasonings and so the risk of giving the same verdict may be unlawful and unjust. so the Judge does not use that precedent in his case. 29
	Over-Ruling :- When the 'junior' court over rules the decisions made by the 'senior' court, in betterment of justice and breach of articles. The appeals would want to disagree with the court so this tool is used. In R v R case, a husband raped his wife, Reversing the wife appealed in appeal court that she was raped, the previous judgement made did not punish the 'husband' but the the appeal court over ruled the decision. 30
	Reversing :- The name has it all, the decisions are reversed in favour of justice.

29 This material is not linked to the House of Lords/Supreme Court.

30 With more detail and a link to the House of Lords, this could have provided a valid example.

Example Candidate Response – low, continued

Examiner comments

Question Part

The supreme court plays an effective role in developing precedent. ³¹ Since, the judges go through so many cases at one time, giving each case different decisions, may sometimes be not fair for people. If one person has been to jail for 2 years for committing a crime and other person for 3 years upon committing the same crime. ³² In this way, law was not equal, the original precedent makes law more flexible and consistent, the reasonings of a decision is valid and correct so the binding precedent follows it without the reasonings given. With ~~to~~ the judicial tools, the modern or new problems are not the same as before so the older precedent might not be relateable. So with the power of distinguishing, reversing and over-ruling, the ~~the~~ appeals are heard and the decisions are changed. This shows the flexibility and consistency of law. The ~~levels~~ ^{over} hierarchy of courts where one "junior" court is bound by the upper or senior court. This demonstrates the discipline and bound of law that law is not

³¹ This is a basic evaluative comment.

³² This is an unnecessary diversion into sentencing.

Example Candidate Response – low, continued

Examiner comments

Question Part

Unjust and unflexible. The Supreme Court being the upper court creates precedents so ensure that the justice is provided with the most senior and experienced judges. ³³ It is not that judges are given less power or judges are bound before law. they are but if the precedent is not similar they can make changes if the law is not provided. The courts are bound ³⁴ one another in favour of justice. where the upper courts being the most senior and expertized and the lower courts following the ~~footsteps~~ foot steps. The court in hirchy makes sure that no one goes out without justice being done. ³⁵

The supreme court judges create precedent so it is very important to give the right and fair precedent for others to follow. The supreme court being the upper courts and other courts bound by the decisions of supreme court proves that the decisions are well evaluated and brings justice to everyone. If some changes are made it is for the betterment of the law. ³⁶

³³ Here is some relevant evaluation of the role of the House of Lords/Supreme Court.

³⁴ This is a hint at some evaluation on when the House of Lords/Supreme Court might develop precedent.

³⁵ This is repetition of a previous point.

³⁶ This paragraph provides a summary on the role of the House of Lords/Supreme Court.

Mark for (d) = 8 out of 10

Total mark awarded = 23 out of 50

How the candidate could have improved their answer

- (a) The candidate did include some relevant law but there were Sections missing. Citation was not always in evidence and it would have helped the candidate if their application of law had been clearer and more tightly focused on the relevant sections.
- (b) The candidate was rather repetitive in their answer and better planning would have been helpful. Several Sections of the source material were missing and those which were applied were often not cited. Fine detail was lacking and the application was very general and lacking in conviction, as was the conclusion.
- (c) The candidate identified most of the relevant areas of law in the source material and there was some clearer application. It would have helped to focus more on issues in the scenario facts, such as the detail in Section 3(1)(3)(c) and the impact of the incorrect number of judges in Section 3(1)(1). It would also have been helpful to have a conclusion.
- (d) The candidate covered some very general material relating to the basic principles of precedent and how the House of Lords/Supreme Court fits into the hierarchical structure. There were a few relevant examples but it would have been helpful to have more detailed information on the cases used in relation to precedent development. A much tighter focus on the question would have been beneficial, for example, with clear references to the Supreme Court and the Practice Statement, to give more depth to some rather general evaluative remarks. The answer would also have benefited from better planning and a logical structure.

Common mistakes candidates made in this question

- In the scenario questions, better planning would have helped candidates deal with only the issues pertinent to each different scenario and so not lose time by considering irrelevant issues. Great detail in some instances, such as the citation and application of subsections where relevant, would also have been helpful.
- In the essay question the most common mistake was not reading the question carefully enough; many candidates dealt with precedent as a whole and did not focus on the particular courts specified in the question. There was very little reference to the role of the Supreme Court and often essays were a historical journey through the development of the role of the House of Lords accompanied by some general advantages and disadvantages.

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