

# GCE 2004

## *June Series*



# Mark Scheme

## Law

### *(Subject Code LAW1)*

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

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of candidates' 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.

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*Dr Michael Cresswell Director General*

## Assessment Objectives One and Two

### **General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of candidates, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.*

### **Positive Marking**

*You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as candidates penalise themselves in terms of the time they have spent.*

### **Mark Range**

*You should use the whole mark range available in the mark scheme. Where the candidate's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the candidate's answer does not deserve credit, then no marks should be given.*

### **Levels of Response for Essay Marking**

*When reading an essay it is useful to annotate your recognition of the achievement of a response level. This will help the Team Leader follow your thought processes. Levels of response marking relies on recognition of the highest Level achieved by the candidate. When you have finished reading the essay, therefore, think top-down, rather than bottom-up. In other words, has the candidate's overall answer met the requirements for the top level? If not, the next level?*

### **Citation of Authority**

*Candidates will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.*

### Assessment Objective Three

#### Quality of Written Communication

The Code of Practice for GCSE, GCSE in vocational subjects, GCE, VCE and GNVQ requires the assessment of candidates' quality of written communication wherever they are required to write in continuous prose. In this unit, this assessment will take place by marking the candidate's script as a whole, by means of the following criteria:

- |                |   |                  |
|----------------|---|------------------|
| <b>Level 3</b> | Moderately complex ideas are expressed clearly and reasonably fluently, through well linked sentences and paragraphs. Arguments are generally relevant and well structured. There may be occasional errors of grammar, punctuation and spelling.  | <b>4-5 marks</b> |
| <b>Level 2</b> | Straightforward ideas are expressed clearly, if not always fluently. Sentences and paragraphs may not always be well connected. Arguments may sometimes stray from the point or be weakly presented. There may be some errors of grammar, punctuation and spelling, but not such as to detract from communication of meaning. | <b>2-3 marks</b> |
| <b>Level 1</b> | Simple ideas are expressed clearly, but arguments may be of doubtful relevance or be obscurely presented. Errors in grammar, punctuation and spelling may be noticeable and intrusive, sufficient to detract from communication of meaning.   | <b>1 mark</b>    |
| <b>Level 0</b> | Ideas are expressed poorly and sentences and paragraphs are not connected. There are errors of grammar, punctuation and spelling, such as to severely impair communication of meaning.  | <b>0 marks</b>   |

**1****Total for this question: 30 marks**

- (a) Describe the formal process of statute creation and the role of the House of Commons, House of Lords and the Crown in this process. *(15 marks)*

**Potential Content**

- (A) Description of the formal process of statute creation: first reading, second reading, committee stage, report stage, third reading, royal assent

**NB:** Consideration of green paper and white paper could enhance the answer and/or compensate for deficiencies

- (B) Description of the role of the House of Commons, House of Lords and Crown

**Mark Bands**

- 12 - 15      The candidate deals with (A)-(B) as follows:  
**max 15:** two sound (there may be some imbalance in treatment as between them)  
**max 13:** one sound, one clear  
**max 12:** one sound, one some.
- 8 - 11      The candidate deals with (A)-(B) as follows:  
**max 11:** one sound **or** two clear  
**max 9:** one clear, one some  
**max 8:** two some **or** one clear.
- 4 - 7      The candidate begins to display some understanding by introducing discussion of any of the material in (A)-(B). Where a candidate introduces material across the range, it will be superficial.
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges
- 0      The answer contains no relevant information.

(b) Consider the advantages and disadvantages of this process of law making.	(15 marks)
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**Potential Content**

- (A) Consideration of the advantages, eg taking account of public opinion, role of an elected body, thorough process and scope of legislation
- (B) Consideration of the disadvantages, eg time factor, procedure to rectify any errors

**Mark Bands**

- 12 - 15      The candidate deals with (A)-(B) as follows:  
**max 15:** two sound (there may be some imbalance in treatment as between them)  
**max 13:** one sound, one clear  
**max 12:** one sound, one some.
- 8 - 11      The candidate deals with (A)-(B) as follows:  
**max 11:** one sound **or** two clear  
**max 9:** one clear, one some  
**max 8:** two some **or** one clear.
- 4 - 7      The candidate begins to display some understanding by introducing discussion of any of the material in (A)-(B). Where the candidate introduces material across the range, it will be superficial and any assessment will be based on an inadequate explanatory framework.
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no explanation emerges  
**or**  
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

**2****Total for this question: 30 marks**

(a) Describe the operation of the doctrine of precedent.

(15 marks)

**Potential Content**

- (A) Description of the hierarchy of courts
- (B) Description of *ratio decidendi* and *obiter dicta*
- (C) Description of law reports provision and/or explanation of binding and persuasive precedent and/or methods of departure

**Note:** Discussion of a wider range compensates for less detail in discussion**Mark Bands**

- 12 – 15      The candidate deals with (A)-(C) as follows:  
**max 15:** two sound, one clear  
**max 13:** one sound, two clear **or** two sound, one some  
**max 12:** three clear **or** one sound, one clear, one some.
- 8 – 11      The candidate deals with (A)-(C) as follows:  
**max 11:** two clear, one some  
**max 10:** one sound **or** two clear **or** one clear, two some  
**max 9:** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 – 7      The candidate begins to display some understanding by introducing consideration of any of the material in (A)-(C). Where the candidate introduces material across the range of (A)-(C) this may be superficial.
- 1 – 3      The answer consists of brief, fragmented comments so that no coherent explanation emerges  
**or**  
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

- (b) Identify and explain the advantages and disadvantages of precedent as a system of law making.  
(15 marks)

### Potential Content

- (A) Identification and explanation of the advantages of precedent, eg certainty, consistency and flexibility
- (B) Identification and explanation of the disadvantages of precedent, eg rigidity, the volume of Law Reports, complexity, lack of certainty

### Mark Bands

- 12 - 15      The candidate deals with (A)-(B) as follows:  
**max 15:** two sound (there may be some imbalance in treatment as between them)  
**max 13:** one sound, one clear  
**max 12**    one sound, one some.
- 8 - 11      The candidate deals with (A)-(B) as follows:  
**max 11:** one sound **or** two clear  
**max 9:**    one clear, one some  
**max 8:**    two some **or** one clear.
- 4 - 7      The candidate displays some understanding by introducing consideration of any of the material in (A)-(B) but the discussion is inadequate or suffers from errors or confusion.
- 1 - 3      The answer consists of brief, fragmented comments so that no coherent explanation emerges  
**or**  
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0          The answer contains no relevant information.



**3****Total for this question: 30 marks**

- (a) Describe the functions of the Council of Ministers, European Commission and European Parliament in the creation of European Union law. (15 marks)

**Potential Content**

- (A) Description of the appropriate function of the Council of Ministers, eg acting on proposals put forward
- (B) Description of the appropriate function of the European Commission, eg initiating, drafting and putting forward proposals
- (C) Description of the appropriate function of the European Parliament, eg consultation and advice

**Mark Bands**

- 12 – 15      The candidate deals with (A)-(C) as follows:  
**max 15:** two sound, one clear  
**max 13:** one sound, two clear **or** two sound, one some  
**max 12:** three clear **or** one sound, one clear, one some.
- 8 – 11      The candidate deals with (A)-(C) as follows:  
**max 11:** two clear, one some  
**max 10:** one sound **or** two clear **or** one clear, two some  
**max 9:** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 - 7      The candidate demonstrates some understanding by introducing consideration of any of the material in (A)-(C)  
**or**  
the candidate attempts to introduce material across the range but the descriptions are inadequate or suffer from error or confusion.
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no description emerges  
**or**  
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

- (b) Outline the role of the European Court of Justice (ECJ) and consider the relationship between the ECJ and the English courts. (15 marks)

### Potential Content

- (A) Outline the role of the European Court of Justice in interpreting European Law (Article 234) and, possibly, in making law in its decisions in original cases
- (B) Consideration of the implementation of Article 234, eg binding element of ruling, interpretation issues

**NB:** There may be some imbalance in treatment as between them

### Mark Bands

- 12 - 15 The candidate deals with (A)-(B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear  
**max 12:** one sound, one some.
- 8 - 11 The candidate deals with (A)-(B) as follows:  
**max 11:** one sound **or** two clear  
**max 9:** one clear, one some  
**max 8:** two some **or** one clear.
- 4 - 7 The candidate demonstrates some understanding of any of (A)-(B); where the candidate attempts to introduce discussion of material across the range, this will be superficial.
- 1 - 3 The answer consists of brief, fragmented comments so that no explanation or distinction emerges  
**or**  
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

**4****Total for this question: 30 marks**

- (a) Describe, using examples, the different forms of delegated legislation as a source of law.  
(15 marks)

**Potential Content**

- (A) Description and example of Ministerial Regulations  
(B) Description and example of bye-laws  
(C) Description and example of Orders in Council

**Mark Bands**

- 12 – 15      The candidate deals with (A)-(C) as follows:  
                 **max 15:** two sound, one clear  
                 **max 13:** one sound, two clear **or** two sound, one some  
                 **max 12:** three clear **or** one sound, one clear, one some.
- 8 – 11      The candidate deals with (A)-(C) as follows:  
                 **max 11:** two clear, one some  
                 **max 10:** one sound **or** two clear **or** one clear, two some  
                 **max 9:** one clear, one some **or** three some  
                 **max 8:** one clear **or** two some.
- 4 - 7      The candidate displays some understanding by introducing consideration of any  
                 of the material in (A)-(C)  
                 **or**  
                 the candidate attempts to introduce material across the range but the descriptions  
                 are inadequate or suffer from error or confusion.
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no  
                 description emerges  
                 **or**  
                 a more substantial attempt at explanation is fundamentally undermined by  
                 mistakes and confusion.
- 0      The answer contains no relevant information.

- (b) Identify and explain the advantages and disadvantages of delegated legislation. (15 marks)

**Potential Content**

- (A) Identification and explanation of the advantages of delegated legislation, eg expertise, local needs, speed, saving Parliamentary time
- (B) Identification and explanation of the disadvantages of delegated legislation, eg unelected parties creating law, exceeding of powers, inadequate controls

**Mark Bands**

- 12 - 15 The candidate deals with (A)-(B) as follows:  
**max 15:** two sound (there may be some imbalance in treatment as between them)  
**max 13:** one sound, one clear  
**max 12** one sound, one some.
- 8 - 11 The candidate deals with (A)-(B) as follows:  
**max 11:** one sound **or** two clear  
**max 9:** one clear, one some  
**max 8:** two some **or** one clear.
- 4 - 7 The candidate displays some understanding by introducing consideration of any of the material in (A)-(B)  
**or**  
the candidate attempts to introduce material across the range but the descriptions are inadequate or suffer from error or confusion.
- 1 - 3 The answer consists of brief fragmented comments so that no coherent explanation emerges
- 0 The answer contains no relevant information.

**5****Total for this question: 30 marks**

- (a) Describe the various rules and other aids available to a judge when interpreting an Act of Parliament. (20 marks)

**Potential Content**

- (A) Description of rules of interpretation (literal, golden and mischief “rules”, purposive approach)
- (B) Description of internal aids (for example preamble, long and short title, headings, marginal notes, punctuation, interpretation section, etc) and external aids (for example other statutes, Interpretation Act 1978, Hansard, dictionaries, legal textbooks, etc)
- NB:** Material on presumptions and/or rules of language may enhance and/or substitute for (B), and/or may enhance the quality of (A)

**Mark Bands**

- 16 - 20 The candidate deals with (A) and (B) as follows:  
**max 20:** two sound (there may be some imbalance in treatment as between them)  
**max 18:** one sound, one clear  
**max 16:** one sound, one some **or** two clear.
- 11 - 15 The candidate deals with (A) and (B) as follows:  
**max 15:** sound (A) only  
**max 14:** clear (A), some (B)  
**max 13:** sound (B) only **or** clear (A) only  
**max 12:** clear (B), some (A)  
**max 11:** clear (B) only.
- 6 - 10 The candidate displays some understanding by introducing consideration of any of the material in (A) and (B)  
**or**  
the candidate attempts to introduce material across the range but the descriptions and examples are inadequate or suffer from error or confusion.
- 1 - 5 The answer consists of brief fragmented comments or examples so that no description or evaluation emerges.
- 0 The answer contains no relevant information.

- (b) Choose any **two** of these various rules or aids described in your answer to 5(a). Consider the **advantages** of their use. (10 marks)

### Potential Content

- (A) Consideration of the advantages of one of the rules/aids described in the answer to part (a)
- (B) Consideration of the advantages of a second rule/aid described in your answer to part (a)

Advantage could include, for example, easy to apply rule, opportunity for some flexibility, allows for Parliaments intentions to be carried out, etc

### Mark Bands

- 8 - 10            The candidate deals with (A)-(B) as follows:  
**max 10:** two sound  
**max 8:** one sound, one clear.
- 5 - 7            The candidate deals with (A)-(B) as follows:  
**max 7:** two clear **or** one sound  
**max 6:** one clear, one some  
**max 5:** one clear **or** two some.
- 3 - 4            The candidate displays some understanding by introducing consideration of any of the material in (A)-(B) but the discussion is inadequate or suffers from error or confusion.
- 1 - 2            The answer consists of brief fragmented comments so that no discussion emerges **or** a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0                The answer contains no relevant information.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level law (LAW1)**

<b>UNIT 1</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
Question 1	20	10	
Question 2	20	10	
Question 3	20	10	
Question 4	20	10	
Question 5	20	10	
	(x2 from 5)	(x2 from 5)	
<b>AO3</b> (Quality of written communication for the paper as a whole)			5
<b>Total marks</b>	40	20	5
<b>% of the AS</b>	18.5	9	2.5
<b>% of the A Level</b>	9.25	4.5	1.25