



General Certificate of Education

Law 5161/6161

LAW1 Law Making

Mark Scheme

2005 examination – June series

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.

LAW1

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:

- | | | |
|----------------|---|------------------|
| Level 3 | 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. | 4-5 marks |
| Level 2 | 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. | 2-3 marks |
| Level 1 | 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. | 1 mark |
| Level 0 | 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. | 0 marks |

The level of understanding in AS Law – LAW1

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year old, so the level of understanding required by these criteria will be that of the notional 17-year old.

Sound	<ul style="list-style-type: none">• The material will be generally accurate and contain relevant material to the Potential Content.• The material will be supported by generally relevant authority and/or examples.• It will generally deal with the Potential Content in a manner required by the question. <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
Clear	<ul style="list-style-type: none">• The material is broadly accurate and relevant to the Potential Content.• The material will be supported by some use of relevant authority and/or examples.• The material will broadly deal with the Potential Content in a manner required by the question. <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.</p>
Some	<ul style="list-style-type: none">• The material shows some accuracy and relevance to the Potential Content.• The material may occasionally be supported by some relevant authority and/or examples.• The material will deal with some of the Potential Content in a manner required by the question. <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.</p>

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

- (a) Briefly explain the roles of the House of Commons and the House of Lords, and outline the role of the Crown, in the formal process of statute creation. (10 marks)

Potential Content

- (A) Brief explanation of the role of the House of Commons
- (B) Brief explanation of the role of the House of Lords and outline of the role of the Crown

Mark Bands

- 8 – 10 The candidate deals with (A) - (B) as follows:
max 10: two sound
max 9: one sound, one clear
max 8: one sound, one some **or** two clear
- 5 – 7 The candidate deals with (A) - (B) as follows:
max 7: one sound **or** 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). Where a candidate introduces material across the range of (A)-(B), this may be superficial.
- 1 – 2 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) Outline the role undertaken by any **two** bodies who can influence Parliament as a law maker. Comment on the extent of their success or failure in influencing Parliament. (20 marks)

Potential Content

- (A) Outline of one body that can influence Parliament
- (B) Outline of a second body that can influence Parliament
- (C) Comment on the success or otherwise of their influence

Note: Bodies that can influence Parliament as a law-maker include the Law Commission, Royal Commissions, MPs, communication media and pressure groups

Mark Bands

- 16 – 20 The candidate deals with (A)-(C) as follows:
max 20: two sound, one clear
max 18: two sound, one some **or** one sound, two clear
max 16: two sound **or** one sound, one clear, one some **or** three clear.
- 11 – 15 The candidate deals with (A)-(C) as follows:
max 15: one sound, one clear **or** one sound, two some **or** two clear, one some
max 14: one sound, one some **or** two clear **or** one clear, two some
max 13: one sound **or** one clear, one some **or** three some
max 11: one clear **or** two some.
- 6 – 10 The candidate displays some understanding by introducing consideration of any of the material in (A) - (C) but the discussion is inadequate or suffers from errors or confusion.
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent discussion emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

2

Total for this question: 30 marks

(a) Identify and describe **three** different types of European Union law. (15 marks)

Potential Content

- (A) Identification and description of one type of European Union law
- (B) Identification and description of a second type of European Union law
- (C) Identification and description of a third type of European Union law

Note: Types of European Union law that can be identified and described include Treaties, regulations, directives and decisions and ECJ case law

Mark Bands

- 12 - 15 The candidate deals with (A) – (C) as follows:
max 15: two sound, one clear
max 13: two sound, one some **or** one sound, two clear
max 12: two sound **or** one sound, one clear, one some **or** three clear.
- 8 - 11 The candidate deals with (A) – (C) as follows:
max 11: one sound, one clear **or** one sound, two some **or** two clear, one some
max 10: one sound, one some **or** two clear **or** one clear, two some
max 9: one sound **or** 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 discussion of any of the material in (A)-(C). Where the 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
or
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

- (b) Using examples, discuss the effect that European Union law has had on English law.
(15 marks)

Potential Content

- (A) Discussion of the effect on Parliament, in terms of sovereignty
- (B) Discussion of the effect on the courts, eg approaches to interpretation, referrals, supremacy of ECJ decisions
- (C) Discussion of examples

Mark Bands

- 12 - 15 The candidate deals with (A) – (C) as follows:
max 15: two sound, one clear
max 13: two sound, one some **or** one sound, two clear
max 12: two sound **or** one sound, one clear, one some **or** three clear.
- 8 - 11 The candidate deals with (A) – (C) as follows:
max 11: one sound, one clear **or** one sound, two some **or** two clear, one some
max 10: one sound, one some **or** two clear **or** one clear, two some
max 9: one sound **or** 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 discussion of any of the material in (A)-(C). Where the 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
or
a more substantial answer will be fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

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

- (a) Identify and describe **three** judicial rules (approaches) to the task of statutory interpretation.
(20 marks)

Potential Content

- (A) Identification and description of one rule (approach)
- (B) Identification and description of a second rule (approach)
- (C) Identification and description of a third rule (approach)

Note Rules (approaches) identified and described can include, eg literal rule, golden rule, mischief rule, purposive approach, rules of language

Mark Bands

- 16 – 20 The candidate deals with three of (A)-(C) as follows:
max 20: two sound, one clear
max 18: two sound, one some **or** one sound, two clear
max 16: two sound **or** one sound, one clear, one some **or** three clear.
- 11 – 15 The candidate deals with (A)-(C) as follows:
max 15: one sound, one clear **or** one sound, two some **or** two clear, one some
max 14: one sound, one some **or** two clear **or** one clear, two some
max 13: one sound **or** one clear, one some **or** three some
max 11: one clear **or** two some.
- 6 - 10 The candidate demonstrates some understanding by introducing consideration of any of the material in (A)-(C). Where the candidate introduces material across the range, it will be superficial.
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent 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 briefly consider **one disadvantage** of each of the **three** rules (approaches) that you have described in your answer to 3(a). (10 marks)

Potential Content

- (A) Identification and brief consideration of one disadvantage of the first rule (approach)
- (B) Identification and brief consideration of one disadvantage of the second rule (approach)
- (C) Identification and brief consideration of one disadvantage of the third rule (approach)

Note: Disadvantages can include – literal rule – bad decisions being made, need for Parliament to remedy errors and delay, golden rule – judiciary having discretion with interpretation and application of legislation, mischief rule – judiciary given too much freedom, making law rather than applying law made by Parliament

Mark Bands

- 8 – 10 The candidate deals with (A) - (C) as follows:
 max 10: two sound, one clear
 max 9: two sound, one some **or** one sound, two clear
 max 8: two sound **or** one sound, one clear, one some **or** three clear.
- 5 – 7 The candidate deals with (A) - (C) as follows:
 max 7: one sound, one clear **or** one sound, two some **or** two clear, one some
 max 6: one sound, one some **or** two clear **or** one clear, two some
 max 5: one sound **or** one clear, one some **or** three some.
- 3 – 4 The candidate displays some understanding by introducing discussion of any of the material in (A)-(C). Where the 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 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) Identify and briefly describe **three** forms of delegated legislation.*(10 marks)***Potential Content**

- (A) Brief description of the first form of delegated legislation
- (B) Brief description of the second form of delegated legislation
- (C) Brief description of the third form of delegated legislation

Note: Forms of delegated legislation – statutory instruments, bye-laws, orders in council. Credit will be given for examples, eg ministerial regulations, local authorities, professional and public bodies

Mark Bands

- 8 – 10 The candidate deals with (A) - (C) as follows:
max 10: two sound, one clear
max 9: two sound, one some **or** one sound, two clear
max 8: two sound **or** one sound, one clear, one some **or** three clear.
- 5 – 7 The candidate deals with (A) - (C) as follows:
max 7: one sound, one clear **or** one sound, two some **or** two clear, one some
max 6: one sound, one some **or** two clear **or** one clear, two some
max 5: one sound **or** one clear, one some **or** three some.
- 3 – 4 The candidate displays some understanding by introducing consideration of any of the material in (A)-(C). Where the candidate introduces material across the range, it will be superficial.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent description emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

- (b) Explain and discuss **both** judicial **and** parliamentary controls over delegated legislation.
(20 marks)

Potential Content

- (A) Explanation of judicial controls over delegated legislation
- (B) Explanation of parliamentary controls over delegated legislation
- (C) Discussion can relate to, for example, value, effectiveness, extent of usage, controls

Mark Bands

- 16 – 20 The candidate deals with three of (A)-(C) as follows:
max 20: two sound, one clear
max 18: two sound, one some **or** one sound, two clear
max 16: two sound **or** one sound, one clear, one some **or** three clear.
- 11 – 15 The candidate deals with (A)-(C) as follows:
max 15: one sound, one clear **or** one sound, two some **or** two clear, one some
max 14: one sound, one some **or** two clear **or** one clear, two some
max 13: one sound **or** one clear, one some **or** three some
max 11: one clear **or** two some.
- 6 – 10 The candidate displays some understanding by introducing consideration of any of the material in (A)-(C). Where material is introduced across the range, it will be superficial.
- 1 – 5 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.

5

Total for this question: 30 marks

- (a) In the context of the doctrine of precedent, explain the importance of *ratio decidendi*, *obiter dicta* and law reporting. (15 marks)

Potential Content

- (A) Explanation of the importance of *ratio decidendi*
- (B) Explanation of the importance of *obiter dicta*
- (C) Explanation of the importance of law reporting

Mark Bands

- 12 - 15 The candidate deals with (A) – (C) as follows:
max 15: two sound, one clear
max 13: two sound, one some **or** one sound, two clear
max 12: two sound **or** one sound, one clear, one some **or** three clear.
- 8 - 11 The candidate deals with (A) – (C) as follows:
max 11: one sound, one clear **or** one sound, two some **or** two clear, one some
max 10: one sound, one some **or** two clear **or** one clear, two some
max 9: one sound **or** 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, it will be superficial.
- 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.

- (b) Outline how judges can avoid following precedent and discuss the advantages of their doing so. (15 marks)

Potential Content

- (A) Outline of how judges can avoid following precedent
- (B) Discussion of advantages, for example, allows the law to develop, prevents bad decisions being perpetuated, prevents injustice

Mark Bands

- 12 - 15 The candidate deals with (A) – (B) as follows:
max 15: two sound
max 13: one sound, one clear
- 8 - 11 The candidate deals with (A) – (C) as follows:
max 11: one sound, one some **or** two clear
max 10: one sound
max 9: one clear, one some
max 8: one clear **or** two some.
- 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.
- 1 – 3 The answer consists of brief, fragmented comments so that no coherent 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)

UNIT 1	AO1	AO2	AO3
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)	
AO3 (Quality of written communication for the paper as a whole)			5
Total marks	40	20	5
% of the AS	18.5	9	2.5
% of the A Level	9.25	4.5	1.25