



# General Certificate of Education

## Law 5161/6161

### *LAW1 Law Making*

# Mark Scheme

## *2006 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.

## **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.

<b>Sound</b>	<ul style="list-style-type: none"><li>• The material will be generally accurate and contain relevant material to the Potential Content.</li><li>• The material will be supported by generally relevant authority and/or examples.</li><li>• It will generally deal with the Potential Content in a manner required by the question.</li></ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<b>Clear</b>	<ul style="list-style-type: none"><li>• The material is broadly accurate and relevant to the Potential Content.</li><li>• The material will be supported by some use of relevant authority and/or examples.</li><li>• The material will broadly deal with the Potential Content in a manner required by the question.</li></ul> <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>
<b>Some</b>	<ul style="list-style-type: none"><li>• The material shows some accuracy and relevance to the Potential Content.</li><li>• The material may occasionally be supported by some relevant authority and/or examples.</li><li>• The material will deal with some of the Potential Content in a manner required by the question.</li></ul> <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) Describe the roles of the House of Commons, House of Lords and the Crown in the formal process of statute creation. (15 marks)

**Potential Content**

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

**Note:** Role of the House of Commons can include implementing the manifesto, consideration of proposed legislation and voting on that proposal. Deliberation at committee stage with expertise and making amendments before final reading.

Role of the House of Lords can include separate independent consideration of proposed legislation, making recommendations, delaying implementation.

The role of the Crown is to give royal approval which is seen as a formality.

**Mark Bands**

- 12 – 15      The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 – 11      The candidate deals with (A) and (B) 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 displays limited 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 – 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) Briefly describe the advantages and disadvantages associated with this formal process and comment on how well this process works. *(15 marks)*

### Potential Content

- (A) Brief description of advantages and evaluation associated with this process, eg detailed consideration of Bills, open to public and press, etc
- (B) Brief description of disadvantages and evaluation associated with this process, eg delays associated with process, political influences rather than genuine debate, non-democratic aspects, complex language, etc

### Mark Bands

- 12 - 15            The candidate deals with (A) and (B) as follows:  
                      **max 15:** two sound  
                      **max 13:** one sound, one clear.
- 8 - 11             The candidate deals with (A) and (B) 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 displays limited understanding by introducing consideration of any of the material in (A) - (B).
- 1 - 3              The answer consists of brief, fragmented comments or examples so that no coherent approach emerges  
                      **or**  
                      a more substantial attempt at explanation is fundamentally undermined by mistakes or confusion.
- 0                    The answer contains no relevant information.

2

Total for this question: 30 marks

- (a) In the context of the doctrine of precedent, explain what is meant by, and outline the importance of, **both** the court hierarchy **and** the terms *ratio decidendi* and *obiter dicta*.  
(15 marks)

**Potential Content**

- (A) Explanation of the court hierarchy
- (B) Explanation of *ratio decidendi* and *obiter dicta*
- (C) Outline of the importance of the court hierarchy and *ratio decidendi* and *obiter dicta*

**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 limited understanding by introducing explanation 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 explanation emerges  
**or**  
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

- (b) Briefly describe how judges can avoid following precedent **and** briefly discuss **two advantages** of their being able to do so. (15 marks)

### Potential Content

- (A) Brief description of how judges can avoid following precedent
- (B) Brief discussion of one advantage of them avoiding precedent
- (C) Brief discussion of a second advantage of them avoiding precedent

**Note:** Examples of how judges can avoid following precedent can include distinguishing, overruling, reversing, etc. Advantages can include, eg avoidance of rigidity and need to follow bad decisions, take account of social or technological changes, etc.

### 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 limited 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 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) Describe, with examples, the different forms of delegated legislation. (15 marks)

**Potential Content**

- (A) Description, with example of one form of delegated legislation
- (B) Description, with example of a second form of delegated legislation
- (C) Description, with example of a third form of delegated legislation

**Note:** Examples of delegated legislation can include, eg Statutory instruments, Bye-laws and Orders in Council.

**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 demonstrates limited 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 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 discuss the advantages and disadvantages of delegated legislation as a form of law making. *(15 marks)*

### Potential Content

- (A) Identification and discussion of advantages
- (B) Identification and discussion of disadvantages

**Note:** A reasoned overall conclusion may compensate for a lack of breadth or depth in any of (A)-(B).

Advantages can include, for example, expertise, local knowledge, speed, detail and rapid change.

Disadvantages can include, for example, insufficient consideration given, possible exceeding of power, involvement of unelected parties and difficulty of control.

### Mark Bands

- 12 – 15      The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 – 11      The candidate deals with (A) and (B) 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 displays limited 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 or examples 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 <b>three</b> forms of European Union (EU) law.	(15 marks)
---	------------

**Potential Content**

- (A) Brief description of one form of European Union law
- (B) Brief description of a second form of European Union law
- (C) Brief description of a third form of European Union law

**Note:** Forms can involve

1. Treaties which are primary legislation and binding on all Member States
2. Regulations which are again directly applicable in all Member States
3. Directives which require the relevant legislation to be introduced by the particular Member State(s).

**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 candidates 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 displays limited 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 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) Briefly explain the roles of the European Court of Justice (ECJ), and briefly discuss the relationship between the ECJ and the English courts. *(15 marks)*

### Potential Content

- (A) Brief explanation of the roles of the European Court of Justice
- (B) Brief discussion of one aspect of the relationship between the ECJ and the English courts
- (C) Brief discussion of a second aspect of the relationship between the ECJ and the English courts

**Note:** Aspects of the relationship can include, for example, issues of supremacy, implications of Article 234, approaches to interpretation, etc.

Roles of the ECJ can include, for example, to ensure that EU law is observed and upheld in interpretation and application, to issue rulings on breaches of EU law, to resolve disputes between Member States, Institutions, etc, and to give opinions on international agreements.

### 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 displays limited understanding by introducing consideration of any of the material in (A)-(C). Where material is introduced 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.

5

Total for this question: 30 marks

Judges use a variety of **aids**, intrinsic (internal) and extrinsic (external), and **rules** (approaches) when interpreting Acts of Parliament.

(a) Briefly describe the **aids** to interpretation used by judges. (10 marks)

### Potential Content

(A) Brief description of the aids.

**Note:** Descriptions can relate to, eg long title, short title, preamble, headings marginal notes, Hansard, dictionaries, etc.

### Mark Bands

- |        |  |
|--------|--|
| 8 – 10 | The candidate demonstrates a sound understanding of (A).   |
| 5 – 7  | The candidate demonstrates a clear understanding of (A).   |
| 3 – 4  | The candidate displays limited understanding by introducing consideration of any of the material in (A).   |
| 1 – 2  | <p>The answer consists of brief, fragmented comments so that no explanation emerges</p> <p><b>or</b></p> <p>a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.</p> |
| 0      | The answer contains no relevant information.   |

- (b) Describe **two** of the **rules** of (approaches to) statutory interpretation and discuss their advantages and disadvantages. (20 marks)

### Potential Content

- (A) Description of the first rule (approach)
- (B) Description of the second rule (approach)
- (C) Discussion of the advantages and disadvantages of the first rule (approach)
- (D) Discussion of the advantages and disadvantages of the second rule (approach)

**Note:** Where a candidate deals with all four (A)-(D), this can compensate for any deficiencies in any or all of (A)-(D).

Rules (approaches) can include, for example, the literal, golden, mischief rules and the purposive approach (credit can be given for presumptions and rules of language).

Advantages can include, for example, with literal rule - respect for parliamentary supremacy and certainty; golden rule - avoid absurd outcome.

Disadvantages can include, for example, literal rule – rigidity, following bad decisions; golden rule – judicial law making, too much flexibility.

### Mark Bands

- |         |  |
|---------|--|
| 16 – 20 | <p>The candidate deals with three of (A)–(D) as follows:</p> <p><b>max 20:</b> two sound one clear</p> <p><b>max 18:</b> one sound, two clear</p> <p><b>max 16:</b> two sound <b>or</b> three clear <b>or</b> one sound, one clear, one some.</p>  |
| 11 - 15 | <p>The candidate deals with (A)–(D) as follows:</p> <p><b>Max 15:</b> two clear, one some</p> <p><b>max 14:</b> one sound, <b>or</b> two clear, <b>or</b> one clear, two some</p> <p><b>max 13:</b> one clear, one some, <b>or</b> three some</p> <p><b>max 11:</b> one clear, <b>or</b> two some.</p> |
| 6 - 10  | <p>The candidate begins to displays limited understanding by introducing discussion of any of the material in (A)-(D). Where the candidate introduces material across the range it will be superficial.</p>  |
| 1 – 5   | <p>The answer consists of brief, fragmented comments so that no discussion emerges <b>or</b> a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.</p>  |
| 0       | <p>The answer contains no relevant information.</p>  |

**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