



ASSESSMENT and  
QUALIFICATIONS  
ALLIANCE

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# Mark scheme

# June 2003

## GCE

## LAW

### Unit LAW1

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## 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**

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

(a) In the context of statutory interpretation, outline, using cases, any **three** of the following:

- the **literal** rule;
- the **golden** rule;
- the **mischief** rule;
- the **purposive** approach..

*(20 marks)***Potential Content**

- (A) Outline of first rule/approach
- (B) Outline of second rule/approach
- (C) Outline of third rule/approach
- (D) Appropriate case illustration

**Mark Bands**

- 16 – 20            The candidate presents a clear outline of (A) – (C) and is able to make use of appropriate cases as in (D) (although there may be some imbalance in treatment as between them).
- 11 – 15            The candidate presents a clear outline of **two** of (A) – (C)  
**or**  
the candidate presents a clear outline of **one** of (A) – (C), makes some reference to another, and introduces some case illustration as in (D)  
**or**  
the candidate attempts an outline across the range which is a little limited or lacking in clarity (use of case illustration will enhance the answer or substitute for omissions)
- 6 – 10             The candidate introduces an outline of any of (A) – (C) and/or introduces appropriate case illustration as in (D)  
**or**  
the candidate attempts to introduce discussion of material across the range but the outlines and/or case descriptions are inadequate and suffer from error or confusion.
- 1 – 5                The answer consists of brief, fragmented comments or examples so that no coherent outline or illustration emerges  
**or**  
a more substantial attempt at outline and/or illustration is fundamentally undermined by mistakes and confusion.
- 0                     The answer contains no relevant information.

(b) Discuss the advantages and disadvantages of any **two** of the rules (approaches) identified in (a) above. *(10 marks)*

### Potential Content

- (A) Advantages of the first rule (approach), eg consistent outcomes, sensible outcomes based on Parliament's intention
- (B) Disadvantages of the first rule (approach), eg inflexibility, lack of consistency
- (C) Advantages of the second rule (approach)
- (D) Disadvantages of the second rule (approach)

### Mark Bands

- |        |   |
|--------|---|
| 8 – 10 | The candidate displays sound understanding of (A) – (D), though there may be some slight imbalance in treatment.  |
| 5 – 7  | The candidate displays <b>sound</b> understanding of any <b>two</b> of (A) – (D)<br><b>or</b><br>the candidate displays some understanding of any <b>three</b> of (A) – (D)   |
| 3 – 4  | The candidate begins to display some understanding by introducing any of (A) – (D) in relation to any rule (approach)<br><b>or</b><br>the candidate attempts to deal with a range of issues but any discussion of advantages or disadvantages is very superficial and/or suffers from error or confusion. |
| 1 – 2  | The answer consists of brief, fragmented comments so that no discussion of advantages or disadvantages emerges<br><b>or</b><br>a more substantial attempt at discussion of advantages and/or disadvantages is fundamentally undermined by mistakes and confusion.   |
| 0      | The answer contains no relevant information.  |

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

- (a) Give an outline description of any **three** influences operating on Parliament before and during the legislative process, and explain the formal process of statute creation. (20 marks)

**Potential Content**

- (A) Outline description of one influence on Parliament (eg the Law Commission, Royal Commissions, MPs, media, pressure groups, etc)
- (B) Outline description of second influence on Parliament
- (C) Outline description of third influence on Parliament
- (D) Explanation of the formal process in House of Commons
- (E) Explanation of the role of House of Lords and Crown

**Mark Bands**

- 16 – 20      The candidate presents clear outline descriptions as in (A) – (C) and demonstrates sound understanding of (D) and (E), although there may be some imbalance in the treatment of the elements (A) – (E).
- 11 – 15      The candidate presents clear outline descriptions/demonstrates sound understanding of any **three** of (A) – (E) (**max 12** for two only)  
**or**  
the candidate presents some outline descriptions/demonstrates some understanding across a range of **four** of (A) – (E).
- 6 – 10      The candidate presents an outline/demonstrates some understanding of any of the material in (A) – (E) (**max 8** for (E) only)  
**or**  
the candidate attempts to introduce material across the range but the outlines and explanations are superficial and are subject to some error and confusion.
- 1 – 5      The answer consists of brief, fragmented comments or examples so that no outlines or explanation emerge  
**or**  
more substantial attempts at outlines and explanations are fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

(b) Discuss the advantages and disadvantages of the legislative process.	(10 marks)
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**Potential Content**

- (A) Advantages of the legislative process (issues of democracy, quality of legislation, personnel involved, etc)
- (B) Disadvantages of the legislative process (speed, flexibility, democracy – perhaps in relation to composition of House of Lords, etc)

**Mark Bands**

- 8 – 10 The candidate demonstrates sound understanding of both (A) and (B).
- 5 – 7 The candidate demonstrates a sound understanding of either (A) or (B)  
**or**  
the candidate demonstrates some understanding of both (A) and (B), but is unable to present a comprehensive account of either.
- 3 – 4 The candidate displays some understanding of any of the material in (A) – (B).  
Where the candidate attempts to introduce discussion across the range, this will be superficial.
- 1 – 2 The answer consists of brief, fragmented comments so that no discussion emerges  
**or**  
a more substantial attempt across the range is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

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

(a) Explain, giving examples, what is meant by delegated legislation.	(15 marks)
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**Potential Content**

- (A) Explanation of how power is delegated: “enabling Act”; delegated bodies
- (B) Explanation of Ministerial Regulations, bye-laws and Orders in Council
- (C) Examples of Regulations, bye-laws and Orders in Council

**Mark Bands**

- 12 – 15 The candidate demonstrates sound understanding of at least **two** of (A) – (C).
- 8 – 11 The candidate demonstrates sound understanding of **either** (A) (**max 9**) or (B) (**max 9**) and makes reference to one other  
**or**  
the candidate attempts to deal with **two or more** without being able to present fully accurate explanations or examples of any.
- 4 – 7 The candidate displays 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 will 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) Both Parliament and judges are able to control delegated legislation. Outline how these controls work and discuss the advantages and disadvantages of these methods of control. (15 marks)

### Potential Content

- (A) Outline of judicial control of delegated legislation: doctrine of *ultra vires*
- (B) Outline of parliamentary controls of delegated legislation: role of the Scrutiny Committee, positive and negative procedures in “laying the delegated legislation before Parliament”, Ministerial approval, repeal of the enabling Act
- (C) Advantages and disadvantages of judicial controls
- (D) Advantages and disadvantages of Parliamentary controls

### Mark Bands

- 12 – 15      The candidate presents clear outlines of (A) – (B), and demonstrates sound understanding of advantages and disadvantages in (C) – (D). There may be some imbalance in treatment between (A) and (B) and/or (C) and (D) and/or as between advantages and disadvantages.
- 8 – 11      The candidate presents clear outlines/demonstrates sound understanding of **two** of (A) – (D). (A) & (B) only (**max 8**); (C) & (D) only (**max 10**)  
**or**  
the candidate outlines/demonstrates some understanding of **three** of (A) – (D) (as the range increases, the treatment will become more superficial)
- 4 – 7      The candidate presents a clear outline/demonstrates sound understanding of **one** of (A) – (D) (**some** outline or understanding of **one** merits **max 5**)  
**or**  
the candidate attempts to introduce material from **two or more** of (A) – (D) but the outlines and/or discussion of advantages and disadvantages are superficial or suffer from error and confusion.
- 1 – 3      The answer consists of brief, fragmented comments so that no outline or discussion of advantages and disadvantages emerge  
**or**  
a more substantial attempt at outline and/or discussion is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

4

**Total for this question: 30 marks**

(a) Describe the essential features of the doctrine of judicial precedent.	(15 marks)
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**Potential Content**

- (A) Description of the hierarchy of the courts
- (B) Description of the binding rule of law (*ratio decidendi*)
- (C) Description of, and provision for, law reports

**Mark Bands**

- 12 – 15 The candidate presents a comprehensive account of the elements by describing (A) – (C), though there may be some imbalance in treatment as between them.
- 8 – 11 The candidate shows clear understanding of at least **one** of (A) – (C) (**max 9**) and refers to another  
**or**  
attempts to deal with **two or more** without being able to present fully accurate description of either or any.
- 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) Outline how judges might avoid following precedent and discuss why they might wish to do so. (15 marks)

### Potential Content

- (A) Very brief framework outline of the obligations of the court to follow previous precedents, with possible use of authority (reference may be made to the answer to part (a))
- (B) Outline explanation of methods used to escape from the constraints of precedent (eg overruling, distinguishing, disapproving, reinterpretation of ratio), with possible use of authority, eg The 1966 Practice Direction
- (C) Discussion of the reasons for wishing to avoid precedent – for example, to modernise law in response to changing circumstances/values etc, to correct perceived errors, to resolve uncertainty or confusion in the law

### Mark Bands

- 12 – 15      The candidate presents a clear outline of (B) and demonstrates a sound understanding of the reasons in (C). (A) can compensate for any imbalance in (B) or (C).
- 8 – 11      The candidate demonstrates a sound understanding of the reasons in (C) (**max 10**)  
**or**  
the candidate presents a clear outline of (B) (the framework in (A) will enhance coherence) (**max 9**)  
**or**  
the candidate presents some outline of (B) (the framework in (A) will enhance coherence) and demonstrates some understanding of the reasons in (C).
- 4 – 7      The candidate displays some understanding by introducing discussion of any of the material in (A) – (C) (**max 4** for (A) only); where the candidate attempts to introduce discussion of material across the range of (A) – (C), this will be superficial and subject to some error and confusion.
- 1 – 3      The answer consists of brief, fragmented comments or examples so that no outline or discussion emerge  
**or**  
a more substantial attempt at outline and discussion is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

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

(a) Describe the functions of the main institutions of the European Union.	(15 marks)
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**Potential Content**

- (A) Description of the functions of the Council of Ministers
- (B) Description of the functions of the European Commission
- (C) Description of the functions of the European Parliament
- (D) Description of the functions of the European Court of Justice (eg as a court of reference, dispute resolution between member states, etc)

**Mark Bands**

- 12 – 15 The candidate demonstrates sound understanding of **three or more** of (A) – (D).
- 8 – 11 The candidate demonstrates a sound understanding of **one** of (A) – (D) (**max 9**) and refers to one other  
**or**  
the candidate displays clear understanding of **two or more** of (A) – (D) without being able fully to describe any.
- 4 – 7 The candidate begins to show some understanding of any of (A) – (D) but the explanations are limited or suffer from error or confusion.
- 1 – 3 The answer consists of brief, fragmented comments so that no explanation or description emerges  
**or**  
a more substantial attempt across the range is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

(b) Discuss what effect, if any, UK membership of the EU has had on the doctrine of parliamentary supremacy. *(15 marks)*

### Potential Content

- (A) Outline of the concept of parliamentary supremacy
- (B) Arguments that membership of the EU has affected the supremacy of Parliament (for example, supremacy of EC law over national law, direct effect of EC law) with reference to relevant authority
- (C) Arguments that membership of the EU has not affected the supremacy of Parliament (for example, repeal of the ECA 1972)

### Mark Bands

- |         |   |
|---------|---|
| 12 – 15 | The candidate presents a clear outline as in (A) and presents sound arguments as in (B) and (C).  |
| 8 – 11  | The candidate gives a clear outline of (A) and provides sound arguments as in (B) or (C)<br><b>or</b><br>the candidate gives some outline of (A) and provides some arguments as in (B) and (C).   |
| 4 – 7   | The candidate begins to display some understanding by introducing discussion of any of the material in (A) – (C); where the candidate attempts to introduce discussion of material across a range from (A) – (C), this will be superficial and subject to some error and confusion. |
| 1 – 3   | The answer consists of brief, fragmented comments or examples so that no outline or coherent arguments emerge<br><b>or</b><br>more substantial attempts at an outline and at presenting arguments are 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)	(x 2 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