



ASSESSMENT and  
QUALIFICATIONS  
ALLIANCE

# Mark scheme

# June 2003

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## GCE

## LAW

### Unit LAW6

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**General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of candidates, mainly 18 years old, 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. **8-10 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. **4-7 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. **1-3 marks**
- 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**

“The ‘rules’ of precedent and statutory interpretation only **appear** to impose constraints on what judges may do. The truth is that judges can always find ways to develop the law in the directions they desire.”

Discuss the view quoted above. Include in your answer a comparison between the role of judges and that of Parliament in developing the law. (30 marks)

**Potential Content**

- (A) Brief explanation of the doctrine of precedent. Consideration of the ways in which, and extent to which, judges can develop the law despite the apparent constraints of the doctrine of precedent (eg distinguishing, reinterpretation of ratio, overruling, flexibility available to House of Lords because of the Practice Statement)
- (B) Brief explanation of the approach to statutory interpretation. Consideration of the extent of the flexibility available to judges in statutory interpretation (eg the inherent problems in certainty of language, unforeseen changes or events, choice of different approaches to interpretation)
- (C) An evaluative comparison of the “creativity” permitted by (A) and (B) with the breadth of initiative and detail of implementation possible through legislation
- (D) Identification of appropriate area(s) of law and use of relevant examples

**NB** Give credit to candidates who express evaluation through the notion of policy

**Mark Bands**

- 26 – 30 The candidate presents a sound examination of the issues which incorporates all four elements (A) – (D). There may be some imbalance in treatment across the elements (for example, (A) may be more extensively treated than (B), or vice versa) but this will not undermine the quality of the explanation and evaluation offered.
- 21 – 25 The candidate incorporates (D) and develops sound explanations of (A) or (B) but approaches the other rather hesitantly whilst still presenting a rounded evaluation in (C)
  - or**
  - incorporates (D) and develops a strong emphasis on flexibility and evaluation in (A) – (C) without establishing a sound framework of explanation
  - or**
  - deals confidently with (A) – (C) but does not fully succeed in integrating examples in (D) into the explanation and evaluation (again, in all of the above, there may be greater emphasis on common law than on statute). (**Max 23** where the answer deals thoroughly with the issues by reference to precedent/common law **or** statutory interpretation.)

- 16 – 20      The candidate tends to concentrate on (A) and (D) with some (C) or on (B) and (D) with some (C)  
**or**  
presents sound explanation of (A) – (B) and incorporates (D) but is unable to present the evaluation required in (C)  
**or**  
develops some explanation and evaluation in (A)-(C) with some use of (D).
- 11 – 15      The candidate presents sound discussion of (A) or (B) (accompanied, at the higher end of the band, by some (D))  
**or**  
attempts to develop the evaluative approach in (C) against an inadequate framework of explanation in either (A) or (B)  
**or**  
seeks to develop explanation and evaluation largely by way of (D) but in which aspects of explanation and evaluation do emerge  
**or**  
the candidate attempts to deal with a range of material but explanation and evaluation are not developed and (D) is not properly utilised so that the answer tends to lack coherence.
- 6 – 10      The candidate displays some understanding by introducing discussion of any of the material in (A) – (D). Where the candidate attempts to deal with a range of material from (A) – (D), explanation and evaluation will be superficial and may show significant confusion, whilst examples will be poorly expressed or not well related to the explanations and evaluation.
- 1 – 5      The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge  
**or**  
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

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

“We often confuse law with justice. In reality, there is no necessary connection between them.”

Discuss the meaning of law and of justice, and consider the relationship between them. (30 marks)

**Potential Content**

- (A) Explanation of the meaning of ‘law’ – whether viewed as the body of rules of substantive and procedural law, or as incorporating also relevant institutions (‘the legal system’)
- (B) Explanation of the different possible meanings of ‘justice’ – from the simple ‘fairness’ approach to distinctions between procedural and substantive justice, perhaps taking account of the views of philosophers
- (C) Analysis of relevant area(s) of law with use of appropriate examples, including examples of procedure, institutions, etc
- (D) Evaluation of the ‘relationship’ between law and justice - almost certainly developing an explanation of the extent to which law does, or does not, achieve justice

**Mark Bands**

- 26 – 30 The candidate presents a comprehensive examination of the issues which incorporates all four elements (A) – (D), and clearly relates (C) to (A) and (B) in making the evaluation in (D).
- 21 – 25 The candidate presents an examination of all four elements but there is some weakness in one which prevents the account from being fully rounded (for example, there is a little hesitancy in the discussion of (A)/(B))  
**or**  
the examples chosen in (C) are not properly integrated into the analysis  
**or**  
the evaluation in (D) does not quite succeed in relating (A)/(B) to (C).
- 16 – 20 The candidate develops sound explanation of (A)/(B) or (C) without being able to develop explanation of the other sufficiently to permit a fully coherent evaluation in (D)  
**or**  
develops sound explanation of (A) – (C) but does not attempt the evaluation in (D) (**max 18**)  
**or**  
attempts to deal with all four elements but with some degree of superficiality or confusion.

- 11 – 15      The candidate presents sound explanation of (A)/(B) (**max 12** for one only) or (C)  
**or**  
there is an attempt to develop the answer largely by way of (D) against an inadequate framework of explanation in aspects of (A) – (C)  
**or**  
the candidate attempts to deal with any three elements but neither explanation nor evaluation are properly developed or related to each other so that the answer tends to lack coherence.
- 6 – 10      The candidate displays some understanding by introducing discussion of any of the material in (A) – (D). Where the candidate attempts to deal with a range of material from (A) – (D), explanations will be superficial and may show significant confusion, whilst evaluation will be poorly expressed and not well related to the explanations.
- 1 – 5      The answer consists of brief, fragmented comments or examples, so that no coherent explanation and evaluation emerge  
**or**  
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

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

To what extent can it be argued that law can be used effectively to enable an appropriate balance to be struck between conflicting interests? *(30 marks)*

**Potential Content**

- (A) Identification and explanation of appropriate area(s) of law – whether substantive, procedural, or aspects of institutions and structure
- (B) Explanation of the interests which may allegedly be in conflict, and of what might represent an ‘appropriate balance’ between those interests
- (C) Analysis of the area(s) of law selected which focuses in particular on the devices by which the balance may be engineered
- (D) Evaluation of the extent to which the balance can be achieved by law – the evaluation will make effective use of the explanation and analysis in (A) – (C)

**Mark Bands**

- 26 – 30      The candidate presents a comprehensive examination of the issues which incorporates all four elements (A) – (D), and clearly relates the explanations in (A) – (C) to the evaluation in (D). There may be some imbalance in treatment between the elements (A) – (C) but this will not undermine the quality of the explanation and evaluation offered.
  
- 21 – 25      The candidate presents an examination of all four elements but there is some weakness in one which prevents the analysis and evaluation from being fully rounded  
                 **or**  
                 the evaluation in (D) is not convincingly related to the explanation and analysis in (A) – (C).
  
- 16 – 20      The candidate develops sound explanation of (A) – (C) but is hesitant in developing the evaluation in (D) (**max 17** if no (D))  
                 **or**  
                 develops evaluation in (D) against a hesitant framework of explanation in (A) – (C)  
                 **or**  
                 attempts to deal with all four elements but with some degree of superficiality or confusion.

- 11 – 15      The candidate presents explanation of aspects of (A) – (C) but does not develop evaluation  
**or**  
there is an attempt to develop the answer largely by way of the evaluation in (D) against an inadequate framework of explanation in aspects of (A) – (C)  
**or**  
the candidate attempts to deal with any three elements but neither explanation nor evaluation are properly developed or related to each other so that the answer tends to lack coherence.
- 6 – 10      The candidate displays some understanding by introducing discussion of any of the material in (A) – (D). Where the candidate attempts to deal with a range of material from (A) – (D), explanations will be superficial and may show significant confusion, whilst evaluation will be poorly expressed and not well related to the explanations.
- 1 – 5      The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge  
**or**  
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

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**Total for this question: 30 marks**

Explain the meaning of ‘fault’ and assess its importance in the imposition of liability in English law.  
(30 marks)

**Potential Content**

- (A) Explanation of the possible meaning of fault (which, inevitably, will take account of the civil and/or criminal law context) – explanation should explore possible variations in levels of fault, where appropriate. Discussion of the extent of the requirement for fault in the chosen area(s) - both in civil and criminal law, this will involve discussion not only of fault requirements (including variations) but also some discussion of liability in the absence of fault (strict liability and, perhaps, vicarious liability)
- (B) Identification of appropriate area(s) of law and use of relevant examples
- (C) Evaluation of the importance of fault – this will involve assessing how important it is, and should be carefully related to the discussion in (A) – (B). (Discussion of whether fault **should be** important should be given credit, but is not a requirement)

**Mark Bands**

- 26 – 30      The candidate presents a comprehensive examination of the issues which incorporates all three elements (A) – (C), and clearly relates evaluation to explanation. There may be some imbalance in treatment across the elements but this will not undermine the quality of the explanation and analysis offered.
- 21 – 25      The candidate demonstrates sound understanding of (A) and (B) but approaches (C) rather more hesitantly  
**or**  
there are sound explanation and evaluation in (A) and (C) but (B) is a little superficial or not fully integrated into the explanation and evaluation  
**or**  
all three elements are dealt with but the explanations are not fully developed or not related to each other or to the evaluation in a fully coherent way.
- 16 – 20      The candidate incorporates some (B) and presents explanation as in (A) but with little (C)  
**or**  
there is a strong focus on (C) against a weaker framework of (A) – (B)  
**or**  
the candidate attempts to deal with the range but there is some error, confusion, or superficiality.

- 11 – 15      The candidate presents sound discussion of one of (A) – (B) (accompanied, at the higher end of the band, by some (C)) or develops the evaluation in (C) without developing a sufficiently adequate framework of explanation in (A) – (B)  
**or**  
there is an attempt to develop the explanations largely by way of (B) but in which aspects of the explanation and evaluation do emerge  
**or**  
the candidate attempts to deal with a range of material but explanation and evaluation are not developed and (B) is not properly utilised so that the answer tends to lack coherence.
- 6 – 10      The candidate displays some understanding by introducing discussion of any of the material in (A) – (C). Where the candidate attempts to deal with a range of material from (A) – (C), explanation and evaluation will be superficial and may show significant confusion, whilst examples will be poorly expressed or not well related to the explanation and evaluation.
- 1 – 5      The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge  
**or**  
a more substantial attempt at explanation and evaluation 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 Level Law (LAW6)**

| <b>UNIT 6</b>  | <b>AO1<br/>No. of Marks</b> | <b>AO2<br/>No. of Marks</b> | <b>AO3<br/>No. of Marks</b> |
|--|-----------------------------|-----------------------------|-----------------------------|
| Question 1   | 20                          | 10                          |                             |
| Question 2   | 20                          | 10                          |                             |
| Question 3   | 20                          | 10                          |                             |
| Question 4   | 20                          | 10                          |                             |
|  | (x2 from 4)                 | (x2 from 4)                 |                             |
| AO3<br>(Quality of written communication for the paper as a whole) |                             |                             | 10                          |
| <b>Total marks</b>   | 40                          | 20                          | 10                          |
| <b>% of the A2</b>   | 23                          | 11                          | 6                           |
| <b>% of the A Level</b>  | 11.5                        | 5.5                         | 3                           |