



General Certificate of Education

Law 5161/6161

LAW6 Concepts of Law

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.

LAW6

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**

Descriptors

Level	Explanation	Analysis/Evaluation
sound	<p>The answer presents a strong explanatory framework, correctly identifying and accurately and comprehensively explaining, say, relevant rules, procedures, institutions, and theories in the central aspects of the potential content. Where appropriate, the explanations are supported by relevant examples and illustration (which is adequately developed where necessary to further elucidate the explanations). Where there are more marginal aspects of the potential content, there may be some minor omissions or inaccuracies in the explanation and/or in the treatment of the supporting examples and illustration.</p>	<p>Arguments are developed perceptively and coherently, making careful use of framework explanations, examples and illustration, and are directly related to the thrust of the question. Summaries and conclusions are sustainable, and demonstrably emerge from the supporting explanations and arguments.</p>
clear	<p>The answer presents an explanatory framework, correctly identifying and accurately explaining significant parts of, say, relevant rules, procedures, institutions, and theory in the central aspects of the potential content, though there are omissions in the explanations of some parts of the rules, procedures, institutions, and theory or errors or some confusion in the explanation, in those central aspects. There may be a little overemphasis on marginal aspects at the expense of some of the more central aspects. In the higher part of the level, relevant examples and illustration are used but there may be a little confusion and error in selection and/or explanation or the explanation may be limited. At the lower end of the level, there may be little evidence of relevant examples and illustration or more evident inaccuracies.</p>	<p>Appropriate arguments are introduced but may not be fully developed, or may be restricted in range. Alternatively, the arguments suffer from a little inaccuracy or confusion. The arguments make use of framework explanations (including any relevant examples and illustration) but do not always succeed in incorporating them in a fully coherent way or in demonstrating their full relevance. Summaries and conclusions may be a little tentative and may not fully address the thrust of the question. Though broadly based on the supporting explanations and arguments, summaries and conclusions may not be closely and carefully related to them in the discussion.</p>
some	<p>The answer presents an explanatory framework which correctly identifies and accurately explains a very limited part of, say, relevant rules, procedures, institutions, and theory in the central aspects of the potential content. There may be a very evident imbalance between explanation of central and of more marginal aspects of the potential content. Alternatively, the answer attempts explanation across a much broader range of relevant rules, procedures, institutions, and theory in the central aspects of the potential content but the explanations suffer from significant omission, error or confusion. Explanations may emerge only out of attempts to introduce relevant examples and illustration. If introduced at all, examples and illustration may be of marginal relevance or their treatment may be highly superficial or subject to significant inaccuracies or not properly used to support the explanation of the relevant rules, procedures, institutions, and theory.</p>	<p>There are relevant arguments but they are undeveloped and may tend to consist of simple assertions or assumptions. Alternatively, arguments may be characterised by evident confusion which significantly impedes coherence. Very limited use is made of framework explanations and any examples and illustration. Summaries and conclusions may be absent. Where present, they may barely address the thrust of the question, and be only imprecisely related to any supporting explanations and arguments.</p>

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

Write a critical analysis of the extent to which judges display creativity in developing and interpreting common law and statutory rules. (30 marks)

Potential Content

- (A) Brief explanation of the doctrine of precedent and consideration of the ways in 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). Evaluation of extent of creativity. Utilisation of examples
- (B) Brief explanation of the approach to statutory interpretation and consideration 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). Evaluation of extent of creativity. Utilisation of examples

Mark Bands

The candidate deals with (A) and (B) as follows:

- | | |
|---------|---|
| 26 – 30 | Sound (A) and (B)
or
sound on one, clear on the other (max 26). |
| 21 - 25 | Sound on one, some on the other (max 23)
or
clear on both. |
| 16 - 20 | Sound on one
or
clear on one, some on the other. |
| 11 - 15 | Clear on one
or
some on both (max 11 for one). |
| 6 – 10 | Some on one. |
| 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

Consider the suggestions that English law and institutions **do** achieve justice, and that they **should** seek to do so. *(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'), and of the meaning of 'justice' - from the simple 'fairness' approach to distinctions between procedural and substantive justice, perhaps taking account of the views of philosophers
- (B) Evaluation of the extent to which law **does** and **should seek to** achieve justice, utilising the framework explanations in (A) and examples and illustration

Mark Bands

The candidate deals with (A) and (B) as follows:

- 26 – 30 Sound (A) and (B)
 or
 sound on one, clear on the other (**max 26**).
- 21 - 25 Sound on one, some on the other (**max 23**)
 or
 clear on both.
- 16 - 20 Sound on one (**max 18** if no (B))
 or
 clear on one, some on the other.
- 11 - 15 Clear on one
 or
 some on both (**max 11** for one).
- 6 – 10 Some on one.
- 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

Examine the **relationship** between law and morals and consider whether law **should** support and protect moral values. (30 marks)

Potential Content

- (A) Examination of the relationship between law and morals, considering the meaning of legal and moral rules, the extent to which they are distinct from each other and overlap. Use of relevant examples and illustration
- (B) Evaluation of the extent to which the law should support and protect moral values, utilising theoretical debate such as Hart/Devlin and modern variations and/or specific examples and illustration

Mark Bands

The candidate deals with (A) and (B) as follows:

- 26 – 30 Sound (A) and (B)
or
 sound on one, clear on the other (**max 26**).
- 21 - 25 Sound on one, some on the other (**max 23**)
or
 clear on both.
- 16 - 20 Sound on one (**max 18** if no (B))
or
 clear on one, some on the other.
- 11 - 15 Clear on one
or
 some on both (**max 11** for one).
- 6 – 10 Some on one.
- 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.

4

Total for this question: 30 marks

Write a critical analysis of the proposition that one of the important functions of law is to promote a balance 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. Explanation of the interests which may allegedly be in conflict, and of what might represent an ‘appropriate balance’ between those interests
- (B) Analysis of the area(s) of law selected which focuses in particular on the devices by which the balance may be engineered. Evaluation of the extent to which the balance can be achieved by law, taking account of the explanations in (A)

Mark Bands

The candidate deals with (A) and (B) as follows:

- 26 – 30 Sound (A) and (B)
or
sound on one, clear on the other (**max 26**).
- 21 - 25 Sound on one, some on the other (**max 23**)
or
clear on both.
- 16 - 20 Sound on one (**max 18** if no (B))
or
clear on one, some on the other.
- 11 - 15 Clear on one
or
some on both (**max 11** for one).
- 6 – 10 Some on one.
- 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)

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