



# General Certificate of Education

## Law (5161/6161)

*LAW1 Law Making*

# Mark Scheme

*2006 examination - January 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.

<b>Sound</b>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain material relevant 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>

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

- (a) Describe the system of judicial precedent in English law and briefly explain how judges can avoid following precedent. (20 marks)

**Potential Content**

- (A) Description of the hierarchy of the courts, *ratio decidendi*, *obiter dicta* and law reports provision and/or description of binding and persuasive precedent
- (B) Brief explanation of the variety of options available to a judge, eg distinguishing, overruling and disapproving precedents, reversing, Practice statement, *Young vs British Aeroplane* exceptions.

**Note:** Discussion of a wider range compensates for less detail in discussion.

**Mark Bands**

- 16 - 20            The candidate deals with three of (A) and (B) as follows (**max 16 if no (B), max 18 if no (A)**):  
**max 20:** two sound (there may be some imbalance in treatment as between them)  
**max 17:** one sound, one clear.
- 11 - 15            The candidate deals with (A) and (B) as follows:  
**max 15:** one sound, one some, **or** two clear  
**max 14:** one sound  
**max 13:** one clear, one 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)-(B). Where a candidate introduces material across the range of (A)-(B), this may be superficial.
- 1 - 5            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 discuss **three** advantages of the system of judicial precedent. (10 marks)

**Potential Content**

- (A) Brief discussion of one advantage of the system of judicial precedent
- (B) Brief discussion of a second advantage of the system of judicial precedent
- (C) Brief discussion of a third advantage of the system of judicial precedent

**Note:** Advantages can include certainty, consistency, flexibility, the time factor and the practical nature of situations based on real life.

**Mark Bands**

- 8 - 10            The candidate deals with (A)-(C) as follows (coverage of all three can compensate for weaknesses/inaccuracies in content):  
**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 (coverage of all three can compensate for weaknesses/inaccuracies in content):  
**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 begins to display 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 – 2            The answer consists of brief, fragmented comments or examples so that no 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) Describe, using examples, the different forms of delegated legislation. (15 marks)

**Potential Content**

- (A) Description and example of first form of delegated legislation
- (B) Description and example of second form of delegated legislation
- (C) Description and example of third form of delegated legislation

**Note:** Relevant forms include Orders in Council, Bye-laws and Statutory Instruments

**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 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) Identify and discuss <b>three</b> advantages of Parliament delegating its law-making powers to others. <span style="float: right;"><i>(15 marks)</i></span> |
|---|

**Potential Content**

- (A) Identification and discussion of first advantage of Parliament delegating its law-making powers
- (B) Identification and discussion of second advantage of Parliament delegating its law-making powers
- (C) Identification and discussion of third advantage of Parliament delegating its law-making powers

**Note:** Examples can include eg saves Parliament time, speed of process, flexibility, local knowledge and specialist knowledge.

**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 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) Briefly describe both the composition and role of the Council of Ministers, the European Commission and the European Parliament in the creation of European Union law. (15 marks)

**Potential Content**

- (A) Brief description of the composition and role of the Council of Ministers in the creation of European Union law, eg representatives of member states, relevant ministers attend, decision-making body, takes final decision on most EU legislation
- (B) Brief description of the composition and role of the European Commission in the creation of European Union law, eg commissioners appointed by mutual agreement, significance of larger countries, executive body, wide legislative function, drafts most EU legislation, puts proposals before the Council
- (C) Brief description of the composition and role of the European Parliament in the creation of European Union law, eg directly elected body, consultative advisory functions, opinions provided on proposals

**Note:** Extended description of one of the two aspects (composition or role) relating to the Institutions can serve to compensate for limited description of the other aspect.

**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 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 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.

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|--|
| (b) Identify and discuss any <b>three</b> ways in which UK membership of the European Union has affected English law. (15 marks) |
|--|

**Potential Content**

- (A) Identification and discussion of one way in which membership of the European Union has affected English law
- (B) Identification and discussion of a second way in which membership of the European Union has affected English law
- (C) Identification and discussion of a third way in which membership of the European Union has affected English law

**Note:** Material can include explanation of the general provisions of the European Communities Act 1972: issues of supremacy; the effect on English courts and tribunals; (Article 234 Preliminary Rulings Procedure); the concept of direct effect; general issues of interpretation and approach; also identified actual changes in the law, eg company law, employment and consumer credit.

**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 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 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) Explain and illustrate **three** rules (approaches) that can be used by judges when interpreting a statute (Act of Parliament). (20 marks)

**Potential Content**

- (A) Explain and illustrate the first rule (approach)
- (B) Explain and illustrate the second rule (approach)
- (C) Explain and illustrate the third rule (approach)

**Note:** Rules (approaches) can include the literal, golden and mischief rules and the purposive approach, etc.

**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)  
**or**  
attempts to introduce material across the range but the descriptions are inadequate or suffer from error or confusion.
- 1 – 5            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) Discuss the advantages of any <b>two</b> of the rules of (approaches to) statutory interpretation.<br><i>(10 marks)</i> |
|---|

**Potential Content**

- (A) Discussion of the advantages of the first rule (approach)
- (B) Discussion of the advantages of the second rule (approach)

**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) but the descriptions are inadequate or suffer from error or confusion.
- 1 – 2            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) Using examples, describe **three** different influences operating on Parliament before **and/or** during the legislative process. *(20 marks)*

**Potential Content**

- (A) Description of one influence with example
- (B) Description of second influence with example
- (C) Description of third influence with example

**Note:** Examples provided can be of influences or the effects of such. Influences can include the Law Commission, Royal Commissions, MPs, media and pressure groups. Examples can include references to particular reports, campaigns, Bills and Pieces of Legislation.

**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)  
**or**  
attempts to introduce material across the range but the descriptions and examples are inadequate or suffer from error or confusion.
- 1 – 5            The answer consists of brief, fragmented comments so that no explanation emerges  
**or**  
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0            The answer contains no relevant information.

- |   |
|---|
| (b) Choose <b>one</b> of the influences you have described in your answer to part (a). Briefly discuss the advantages <b>and</b> disadvantages associated with that influence. <span style="float: right;"><i>(10 marks)</i></span> |
|---|

**Potential Content**

- (A) Brief discussion of the advantages
- (B) Brief discussion of the disadvantages

**Note:** Advantages can include: assist public awareness and communication of public opinions, use of expertise and experience. Disadvantages can include: a narrow view taken, qualified success, time factor and the adverse implications of public pressure.

**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) but the descriptors are inadequate or suffer from error or confusion.
- 1 – 2            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.

**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