



General Certificate of Education

LAW (5161/6161)

LAW2 Dispute Solving

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.

LAW2

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 – LAW2

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.

Sound	<ul style="list-style-type: none"> • The material will be generally accurate and contain material relevant to the Potential Content. • The material will be supported by generally relevant authority and/or examples. • It will generally deal with the Potential Content in a manner required by the question. <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
Clear	<ul style="list-style-type: none"> • The material is broadly accurate and relevant to the Potential Content. • The material will be supported by some use of relevant authority and/or examples. • The material will broadly deal with the Potential Content in a manner required by the question. <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>
Some	<ul style="list-style-type: none"> • The material shows some accuracy and relevance to the Potential Content. • The material may occasionally be supported by some relevant authority and/or examples. • The material will deal with some of the Potential Content in a manner required by the question. <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) Explain how lay Magistrates are chosen and appointed. *(15 marks)*

Potential content

- (A) Explanation of how magistrates are chosen – eg qualification, application or nomination qualities required, interviews, role of local advisory committee
- (B) Explanation of how magistrates are appointed – eg balance of Bench recommendation to and appointment by Lord Chancellor, possible reference to initial training, swearing in

Mark Bands

- 12 - 15 The candidate deals with (A) – (B) as follows:
max 15: two sound
max 13: one sound, one clear
- 8 - 11 The candidate deals with (A) – (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 some understanding by introducing explanation 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 and confusion.
- 0 The answer contains no relevant information.

- | |
|---|
| (b) Identify and discuss the advantages and disadvantages of using lay Magistrates and juries in the criminal justice system. (15 marks) |
|---|

Potential content

- (A) Identification and discussion of advantages – eg open justice, trial by peers, public confidence, overall fairness
- (B) Identification and discussion of disadvantages – eg perverse verdicts, feelings of possible bias, make-up of panel and selection issues, influence within panel, media pressure, complexity of issues

Mark Bands

- 12 - 15 The candidate deals with (A) – (B) as follows:
max 15: two sound
max 13: one sound, one clear
- 8 - 11 The candidate deals with (A) – (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 some understanding by introducing discussion 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 and confusion.
- 0 The answer contains no relevant information.

2

Total for this question: 30 marks

- (a) Alternative Dispute Resolution (ADR) can be used instead of the civil courts in order to settle a dispute. Describe any **three** forms of ADR. *(20 marks)*

Potential content

- (A) Description of first form of ADR
 (B) Description of second form
 (C) Description of third form

Methods of ADR can include Tribunals, Arbitration, Mediation, Conciliation, Negotiation

Note: description can refer to makeup of panel, style of hearings, types of cases dealt with and outcomes

Mark Bands

- 16 – 20 The candidate deals with all three of (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).
- 1 – 5 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 and confusion.
- 0 The answer contains no relevant information.

(b) Discuss the **advantages** of ADR as a form of dispute resolution. (10 marks)

Potential content

- (A) Discussion of advantages – eg informal, self-representation, decisions by experts, speed, convenience, cost, less confrontational approach

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 some understanding by introducing consideration of any of the material in (A).
- 1 – 2 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.

3

Total for this question: 30 marks(a) Describe the role of a judge in **civil** and in **criminal** cases. (15 marks)**Potential content**

- (A) Description of role of judge in civil cases – eg manager of interlocutory (pre-trial) work, sitting without jury, hearing evidence and legal arguments, deciding liability and award
- (B) Description of role of judge in criminal cases – eg considering pre-trial issues such as venue, evidence and trial date, bail, sitting with jury in trial, deciding issues of law, directing jury, sentencing after guilty verdict or plea

Note: a reference to appeals may enhance quality of (A) and or (B)

Mark Bands

- 12 - 15 The candidate deals with (A) – (B) as follows:
max 15: two sound
max 13: one sound, one clear
- 8 - 11 The candidate deals with (A) – (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 some 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 and confusion.
- 0 The answer contains no relevant information.

- (b) Outline how a judge can be dismissed from office and consider why it is so difficult to dismiss a judge. (15 marks)

Potential content

- (A) Outline of dismissal – eg parliamentary petition for superior judges, powers of Lord Chancellor in cases of incapacity and misbehaviour for inferior judges, fixed term appointments
- (B) Consideration of dismissal - eg security of tenure, impartiality of decisions, independence from Executive, freedom from pressure

Mark Bands

- 12 - 15 The candidate deals with (A) – (B) as follows:
max 15: two sound
max 13: one sound, one clear
- 8 - 11 The candidate deals with (A) – (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 some 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 and confusion.
- 0 The answer contains no relevant information.

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

- (a) Identify the courts (including any appeal courts) in which he will or (may) appear. Outline the nature of the hearings. *(15 marks)*

Potential content

- (A) Identification and outline of Magistrates' Court hearing – eg consideration of bail/custody, Extension of Legal Representation to Crown Court, Transfer (sending) for trial
- (B) Identification and outline of Crown Court hearing – eg Plea and Directions Hearing before trial, trial before judge and jury, full hearing of evidence, jury decides verdict, guilty/not guilty verdict, sentence by judge
- (C) Identification and outline of appeal hearings – eg Court of Appeal grounds for appeal, and House of Lords grounds for appeal, arguments based on law, orders available to both courts

Mark Bands

- 12 - 15 The candidate deals with all three of (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 consideration of any of the material in (A) – (C).
- 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 and confusion.
- 0 The answer contains no relevant information.

(b) Briefly describe and comment on the different forms of legal advice and representation available to him. <p style="text-align: right;"><i>(15 marks)</i></p>

Potential content

- (A) Brief description of forms of legal advice and representation – eg duty solicitor, legal representation, private finance
- (B) Comment on forms of advice – eg availability of specialist advice, cost of private advice, availability of publicly funded advice, quality of advice
- (C) Comment on forms of representation – eg availability, need for solicitors and barristers, cost, quality of representation

Mark Bands

- 12 - 15 The candidate deals with all three of (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 consideration of any of the material in (A) – (C).
- 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 and confusion.
- 0 The answer contains no relevant information.

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

(a) Outline the stages in training and qualifying as a barrister.	(10 Marks)
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Potential content

- (A) Outline of academic training and qualifying of barristers – eg degree entry, CPE/Diploma for non-law degree, membership of Inns of Court, BVC, pupillage, call to Bar

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 some understanding by introducing consideration of any of the material in (A).
- 1 – 2 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.

- | |
|---|
| (b) Briefly describe and compare the roles played by solicitors, barristers and legal executives when acting for a defendant in a court case. (20 marks) |
|---|

Potential Content

- (A) Brief description of solicitor’s work and comparison with (B) and (C) – eg initial advice, obtaining evidence, possible advocacy in initial hearings, solicitor advocates having increased right of audience, advice on trial and liaising with barrister
- (B) Brief description of barrister’s work and comparison with (A) and (C) – eg initial legal opinion, advocacy, advice on presentation and possible appeals, presentation of appeal
- (C) Brief description of legal executive’s work and comparison with (A) and (B) – eg principally working for solicitors, assisting in obtaining evidence and assisting at court, limited rights of audience

Mark Bands

- 16 - 20 The candidate deals with all three of (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).
- 1 – 5 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 and confusion.
- 0 The answer contains no relevant information.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW2)

UNIT 2	AO1	AO2	AO3
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)	
A03 (Quality of written communication for the paper as a whole)			5
Total marks	40	20	5
% of the AS	18.5	9	2.5
% of the A Level	9.25	4.5	1.25