



# General Certificate of Education

## Law 5161/6161

### *LAW6 Concepts of Law*

# Mark Scheme

## *2006 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.

### **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**

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**Descriptors**

<b>Level</b>	<b>Explanation</b>	<b>Analysis/Evaluation</b>
<b>sound</b>	<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>
<b>clear</b>	<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>
<b>some</b>	<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**

Discuss the extent to which a judge can develop the law through the operation of the doctrine of judicial precedent **and** by different approaches to statutory interpretation. *(30 marks)*

**Potential Content**

- (A) Brief explanation of the doctrine of judicial precedent. Consideration of the ways in which judges can develop the law despite the apparent constraints of the doctrine of precedent (eg methods of distinguishing, reinterpretation of ratio, overruling, flexibility available to the House of Lords because of the Practice Statement). Evaluation of extent to which judges can develop the law. Identification and use of relevant examples and case law
- (B) Brief explanation of the approach to statutory interpretation and consideration of the flexibility available to judges in statutory interpretation (eg choice of different approaches to interpretation, inherent problems with certainty of language). Evaluation of extent to which judges can develop the law. Identification and use of relevant examples and case law

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

**Maxima**

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

**Max 30:** two sound.

**Max 27:** one sound, one clear.

**Max 24:** one sound, one some **or** two clear.

**Max 20:** one sound **or** one clear, one some.

**Max 16:** one clear **or** two some.

**Max 12:** one some.

**Max 7:** 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**

Explain the relationship between law and morals. Consider the extent to which the law should seek to uphold moral values. *(30 marks)*

**Potential Content**

- (A) Explanation 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 appropriate examples and illustration
  
- (B) Evaluation of whether the law should seek to uphold moral values: utilising theoretical debate such as Hart v Devlin. Use of appropriate examples and illustration

**Maxima**

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

**Max 30:** two sound.

**Max 27:** one sound, one clear.

**Max 24:** one sound, one some **or** two clear.

**Max 20:** one sound **or** one clear, one some.

**Max 16:** one clear **or** two some.

**Max 12:** one some.

**Max 7:** 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**

Consider the meaning and importance of fault-based 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 of fault in the chosen area(s) – in civil and/or criminal law (including variations). Identification of appropriate area(s) of law and use of examples

**NB** Take account of breadth and depth, eg less detail if both civil and criminal are discussed.

(B) Evaluation of the importance of fault – this will involve assessing how important it is and may involve discussion of issues such as deterrence, punishment, individual responsibility, blameworthiness, liability in the absence of fault. Identification and use of appropriate areas of law and examples. Discussion of whether fault should be important should be given credit but is not a requirement

**Maxima**

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

**Max 30:** two sound.

**Max 27:** one sound, one clear.

**Max 24:** one sound, one some **or** two clear.

**Max 20:** one sound **or** one clear, one some.

**Max 16:** one clear **or** two some.

**Max 12:** one some.

**Max 7:** 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**

Discuss the meaning of justice and consider whether justice is achieved in English law. (30 marks)
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**Potential Content**

- (A) Explanation of the different possible meanings of justice – from the simple fairness approach, approach to distinctions between procedural and substantive justice, perhaps taking account of the views of philosophers. Identification and use of appropriate examples
- (B) Evaluation of whether justice is achieved in English law, whether viewed as the body of rules of substantive and procedural law or as incorporating relevant institutions ('the legal system'), utilising the framework explanation in (A) and examples and illustration.

**Maxima**

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

**Max 30:** two sound.

**Max 27:** one sound, one clear.

**Max 24:** one sound, one some **or** two clear.

**Max 20:** one sound **or** one clear, one some.

**Max 16:** one clear **or** two some.

**Max 12:** one some.

**Max 7:** 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</b> <b>No. of Marks</b>	<b>AO2</b> <b>No. of Marks</b>	<b>AO3</b> <b>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 (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