



General Certificate of Education

Law 5161

Unit 1 (LAW1) Law Making

Mark Scheme

2007 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.

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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.

Sound	<ul style="list-style-type: none"> • The material will be generally accurate and contain relevant material 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 what is meant by the doctrine of precedent.	(15 marks)
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Potential Content

- (A) Explanation of the hierarchy of the courts
- (B) Explanation of binding and persuasive precedent, *ratio decidendi* and *obiter dicta*, and law reporting

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 limited understanding by introducing consideration of any of the material in (A)-(B).
- 1 – 3 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) Identify and discuss the advantages **and** disadvantages of the doctrine of precedent. *(15 marks)*

Potential Content

- (A) Identification and discussion of the advantages of the doctrine of precedent
- (B) Identification and discussion of the disadvantages of the doctrine of precedent

Note: advantages can include certainty, consistency and facilitating development. Disadvantages can include rigidity and law being slow to change with outdated precedents remaining.

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 limited understanding by introducing consideration of any of the material in (A)-(B).
- 1 – 3 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.

2

Total for this question: 30 marks(a) Using examples, briefly describe **three** forms of delegated legislation. (15 marks)**Potential Content**

- (A) Example and brief description of one form of delegated legislation
- (B) Example and brief description of a second form of delegated legislation
- (C) Example and brief description of a third form of delegated legislation

Note: forms of delegated legislation – statutory instruments, orders in council, bye-laws.

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 limited 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) Briefly explain and discuss parliamentary **and** judicial controls over delegated legislation.
(15 marks)

Potential Content

- (A) Brief explanation and discussion of parliamentary controls over delegated legislation
- (B) Brief explanation and discussion of judicial controls over delegated legislation

Note: Parliamentary controls can include laying before Parliament, Scrutiny Committee, repeal.
Judicial controls can include judicial review and the doctrine of *ultra vires*.

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 limited understanding by introducing consideration of any of the material in (A)-(B).
- 1 – 3 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.

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

(a) Describe **two** influences on Parliament as a law maker. *(15 marks)*

Potential Content

(A) Description of one influence on Parliament as a law maker

(B) Description of second influence on Parliament as a law maker

Note: influences on Parliament as a law maker can include the Law Commission, Royal Commission, political groups, communication media and pressure groups.

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 limited understanding by introducing consideration of any of the material in (A)-(B).
- 1 – 3 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) Identify and discuss the advantages **and** disadvantages of **both** of the influences that you have described in your answer to 3(a). *(15 marks)*

Potential Content

- (A) Identification and discussion of the advantages and disadvantages of the first influence
- (B) Identification and discussion of the advantages and disadvantages of the second influence

Note: advantages can include representation of public opinion, expertise, independence, influence and access to parliament/power. Disadvantages can include panic reaction, opinion not truly representative, relevance of motive for taking action.

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 limited understanding by introducing consideration of any of the material in (A)-(B).
- 1 – 3 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.

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

- (a) In the process of statutory interpretation, judges can be helped by various rules of (approaches to) interpretation and also by both intrinsic (internal) and extrinsic (external) aids.

Describe **two** of these rules (approaches) and outline the aids which can help judges interpret an Act of Parliament. *(20 marks)*

Potential Content

- (A) Description of one rule (approach) which can help judges interpret an Act of Parliament
- (B) Description of a second rule (approach) which can help judges interpret an Act of Parliament
- (C) Outline of the aids which can help judges interpret an Act of Parliament

Note: Rules (approaches) that can be used include the literal, golden, mischief, (purposive approach).

Intrinsic aids can include the title, long title, preamble, headings, marginal notes and the interpretation section. Extrinsic aids can include dictionaries and textbooks.

Credit should be given for material on the rules of language.

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 limited 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) Consider the **disadvantages** of the **two** rules (approaches) described in your answer to 4(a).
(10 marks)

Potential Content

- (A) Consideration of the disadvantages of one rule (approach) described in the answer to question 4(a)
- (B) Consideration of the disadvantages of the second rule (approach) described in the answer to question 4(a)

Note: disadvantages can include absurd outcomes, lack of consistency, too much judicial freedom – judges not parliament making law.

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 limited 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.

5

Total for this question: 30 marks

- (a) Identify and briefly describe the functions of any **three** institutions of the European Union.
(15 marks)

Potential Content

- (A) Identification and brief description of the functions of one of the institutions of the European Union
- (B) Identification and brief description of the functions of a second institution of the European Union
- (C) Identification and brief description of the functions of a third institution of the European Union

Note: the institutions include the Council of Ministers, European Commission, European Parliament and the European Court of Justice.

Functions can include:

Council of Ministers – decision-making body, takes final decision on most EU legislation;

European Commission – executive body, wide legislative function, drafts most EU legislation, puts proposals before the Council;

European Parliament – directly elected body, consultative advisory function, opinions provided on proposals;

European Court of Justice – issues on interpretation, resolving disputes.

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 limited 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) Briefly explain what is meant by the doctrine of parliamentary supremacy, and briefly consider **two** possible limitations to this doctrine. *(15 marks)*

Potential Content

- (A) Brief explanation of the doctrine of parliamentary supremacy
- (B) Brief consideration of one limitation on the doctrine of parliamentary supremacy
- (C) Brief consideration of a second limitation on the doctrine of parliamentary supremacy

Note: limitations on the doctrine of parliamentary supremacy can include European Treaties, delegated legislation, the courts and possible reference to political constraints.

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 limited 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.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW1)

UNIT 1	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)	(x2 from 5)	
AO3 (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