



## **General Certificate of Education**

# **Law 5161**

## **Unit 2 (LAW2)      Dispute Solving**

# **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.

Further copies of this Mark Scheme are available to download from the AQA Website: [www.aqa.org.uk](http://www.aqa.org.uk)

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# 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.

<b>Sound</b>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain relevant material 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, in outline, the work of lay Magistrates **and** the role of a jury in the criminal process.  
(15 marks)

**Potential Content**

- (A) Descriptive outline of the work of lay Magistrates, eg pre-trial considering the grant of warrants, bail, grant of Legal Representation, trials – considering evidence, verdicts and sentencing, more serious cases – committals/sending for trial in Crown Court. Possible reference to other work such as Youth Court and Family Proceedings Court
- (B) Descriptive outline of the role of juries, eg listening to evidence and judges' direction, secret discussion, unanimous and majority verdicts, public announcement of verdict

**Mark Bands**

- 12 - 15            The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11             The candidate deals with (A) and (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 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** in the criminal justice process. *(15 marks)*

**Potential Content**

- (A) Identification and discussion of advantages of lay Magistrates, eg trial by peers, open justice, public confidence, fairness, limited number of appeals, cost, reduction of professional involvement
- (B) Identification and discussion of disadvantages of lay Magistrates, eg perceptions of bias, limited training, influence, limited representative nature, complexity of issues, inconsistency of decisions

**Mark Bands**

- 12 - 15            The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11            The candidate deals with (A) and (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 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) Describe the ways in which both inferior and superior Judges are selected and appointed.  
(15 marks)

**Potential Content**

- (A) Description of selection and appointment of inferior judges, eg eligibility/qualification, advertisements, testing, promotion, possible reference to Judicial Appointments Commission, appointment by Lord Chancellor/Queen
- (B) Description of selection and appointment of superior judges, eg eligibility/qualification, advertisements, writing formal applications, secret soundings, invitations, selection by Lord Chancellor/Prime Minister, appointment by Queen, possible reference to Judicial Appointments Commission

**Mark Bands**

- 12 - 15            The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11            The candidate deals with (A) and (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 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 explain the principle of judicial independence and consider why it is such an important part of the UK constitution. *(15 marks)*

**Potential Content**

- (A) Brief explanation of judicial independence, eg impartiality, open justice, immunity within court, appeals through court system, separation from the Executive, freedom from dismissal
- (B) Consideration of importance of judicial independence – public confidence in judiciary, upholding Rule of Law, decision making free of pressure, ability to hear judicial review cases. Possible reference to the Constitutional Reform Act 2005

**Mark Bands**

- 12 - 15            The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11             The candidate deals with (A) and (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 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.

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

- (a) Explain any **three** forms of Alternative Dispute Resolution (ADR). Include a description of the types of case they deal with. *(20 marks)*

**Potential Content**

- (A) Explanation of one form of ADR
- (B) Explanation of second form of ADR
- (C) Explanation of third form of ADR

Forms of ADR may include Tribunals, Arbitration, Mediation, Conciliation or Negotiation

Explanation may include reasons for existence, types of cases heard, make up and qualification of panel/decision maker, nature of hearing, result

**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 limited 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 <b>disadvantages</b> of ADR as a form of dispute resolution.	(10 marks)
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**Potential Content**

(A) Discussion of disadvantages of ADR, eg funding, unpredictable decisions, public awareness, imbalance between parties, limited appeal rights

**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 of (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.

4

**Total for this question: 30 marks**(a) Describe the work of **both** solicitors **and** barristers both in **and** out of court. (20 marks)**Potential Content**

- (A) Description of work of solicitors – in court, eg rights of audience in Magistrates and County Courts, advocacy, acquired rights of audience for higher courts. Out of court, eg advice in contentious work, non-contentious work with examples, negotiation for client, specialist work in city firms, possible reference to local government, business or CPS employment
- (B) Description of work of barristers – in court, eg rights of audience in all courts, advocacy, independence from all other barristers, conducting appeals. Out of court, eg providing expert opinions, drafting documents, direct access. Possible reference to employed Bar.

**Mark Bands**

- 16 – 20 The candidate deals with (A) and (B) as follows:  
**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 demonstrates limited understanding by introducing consideration of any of the material in (A)-(B). Where the candidate introduces material across the range, it will be superficial.
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent description 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 how solicitors **and** barristers can be held responsible for poor work. *(10 marks)*

**Potential Content**

- (A) Brief discussion of solicitor’s responsibility, eg responsibility for negligent work, disciplinary process of Law Society (CCS), Legal Services Ombudsman/Complaints Commissioner, possible reference to Clementi suggestions
- (B) Brief discussion of barrister’s responsibility, eg responsibility for negligent work and advice both in and out of court, appeals, disciplinary process of Inns of Court and Bar Council, Legal Services Ombudsman/Complaints Commissioner, possible reference to Clementi suggestions

**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). Where a candidate introduces material across the range of (A)-(B), this may be superficial.
- 1 – 2            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.

5

**Total for this question: 30 marks**

Laura has been charged with Actual Bodily Harm (ABH), an offence which is triable either way.

- (a) Identify the courts (including any appeal courts) in which she could appear. Outline the nature of the hearings. *(15 marks)*

**Potential Content**

- (A) Identification and outline of magistrates court, eg plea before venue, dealt with as summary trial, representation by solicitors, relative informality, magistrates decide guilt/innocence and sentence, limited sentencing powers, committal/transfer, bail/custody, legal aid
- (B) Identification and outline of Crown Court, eg dealt with as indictable trial, representation by barristers or solicitor advocate, formality, jury decides verdict, judge decides questions of law and sentence
- (C) Identification and outline of appeals, eg Court of Appeal and grounds for appeal against conviction and/or sentence, House of Lords based on appeal against conviction only. Possible reference to appeals from the Magistrates Court

**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 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 coherent explanation emerges  
**or**  
a more substantial answer 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 her. *(15 marks)*

**Potential Content**

- (A) Brief description of forms of legal advice and representation, eg private finance, Duty Solicitors, Legal Help, Criminal Legal Representation, role of Criminal Defence Service
- (B) Comment on advantages, eg assistance at police station and at first appearance in court, no initial costs for Representation, offsets resources of police/CPS
- (C) Comment on disadvantages, eg problems of 24 hour cover, quality of duty solicitors, restrictions on Representation based on type of offence, cost issues at end of case, difficulties of finding representative

Note: if candidate deals with public defenders, this may enhance the quality of (A).

**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 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 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 (LAW2)**

<b>UNIT 2</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