



General Certificate of Education

Law 5161

Unit 1 (LAW1) Law Making

Mark Scheme

2008 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.

<p>Sound</p>	<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>
<p>Clear</p>	<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>
<p>Some</p>	<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) Outline what is meant by the doctrine of judicial precedent and explain how this doctrine operates in the House of Lords and Court of Appeal. (20 marks)

Potential Content

- (A) Outline of the key elements of precedent e.g. court hierarchy, binding and persuasive precedent, *ratio decidendi* and *obiter dicta*. Credit will be given for law reporting
- (B) Explanation of how the doctrine operates in the House of Lords, eg 1966 Practice Statement, possible examples
- (C) Explanation of how the doctrine operates in the Court of Appeal, eg ***Young v Bristol Aeroplane Co***, possible examples

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 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 two advantages of the doctrine of judicial precedent. <i>(10 marks)</i>

Potential Content

- (A) Discussion of one advantage of the doctrine of judicial precedent
- (B) Discussion of a second advantage of the doctrine of judicial precedent

Note: advantages can include, eg certainty, flexibility, ‘real-life’ law-making and instant law-making.

Mark Bands

- 8 – 10 The candidate deals with (A) and (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) and (B) as follows:
max 7: one sound **or** one clear, one some
max 5: one clear **or** two some.
- 3 – 4 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

2

Total for this question: 30 marks

(a) Briefly describe **three** influences on Parliament as a law maker. (15 marks)

Potential Content

- (A) Brief description of one influence on Parliament as a law-maker
- (B) Brief description of second influence on Parliament as a law-maker
- (C) Brief description of third 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)-(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) Discuss **three advantages** of any influences on Parliament as a law maker. (15 marks)

Potential Content

- (A) Discussion of one advantage of the influences on Parliament as a law maker
- (B) Discussion of a second advantage of the influences on Parliament as a law maker
- (C) Discussion of a third advantage of the influences on Parliament as a law maker

Note: Advantages can include representation of public opinion, expertise, independence, influence and access to parliament/power.

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.

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

- (a) Outline, with examples, what is meant by delegated legislation. Briefly explain how Parliament **and** the judiciary exercise control over this law-making process.
(20 marks)

Potential Content

- (A) Outline, with examples, the meaning of delegated legislation
- (B) Brief explanation of how Parliament exercises control over this law-making process
- (C) Brief explanation of how the judiciary exercises control over this law-making process

Note: Examples of delegated legislation include Statutory Instruments, Bye-laws, Orders in Council.

Methods of control can include: publication, consultation with experts: Parliamentary controls (Laying before Parliament, Scrutiny Committee, repeal); Judicial controls (judicial review and the doctrine of *ultra vires*).

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 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 **two disadvantages** of delegated legislation as a source of law. (10 marks)

Potential Content

- (A) Discussion of one disadvantage of delegated legislation as a source of law
- (B) Discussion of a second disadvantage of delegated legislation as a source of law

Note: disadvantages can include eg lack of publicity, sub-delegation, insufficient consideration given, possible exceeding of power, involvement of unelected parties and difficulty to control.

Mark Bands

- 8 – 10 The candidate deals with (A) and (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) and (B) as follows:
max 7: one sound **or** one clear, one some
max 5: one clear **or** two some.
- 3 – 4 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

4

Total for this question: 30 marks

- (a) Briefly describe the functions of the Council of Ministers, European Commission and the European Parliament. *(15 marks)*

Potential Content

- (A) Brief description of the functions of the Council of Ministers
- (B) Brief description of the functions of the European Commission
- (C) Brief description of the functions of the European Parliament

Note: Functions can include, eg the Council of Ministers as a decision-maker in relation to European Union legislation and its position as the supreme decision-making body. The European Commission as a body that drafts legislative proposals, is responsible for the administration of policies and can properly be described as the executive body of the European Union. The European Parliament acts in a supervisory and advisory capacity, and functions significantly differently from the UK Parliament.

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) Outline the role(s) of the European Court of Justice and briefly discuss the relationship between the European Court of Justice and the English courts. (15 marks)

Potential Content

- (A) Outline of the role(s) of the European Court of Justice
- (B) Brief discussion of the relationship between the European Court of Justice and the English courts

Note: Roles of the ECJ can include, eg to ensure that EU law is observed and upheld in interpretation and application, to issue rulings on breaches of EU law, to resolve disputes between Member States, Institutions, etc, and give opinions on international agreements.

Aspects of the relationship can include, eg issues of supremacy, implications of Article 234, approaches to interpretation.

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

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

- (a) Explain and illustrate **three** of the rules (approaches) which can be used by judges when interpreting an Act of Parliament. (20 marks)

Potential Content

- (A) Explanation and illustration of one rule (approach) which can be used by judges when interpreting an Act of Parliament
- (B) Explanation and illustration of a second rule (approach) which can be used by judges when interpreting an Act of Parliament
- (C) Explanation and illustration of a third rule (approach) which can be used by judges when interpreting an Act of Parliament

Note: rules (approaches) that can be used are the **Literal**, **Golden** and **Mischief** rules and the **Purposive** approach. Some credit for Rules of Language, though not required by the specification.

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 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) Briefly discuss the **disadvantages** of any **two** of the rules (approaches) explained in your answer to 5 (a). *(10 marks)*

Potential Content

- (A) Consideration of the disadvantages of one rule (approach) described in the answer to question 5(a)
- (B) Consideration of the disadvantages of the second rule (approach) described in the answer to question 5(a)

Note: Disadvantages can include:

Literal rule: bad decisions being made, need for Parliament to remedy errors and delay,

Golden rule: judiciary having discretion with interpretation and application of legislation,

Mischief rule: judiciary given too much freedom, making law rather than applying law made by Parliament.

Purposive approach: judicial discretion, excess of freedom as law-makers.

Mark Bands

- 8 – 10 The candidate deals with (A) and (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) and (B) as follows:
max 7: one sound **or** one clear, one some
max 5: one clear **or** two some.
- 3 – 4 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 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