



General Certificate of Education

Law 5161

Unit 2 (LAW2) Dispute Solving

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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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.

<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) Olivia wants to claim compensation after being injured in an accident. Identify the courts in which her claim for compensation could be heard (including any appeals) and briefly describe the process involved. *(15 marks)*

Potential Content

- (A) Identification and brief description of small claims/County Court case, eg judge only trial, in local courts, possible reference to tracking, judge acting as case manager, documents & procedure, representation by solicitors or barristers, decision on liability, award of compensation
- (B) Identification and brief description of High Court, eg hearing in QBD, judge only trial, judge acting as case manager, documents and procedure, representation by barristers, decision on liability, award of compensation
- (C) Identification and brief description of appeals, eg appeals from county court and High Court to Court of Appeal, grounds of appeal, representation by barristers, possible orders, possible further appeal to House of Lords

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: two clear, one some
max 10: one sound **or** two clear **or** one clear, two some
max 9: one clear, one some **or** three some
max 8: one clear **or** two some.
- 4 – 7 The candidate begins to display limited understanding by introducing discussion 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 and application emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- (b) Briefly explain ways in which Olivia could pay for her case if it went to court. Discuss advantages **and** disadvantages of these forms of funding. (15 marks)

Potential Content

- (A) Brief explanation of ways of funding civil cases, eg Legal Help, ‘no win – no fee’ conditional fees, private finance, possible reference to Legal Aid in certain cases. Possible reference to trade union, insurance and other forms of funding, *pro bono*
- (B) Discussion of advantages, eg Legal Help available to those on limited means, ‘no win no fee’ allows claims from those who could not afford court action or would not qualify for legal aid, possible reference to funding provided by specialist lawyer panels or claims advisers
- (C) Discussion of disadvantages eg general expense, limited availability of state funding, cost of insurance policies required for ‘no win no fee’ cases, threshold test for ‘no win no fee’ cases possible reference to limited availability of local specialist lawyers

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: two clear, one some
max 10: one sound **or** two clear **or** one clear, two some
max 9: one clear, one some **or** three some
max 8: one clear **or** two some.
- 4 – 7 The candidate begins to display limited understanding by introducing discussion 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 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) Describe the work of barristers, solicitors **and** legal executives both in and out of court. (20 marks)

Potential Content

- (A) Description of work of barristers, eg advocacy and rights of audience, possible reference to advice on and conduct of appeals, drafting of specialist documents, specialist oral advice in conference or in writing by opinions
- (B) Description of work of solicitors, eg work in court general advocacy and extended rights of audience in civil & criminal cases, work out of court including advice and drafting papers in traditional provincial practice, specialist work in city practice, role of instructing solicitor
- (C) Description of work of legal executives – rights of audience in civil & criminal courts, work out of court in solicitors offices, work of conveyancing & probate practitioners

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 how barristers **and** solicitors can be held responsible for poor work. (10 marks)

Potential Content

- (A) Discussion of barristers responsibility for poor work, eg ability to be sued for negligent work, complaints to Inn of Court and/or Bar Council/Bar Standards Board and possible disciplinary action, possible complaint to and investigation by Legal Services Ombudsman
- (B) Discussion of solicitors responsibility for poor work, eg ability to be sued for negligent work, possible reference to breach of contract, complaints to Consumer Complaints Service Bureau/Legal Complaints Service and possible disciplinary action, possible complaint to and investigation by Legal Services Ombudsman

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.

3

Total for this question: 30 marks

Tribunals, arbitration and mediation are examples of alternative dispute resolution (ADR) in which civil disputes can be resolved without going to court.

- (a) Including reference to the type of disputes dealt with, describe how any **two** of these forms of ADR work. **(15 marks)**

Potential Content

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

Methods of ADR required are Tribunals, Arbitration, Mediation.
Description of form of ADR can include reference to who is hearing the dispute, nature of hearings, type of cases dealt with, process issues, outcomes, possible appeals.

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.

(b) Identify and discuss advantages and disadvantages of ADR.	<i>(15 marks)</i>
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Potential Content

- (A) Identification and discussion of advantages of ADR, eg cost, informality, lack of legal representation, efficiency, preservation of relationship, convenience, expertise, procedure, encouragement by courts

- (B) Identification and discussion of disadvantages of ADR, eg funding, appeal rights, unpredictable decisions, public awareness, imbalance between parties

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.

4

Total for this question: 30 marks

- (a) Explain how lay magistrates are chosen and appointed. Briefly outline the role of lay magistrates in court. *(20 marks)*

Potential Content

- (A) Explanation of choice & appointment of lay magistrates, eg application or nomination, qualification, interviews, role of local advisory committee, recommendation to and appointment by Lord Chancellor on behalf of the Crown, swearing in
- (B) Brief outline of role of lay Magistrates, eg decisions of bail/custody, sentencing of guilty pleas, deciding legal issues/verdict/sentence in trials, grant of Legal Representation, committals/sending for trial in Crown Court, sitting on Appeal Court hearings, Youth and Family Court work

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 displays limited understanding by introducing consideration of any of the material in (A) and (B).
- 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 disadvantages of using lay people (lay magistrates and jurors) in the criminal justice process. (10 marks) |
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Potential Content

- (A) Discussion of disadvantages of use of lay persons, eg perverse verdicts/sentences, accusations of bias, unrepresentative nature, selection procedures, influence, media pressure, complexity of issues

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.

NB Discussion of one only (lay magistrates or jurors) – maximum 7

5

Total for this question: 30 marks

(a) Describe the role of a judge in a civil trial, including pre-trial issues. (10 marks)

Potential Content

(A) Description of role, eg dealing with pre trial issues (eg tracking), acting as trial manager, ruling on legal issues during trial, deciding liability, deciding compensation or other remedy, award of costs, possible reference to appeals

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 how judges are chosen, appointed and dismissed. Consider why it is difficult to dismiss a judge from office. (20 marks)

Potential Content

- (A) Brief description of choice, appointment and dismissal of judges, eg qualification, advertisements, interviews, role of Judicial Appointments Commission, appointment by Queen after recommendation, dismissal of superior judges by Queen after petition signed by Parliament/dismissal of inferior judges by Lord Chief Justice and Lord Chancellor
- (B) Consideration of dismissal, eg security of tenure, impartiality of decisions, independence from Executive, freedom from pressure, possible reference to arrangements set out in Constitutional Reform Act 2005 (Office for Judicial Complaints, Judicial Ombudsman's Office)

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 displays limited understanding by introducing consideration of any of the material in (A) and (B).
- 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)	(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