



# **General Certificate of Education**

## **Law 5161**

### **Unit 1 (LAW1R) Law Making**

# **Mark Scheme**

*2008 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.

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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# 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.

<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>

1

**Total for this question: 30 marks**

(a) Outline what is meant by delegated legislation and briefly explain, with examples, **two** forms of delegated legislation. **(15 marks)**

**Potential Content**

- (A) Outline of the meaning of delegated legislation
- (B) Brief explanation, with example(s) of one form of delegated legislation
- (C) Brief explanation, with example(s) of a second form of delegated legislation

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

**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 and comment on the parliamentary and judicial controls over delegated legislation. (15 marks)

**Potential Content**

- (A) Outline of and comment on parliamentary controls over delegated legislation
- (B) Outline of and comment on the 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*. Commentary issues can include: the effectiveness of laying before Parliament; the narrow remit of the Scrutiny Committee; delegated powers are rarely repealed; the availability of judicial review; the narrow application of the doctrine of *ultra vires*, the lack of democratic control, etc.

**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.

2

**Total for this question: 30 marks**

(a) Briefly describe <b>three</b> types of European Union law.	<i>(15 marks)</i>
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**Potential Content**

- (A) Brief description of one type of European Union law
- (B) Brief description of a second type of European Union law
- (C) Brief description of a third type of European Union law

**Note:** Types can include:

Treaties which are primary legislation and binding on all Member States

Regulations which are directly applicable in all Member States

Directives which require the relevant legislation to be introduced by the particular Member State(s)

Decisions which are applicable only to the organisation or state to which they are directed

ECJ Case law

**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, 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 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 discuss the role(s) of the European Court of Justice (ECJ) <b>and</b> briefly explain the relationship between the ECJ and the English courts. <span style="float: right;"><i>(15 marks)</i></span>
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**Potential Content**

- (A) Brief discussion of the role(s) of the European Court of Justice (ECJ)
- (B) Brief explanation of the relationship between the ECJ 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.

3

**Total for this question: 30 marks**

(a) Briefly describe the following:

- **two** rules of (approaches to) statutory interpretation
- intrinsic (internal) aids available to judges when interpreting an Act of Parliament
- extrinsic (external) aids available to judges when interpreting an Act of Parliament.

*(20 marks)***Potential Content**

- (A) Brief description of one rule (approach) available to judges when interpreting an Act of Parliament
- (B) Brief description of a second rule (approach) available to judges when interpreting an Act of Parliament
- (C) Brief description of the intrinsic (internal) and extrinsic (external) aids available to 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. Aids that can be used are, eg Internal - the long title, short title, preamble, headings, marginal notes, External – Hansard, dictionaries. Credit for **Rules of Language**, even 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 **advantages** of the **two** rules (approaches) described in your answer to question 3(a). *(10 marks)*

**Potential Content**

- (A) Brief discussion of the advantages of one rule (approach) described in the part (a) answer.
- (B) Brief discussion of the advantages of the second rule (approach) described in the part (a) answer.

**Note:** Advantages can include, eg with literal rule – respect for parliamentary supremacy and certainty; golden rule – avoid absurd outcome and judicial discretion; mischief rule – application of legislation as intended and providing a remedy for defects in the law; purposive approach – achieving the purpose of the legislation.

**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) Describe in outline the key features of the doctrine of precedent **and** briefly explain how a judge can avoid following a precedent. (20 marks)

**Potential Content**

- (A) Description in outline of the court hierarchy, *ratio decidendi*, *obiter dicta* and law reports provision and/or description of binding and persuasive precedent
- (B) Brief explanation of the variety of options available to a judge, eg distinguishing, overruling and disapproving precedents, reversing, Practice Statement, Young vs British Aeroplane exceptions

**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)  
**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 <b>one</b> advantage and <b>one</b> disadvantage of the doctrine of judicial precedent. <i>(10 marks)</i>
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**Potential Content**

- (A) Discussion of one advantage of the doctrine of Judicial precedent
- (B) Discussion of one disadvantage of the doctrine of judicial precedent

**Note:** Advantages can include, eg certainty, flexibility, ‘real-life’ law-making and instant law-making. Disadvantages can include rigidity and volume.

**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.

5

**Total for this question: 30 marks**

(a) Describe the formal process of statute creation.

*(15 marks)***Potential Content**

- (A) Description of the process in the House of Commons
- (B) Description of the process in the House of Lords and description of the role of the Crown in the process

Note: Credit will be given for material on green and/or white papers and types of bill

**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 comment on the advantages and disadvantages of the formal process of statute creation. (15 marks)

**Potential Content**

- (A) Identification and comment on the advantages of the formal process of statute creation
- (B) Identification and comment on the disadvantages of the formal process of statute creation

Advantages might include: House of Commons is democratically elected; House of Lords provides a revising chamber; Crown’s influence may be useful where constitutional issues are involved.

Disadvantages may include: involvement of House of Commons too party political; House of Lords is an undemocratic institution; Crown’s role serves no real purpose/purely formal process.

**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.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level Law (LAW1)**

<b>UNIT 1</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