



ASSESSMENT and
QUALIFICATIONS
ALLIANCE

Mark scheme January 2003

GCE

Law

Unit LAW1

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Unit 1: Law Making

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**

1

Total for this question: 30 marks

- (a) Describe, and illustrate with cases, the operation of the doctrine of precedent in English law.
(15 marks)

Potential content

- (A) Description of the hierarchy of the courts
- (B) Description of *ratio decidendi* and *obiter dicta*
- (C) Description of need for and provision of law reports
- (D) Appropriate case illustration

Mark bands

- 12 - 15 The candidate presents a comprehensive account of (A) and (B) and makes reference to appropriate cases as in (D) (max 13) and refers to (C)
or
presents a sound account of (A) – (C), though there may be some imbalance, and makes reference to appropriate cases as in (D).
- 8 – 11 The candidate shows sound understanding of at least two of (A) - (D) (max 9) and makes reference to one other
or
attempts to deal with three or more without being able to present fully accurate descriptions of any.
- 4 – 7 The candidate displays some understanding by introducing consideration of any of the material in (A) – (D)
or
the candidate attempts to introduce material across the range but the descriptions are inadequate or suffer from error or confusion.
- 1 – 3 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) Judges may have a number of options open to them which give them the opportunity to avoid having to follow a precedent.

Briefly explain and comment on these options.

(15 marks)

Potential content

- (A) Explanation of methods used to escape from the constraints of precedent (eg overruling, distinguishing, disapproving, reinterpretation of ratio) with possible use of authority
- (B) Commentary related to the range of options available

Mark bands

- 12 - 15 The candidate demonstrates a sound understanding of (A) **and** (B) and provides appropriate commentary as in (B).
- 8 – 11 The candidate demonstrates a sound understanding of **either** (A) **or** (B) (**max 9**) and refers to the other and attempts an assessment as in (C)
or
the candidate displays some understanding of (A) and attempts to provide commentary as in (B).
- 4 – 7 The candidate displays some understanding by introducing consideration of any of the material in (A)-(B)
or
the candidate attempts to introduce material across the range but the explanations are inadequate or suffer from error or confusion; any commentary will be based on an inadequate explanatory foundation.
- 1 – 3 The answer consists of brief, fragmented comments or examples so that no description emerges
or
a more substantial attempt at explanation or commentary is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

2

Total for this question: 30 marks

(a) Outline the formal process of statute creation.	(10 marks)
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Potential content

- (A) Outline explanation of process in House of Commons
- (B) Outline explanation of process in House of Lords
- (C) Outline explanation of other relevant aspects of process, eg public and private Bills, the role of the Crown, etc

Mark bands

- 8 - 10 The candidate presents an accurate account of (A) and (B) Reference to (C) may compensate for minor deficiencies.
- 5 – 7 The candidate presents a clear account of any **one** of (A) – (C) (**max 5 for B or C only**)
or
attempts to deal with both (A) and (B) without being able to provide full descriptions of either. Reference to (C) may compensate for minor deficiencies.
- 3 – 4 The candidate begins to display some understanding by introducing discussion of any of (A) – (C)
or
the candidate attempts to introduce material across the range but the descriptions are inadequate or suffer from error or confusion.
- 1 – 2 The answer consists of brief, fragmented comments or examples, so that no coherent approach emerges
or
the answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

(b) Describe the different types of delegated legislation. Discuss the advantages and disadvantages of Parliament delegating its law-making powers to others. (20 marks)

Potential content

- (A) Description of eg Ministerial Regulations, bye-laws and Orders in Council with possible use of examples
- (B) Explanation of how power is delegated: enabling Act (or “Parent” Act) giving power to others to make delegated legislation
- (C) Consideration of the advantages of delegated legislation, eg, saving Parliamentary time, expertise/local needs, flexibility, speed
- (D) Consideration of the disadvantages of delegated legislation, eg, difficulty in controlling delegated bodies, lack of publicity/public awareness, unreasonable use of delegated legislation

Mark bands

- 16 - 20 The candidate demonstrates sound understanding of (A) and presents a sound account of both (C) and (D). Reference to (B) may compensate for any minor deficiencies.
- 11 – 15 The candidate demonstrates sound understanding of (A) (**max 11**) and attempts (C) and (D). Reference to (B) may compensate for any minor deficiencies
or
the candidate displays some understanding of (A) (C) and (D), although neither description or evaluation are fully developed. Reference to (B) may compensate for any minor deficiencies
or
the candidate demonstrates sound understanding of both (C) and (D) but does not provide an adequate explanatory framework as in (A) or (B).
- 6 – 10 The candidate begins to display some understanding by introducing discussion of any of the material in (A) – (D). Where the candidate attempts to introduce discussion of material across the range, this will be superficial.
- 1 - 5 The answer consists of brief, fragmented comments so that no explanation or discussion 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) There are various influences operating on Parliament before and during the legislative process. Describe and illustrate these influences. (20 marks)

Potential content

- (A) Explanation of a range of influences on Parliament (eg the Law Commission, Royal Commissions, Government, M.P.s, communication media, pressure groups etc)
- (B) Illustration of the above by reference to particular reports, campaigns, Bills or pieces of legislation

Mark bands

- 16 - 20 The candidate demonstrates sound description of **three or more** of (A) and is able to provide appropriate illustration of these influences as in (B). Where the candidate describes and illustrates a range of influences, the descriptions may be less comprehensive
or
the candidate provides a comprehensive explanation of two influences as in (A) and is able to provide appropriate illustration as in (B).
- 11 – 15 The candidate demonstrates a clear understanding of **at least two** of (A) and makes use of some examples as in (B)
or
the candidate presents a sound account of (A) **or** (B).
- 6 – 10 The candidate displays some understanding by introducing consideration of any of the material in (A) - (B)
or
the candidate 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 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 the advantages and disadvantages of any two of these influences.	(10 marks)
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Potential content

- (A) Advantages of two of the influences discussed in 3 (a) (eg representation of public opinion, expertise, independence, influence, access to parliament/power etc)
- (B) Disadvantages of two of the influences discussed in 3 (a) (eg moral panics, expense, degree of independence and influence etc)

Mark bands

- 8 – 10 The candidate displays sound understanding of (A) and (B) in relation to **two** influences, though there may be some imbalance as between the discussion of (A) and (B) and/or as between the influences.
- 5 – 7 The candidate demonstrates a clear understanding of (A) **or** (B) in relation to **two** influences (**max 6**) and refers to the other.
or
the candidate displays sound understanding of (A) and (B) in relation to **at least one** influence.
or
the candidate demonstrates clear understanding of (A) in relation to one influence and (B) in relation to another influence.
or
the candidate displays some understanding of (A) and (B) in relation to **two** influences.
- 3 – 4 The candidate displays some understanding by introducing consideration of any of the material in (A) - (B)
or
the candidate attempts to introduce material across the range but the discussion is inadequate or suffers from error or confusion.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no discussion emerges
or
a more substantial attempt at discussion is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

4

Total for this question: 30 marks

- (a) Describe the different types of European Union Law, using examples to illustrate where appropriate. (10 marks)

Potential content

- (A) Description of primary law (Treaties) with possible use of examples
- (B) Description of secondary legislation (Regulations, Directives and Decisions) with possible use of examples

Mark bands

- 8 – 10 The candidate demonstrates a sound understanding of both (A) and (B).
- 5 – 7 The candidate demonstrates some understanding of both (A) and (B)
or
the candidate demonstrates a sound understanding of (A) (**max 5**) or (B).
- 3 – 4 The candidate demonstrates some understanding of any of (A) – (B). Where the candidate attempts to introduce discussion of material across the range, this will be superficial.
- 1 – 2 The answer consists of brief, fragmented comments so that no explanation or distinction emerges
or
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

(b) Describe the effect of UK membership of the European Union on English law. Comment on whether European law is an important source of law. (20 marks)

Potential content

- (A) Description of general provisions of European Communities Act 1972; issues of parliamentary supremacy
- (B) The effect on English courts and tribunals (Article 234 Preliminary Rulings Procedure)
- (C) Description of the concept of direct effect
- (D) General issues of interpretation and approach
- (E) Numerous changes in the law, eg, company law, tachographs, employment, consumer protection etc.
- (F) Comment as to the importance of European Law

Mark bands

- 16 - 20 The candidate demonstrates sound understanding of at least **two** of (A) – (E) and presents a convincing commentary as in (F)
or
the candidate displays some understanding of three or more of (A) – (E) but the explanations are not fully developed and presents a convincing commentary as in (F).
- 11 – 15 The candidate demonstrates sound understanding of **one** of (A) – (E) (**max 11**) and attempts a commentary as in (F)
or
the candidate displays some understanding of at least two of (A) – (E) (**max 11**) and attempts a commentary as in (F).
- 6 – 10 The candidate begins to display understanding of at least **one** of (A) – (E) but the descriptions are inadequate or suffer from error or confusion
or
the candidate attempts a commentary as in (F) without providing an explanatory framework.
- 1 - 5 The answer consists of brief, fragmented comments so that no coherent discussion 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) Describe the various judicial approaches (rules) to interpreting statutes. Illustrate your description with cases. (20 marks)

Potential content

- (A) Explanation of rules of interpretation (literal, golden and mischief “rules”, purposive approach)
- (B) Explanation of use of intrinsic and extrinsic aids
- (C) Explanation of presumptions, rules of language
- (D) Appropriate case illustration

Mark bands

- 16 - 20 The candidate demonstrates a sound understanding of (A) and is able to make use of appropriate cases as in (D), (although there may be some imbalance in treatment as between them). Reference to (B) and/or (C) may compensate for minor deficiencies in explanation or case illustration.
- 11 – 15 The candidate displays a sound understanding of (A) and refers to **one** other of (B) – (D)
or
the candidate demonstrates some understanding of **two** or more of (A) - (D).
(No (A) – **max 12.**)
- 6 – 10 The candidate displays some understanding by introducing consideration of any of the material in (A) – (D)
or
the candidate attempts to introduce discussion of material across the range but the descriptions are inadequate and suffer from error or confusion.
- 1 - 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation or illustration emerges
or
a more substantial attempt at explanation and/or illustration is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

(b) Discuss the advantages and disadvantages of any **two** of these different judicial approaches (rules). *(10 marks)*

Potential content

- (A) Advantages of the first approach (rule)
- (B) Disadvantages of the first approach (rule)
- (C) Advantages of second approach (rule)
- (D) Disadvantages of second approach (rule)

Mark bands

- 8 – 10 The candidate displays sound understanding of any **three** of (A) – (D), although there may be some minor imbalance in treatment as between them.

- 5 – 7 The candidate demonstrates a clear understanding of any **two** of (A) – (D) (**max 6**) and refers to the other
or
the candidate demonstrates some understanding of any **three** of (A) and (D).

- 3 – 4 The candidate displays some understanding by introducing consideration of any of the material in (A) – (D)
or
the candidate attempts to introduce material across the range but the discussion is inadequate or suffers from error or confusion.

- 1 – 2 The answer consists of brief, fragmented comments so that no evaluation or assessment emerges
or
a more substantial attempt at evaluation is fundamentally undermined by mistakes and confusion.

- 0 The answer contains no relevant information.

Assessment grid

	AO1	AO2	AO3
Question 1	20	10	
Question 2	20	10	
Question 3	20	10	
Question 4	20	10	
Question 5	20	10	
	(× 2 from 5)	(× 2 from 5)	
AO3			5
Total marks	40	20	5
% of AS	18.5	9	2.5
% of A Level	9.25	4.5	1.25