



ASSESSMENT and
QUALIFICATIONS
ALLIANCE

Mark scheme January 2004

GCE

Law

Unit LAW1

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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) Explain how the doctrine of precedent operates within the English system of case law.
(20 marks)

Potential Content

- (A) Explanation of the hierarchy of the courts
- (B) Explanation of *ratio decidendi* and *obiter dicta*
- (C) Explanation of law reports provision and/or explanation of binding and persuasive precedent
- (D) Explanation of the variety of options available to a judge, eg following, distinguishing, overruling and disapproving precedents

Mark Bands

- 16 – 20 The candidate deals with all three of (A)-(D) as follows:
max 20: two sound, one clear
max 18: one sound, two clear
max 16: three clear **or** one sound, one clear, one some.
- 11 – 15 The candidate deals with (A)-(D) as follows:
max 15: two clear, one some
max 14: one sound **or** two clear **or** one clear, two some
max 13: one clear, one some **or** three some
max 11: one clear **or** two some.
- 6 – 10 The candidate displays some understanding by introducing consideration of any of the material in (A)-(D). Where a candidate introduces material across the range of (A)-(D), this may be superficial.
- 1 – 5 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) Discuss the advantages of the system of precedent.

(10 marks)

Potential Content

(A) Discussion of the advantages of judicial precedent, eg detail found in Law Reports, certainty, flexibility, etc

Note: Discussion of a wider range compensates for less detail in discussion.

Mark Bands

- 8 – 10 The candidate gives a sound account 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) but the discussion is inadequate or suffers from errors or confusion. A simple list of advantages merits **max 4**.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no discussion 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) Identify the different forms of European Union legislation and explain how they become part of English law. (15 marks)

Potential Content

- (A) Identification and explanation of primary law (Treaties) and how it becomes part of English Law
- (B) Identification and explanation of secondary legislation (Regulations, Directives and Decisions) and how it becomes part of English Law

Mark Bands

- 12 - 15 The candidate deals with (A) – (B) as follows:
max 15: two sound
max 13: one sound, one clear
max 12: B sound.
- 8 - 11 The candidate deals with (A) – (B) as follows:
max 11: two clear
max 10: sound A **or** clear B
max 9: some A and some B
max 8: clear A **or** some B.
- 4 - 7 The candidate begins to display some understanding by introducing discussion of any of the material in (A)-(B). Where the candidate introduces material across the range, it will be superficial and any assessment will be based on an inadequate explanatory framework.
- 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) Briefly explain what is meant by Parliamentary supremacy and discuss the extent to which UK membership of the European Union has affected both Parliament and the courts. (15 marks)

Potential Content

- (A) Brief explanation of Parliamentary supremacy
- (B) Brief explanation and assessment of the effect of limitations on parliamentary supremacy – general provisions of the European Communities Act 1972
- (C) Brief explanation and assessment of the effect of limitations on the courts, eg (Article 234 Preliminary Ruling Procedure), issues of interpretation and approach

Mark Bands

- 12 - 15 The candidate deals with (A)–(C) as follows:
max 15: two sound, one clear
max 13: one sound, two clear
max 12: three clear **or** one sound, one clear, one some.
- 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 some 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 so that no coherent explanation emerges.
- 0 The answer contains no relevant information.

3**Total for this question: 30 marks**(a) Describe any **three** influences on Parliament as a law maker. (15 marks)**Potential Content**

- (A) Description of one influence on Parliament
- (B) Description of a second influence on Parliament
- (C) Description of a third influence on Parliament

(Influences can include, for example, the Law Commission, Royal Commissions, MPs, media and pressure groups)

Mark Bands

- 12 - 15 The candidate deals with (A)–(C) as follows:
max 15: two sound, one clear
max 13: one sound, two clear
max 12: three clear **or** one sound, one clear, one some.
- 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 demonstrates some 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 - 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) Identify and explain the advantages and disadvantages of any **two** of those influences.

(15 marks)

Potential Content

- (A) Identification and explanation of the advantages of one influence
- (B) Identification and explanation of the disadvantages of one influence
- (C) Identification and explanation of the advantages of a second influence
- (D) Identification and explanation of the disadvantages of a second influence

Note: Discussion of a wider range compensates for less detail in explanation

Mark Bands

- 12 - 15 The candidate deals with (A)–(D) as follows:
max 15: two sound, one clear
max 13: one sound, two clear
max 12: three clear **or** one sound, one clear, one some.
- 8 - 11 The candidate deals with (A)–(D) 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 provides some identification and explanation of any of (A)-(D). Where the candidate attempts to introduce discussion of material across the range, this will be superficial.
- 1 - 3 The answer consists of brief, fragmented comments or examples 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.

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

- (a) Explain what is meant by delegated legislation. Outline how this form of legislation is controlled. (20 marks)

Potential Content

- (A) Explanation of delegated legislation, including “enabling Act” and forms of delegated legislation, eg Bye-laws, Ministerial Regulations, Orders in Council
- (B) Outline of judicial controls over delegated legislation, eg doctrine of *ultra vires*, reasonableness
- (C) Outline of parliamentary controls of delegated legislation, eg positive **and** negative processes in “laying the delegated legislation before Parliament”, role of the Scrutiny Committee, repeal of the enabling Act, Ministerial approval

Mark Bands

- 16 - 20 The candidate deals with (A)–(C) as follows:
max 20: two sound, one clear
max 18: one sound, two clear
max 16: three clear **or** one sound, one clear, one some.
- 11 - 15 The candidates deals with (A)–(C) as follows:
max 15: two clear, one some
max 14: one sound, **or** two clear **or** one clear, two some
max 13: one clear, one some **or** three some
max 11: one clear **or** two some.
- 6 - 10 The candidate displays some 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 of 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) Consider the advantages and disadvantages of delegated legislation.

(10 marks)

Potential Content

- (A) Consideration of the **advantages** of Parliament delegating its law-making powers to others, eg expertise, local needs, speed, flexibility, saving Parliamentary time
- (B) Consideration of the **disadvantages** of Parliament delegating its law-making powers to others, eg lack of public awareness, difficulty in controlling delegated bodies

Mark Bands

- 8 - 10 The candidate deals with (A)–(B) as follows:
max 10: two sound
max 8: one sound, one clear.
- 5 - 7 The candidate deals with (A)–(B) as follows:
max 7: two clear
max 6: one sound, **or** one clear, one some
max 5: one clear, **or** two some.
- 3 - 4 The candidate displays some understanding by introducing consideration of any of the material in (A)–(B) but the descriptions are inadequate or suffer from error or confusion.
- 1 - 2 The answer consists of brief, fragmented comments so that no coherent explanation emerges.
- 0 The answer contains no relevant information.

5

Total for this question: 30 marks

- (a) Explain the different **methods** used by judges when interpreting the meaning of an Act of Parliament. (20 marks)

Potential Content

- (A) Explanation of rules of interpretation (literal, golden and mischief “rules”, purposive approach)
- (B) Internal and external aids, Hansard, Interpretation Act
- (C) Explanation of presumptions and/or Rules of Language

Note: For any candidate who does not deal with Potential Content (A) – **max 12**

Mark Bands

- 16 – 20 The candidate deals with (A)–(C) as follows:
max 20: two sound, one clear
max 18: one sound, two clear
max 16: three clear **or** one sound, one clear, one some.
- 11 – 15 The candidate deals with (A)–(C) as follows:
max 15: two clear, one some
max 14: one sound **or** two clear **or** one clear, two some
max 13: one clear, one some **or** three some
max 11: one clear **or** two some.
- 6 - 10 The candidate displays some understanding by introducing consideration of any of the material in (A)-(C)
or
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 or evaluation emerges.
- 0 The answer contains no relevant information.

- (b) Choose **one** of the methods you have identified in your answer to 5(a). Briefly consider the advantages and disadvantages of this method. (10 marks)

Potential Content

- (A) Consideration of the advantages of the method identified in the answer to 5(a)
- (B) Consideration of the disadvantages of the method identified in the answer to 5(a)
- NB** Comparisons would enhance the answer

Mark Bands

- 8 - 10 The candidate deals with (A)–(B) as follows:
max 10: two sound
max 8: one sound, one clear.
- 5 - 7 The candidate deals with (A)–(B) as follows:
max 7: two clear
max 6: one sound **or** one clear, one some
max 5: one clear **or** two some.
- 3 - 4 The candidate displays some understanding by introducing consideration of any of the material in (A)-(B) but the discussion is inadequate or suffers from error or confusion.
- 1 - 2 The answer consists of brief, fragmented comments so that no discussion 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)

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