

GCE 2005
January Series



Mark Scheme

Law Specification

LAW1 Law Making

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

Copyright © 2005 AQA and its licensors. All rights reserved.

COPYRIGHT

AQA retains the copyright on all its publications. However, registered centres for AQA are permitted to copy material from this booklet for their own internal use, with the following important exception: AQA cannot give permission to centres to photocopy any material that is acknowledged to a third party even for internal use within the centre.

Set and published by the Assessment and Qualifications Alliance.

The Assessment and Qualifications Alliance (AQA) is a company limited by guarantee, registered in England and Wales 3644723 and a registered Charity 1073334. Registered address AQA, Devas Street, Manchester M15 6EX.

Dr Michael Cresswell, Director General.

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 the major features of the doctrine of judicial precedent in the English system of case law. (20 marks)

Potential Content

- (A) Description of the hierarchy of the courts
- (B) Description of *ratio decidendi* and *obiter dicta*
- (C) Description of law reports provision and/or explanation of binding and persuasive precedent

NB Description of the variety of options available to a judge, eg following, distinguishing, overruling and disapproving precedents, may enhance the quality of (A)-(C).

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** 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). Where a candidate introduces material across the range of (A)-(C), 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) Consider **three disadvantages** of the doctrine of judicial precedent.

(10 marks)

Potential Content

- (A) Consideration of first disadvantage
- (B) Consideration of second disadvantage
- (C) Consideration of third disadvantage

Note: Disadvantages can include complexity, volume, lack of democracy, unpredictability, rigidity, retrospective effect, lack of research and unsystematic development of the law.

Mark Bands

- 8 – 10 The candidate deals with (A) - (C) as follows:
max 10: two sound, one clear
max 9: two sound, one some **or** one sound, two clear
max 8: two sound **or** one sound, one clear, one some **or** three clear.
- 5 – 7 The candidate deals with (A) - (C) as follows:
max 7: one sound, one clear **or** two clear, one some
max 6: one sound **or** two clear **or** one clear, two some
max 5: one clear, one some **or** three some.
- 3 – 4 The candidate displays some understanding by introducing consideration of any of the material in (A)- (C) but the discussion is inadequate or suffers from errors or confusion.
- 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) Outline three influences on Parliament as a law maker.

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

- (A) Outline of first influence
- (B) Outline of second influence
- (C) Outline of third influence

Note: Influences on Parliament as a law maker can include the Law Commission, Royal Commissions, 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 some **or** 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, this 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) Identify and discuss **one advantage** of **each** of the influences that you have outlined in your answer to 2(a). *(15 marks)*

Potential Content

- (A) Identification and discussion of an advantage of the first influence
- (B) Identification and discussion of an advantage of the second influence
- (C) Identification and discussion of an advantage of the third influence

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 some **or** 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 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) Identify and outline the functions of any **three** institutions of the European Union. (15 marks)**Potential Content**

- (A) Identification and outline of the functions of one of the institutions of the European Union
- (B) Identification and outline of the functions of a second institution of the European Union
- (C) Identification and outline of the functions of a third institution of the European Union

Note: The institutions include the Council of Ministers, European Commission, European Parliament and the European Court of Justice.

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 some **or** 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). Where the candidate attempts to introduce material across the range, this will be superficial.
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no description emerges
or
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

- (b) Outline what is meant by the doctrine of parliamentary supremacy and briefly discuss **two** possible limitations to this doctrine. **(15 marks)**

Potential Content

- (A) Outline of the doctrine of parliamentary supremacy
- (B) Brief discussion of first possible limitation on the doctrine of parliamentary supremacy
- (C) Brief discussion of second possible limitation on the doctrine of parliamentary supremacy

Note: Limitations on the doctrine of parliamentary supremacy can include – European Treaties, delegated legislation, the courts and possible reference to political constraints.

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 some **or** 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)–(C). 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 description 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) Using examples, briefly explain the meaning of delegated legislation. Include in your answer an outline description of how **Parliament** exercises control over the process of delegated legislation. (20 marks)

Potential Content

- (A) Brief explanation of delegated legislation to include for example explanation of how power is delegated: “Enabling Act”, explanation of Ministerial Regulations, Bye Laws and Orders in Council.
- (B) Use of appropriate examples
- (C) Outline description of Parliamentary Control, eg role of the Scrutiny Committee, positive and negative processes in laying the delegated legislation before parliament and repeal of the enabling Act

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: one sound, one clear, one some **or** three clear.
- 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 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 answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

(b) Briefly discuss **three advantages** of delegated legislation as a source of law. (10 marks)

Potential Content

- (A) Identification and brief discussion of the first advantage
- (B) Identification and brief discussion of the second advantage
- (C) Identification and brief discussion of the third advantage

Note: Advantages can include: saves parliamentary time, use of technical/local expertise, flexibility, speed.

Mark Bands

- 8 – 10 The candidate deals with (A) - (C) as follows:
max 10: two sound, one clear
max 9: two sound, one some **or** one sound, two clear
max 8: two sound **or** one sound, one clear, one some **or** three clear.
- 5 – 7 The candidate deals with (A) - (C) as follows:
max 7: one sound, one clear **or** two clear, one some
max 6: one sound **or** two clear **or** one clear, two some
max 5: one clear, one some **or** three some.
- 3 - 4 The candidate displays some understanding by introducing consideration of any of the material in (A)-(C) 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
or
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

5

Total for this question: 30 marks

<p>(a) Judges use a range of rules (approaches) and aids to interpreting an Act of Parliament.</p> <p>Explain how two of these rules and one of these aids are used by judges in interpreting a statute. <i>(20 marks)</i></p>

Potential Content

- (A) Explanation of first rule of interpretation
- (B) Explanation of second rule of interpretation
- (C) Explanation of one aid to interpretation

Note: Rules can include literal, golden, mischief/purposive rules or approaches, and/or rules of language. Aids can include either intrinsic or extrinsic aids.

Candidates may develop one specific aid within a category or pursue a wider approach.

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: one sound, one clear, one some or three clear.
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 or a more substantial answer is fundamentally undermined by mistakes and confusion.
0	The answer contains no relevant information.

(b) Choose **one** of the rules (approaches) to statutory interpretation.

Discuss the advantages and disadvantages of this particular rule (approach). *(10 marks)*

Potential Content

(A) Discussion of one advantage

(B) Discussion of one disadvantage

(C) Discussion of one advantage / disadvantage, or further comment / illustration

Note: Where candidates discuss a wider range of advantages and/or disadvantages, this may substitute for any deficiencies in discussion in any or all of (A), (B) or (C).

Mark Bands

- 8 – 10 The candidate deals with (A) - (C) as follows:
max 10: two sound, one clear
max 9: two sound, one some **or** one sound, two clear
max 8: two sound **or** one sound, one clear, one some **or** three clear.
- 5 – 7 The candidate deals with (A) - (C) as follows:
max 7: one sound, one clear **or** two clear, one some
max 6: one sound **or** two clear **or** one clear, two some
max 5: one clear, one some **or** three 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 answer 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)

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