

GCE 2005
January Series



Mark Scheme

Law Specification

LAW6 Concepts of Law

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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Dr Michael Cresswell, Director General.

General Marking Guidance

You should remember that your marking standards should reflect the levels of performance of candidates, mainly 18 years old, 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. **8-10 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. **4-7 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. **1-3 marks**
- 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**

Discuss the suggestions that moral rules are an essential foundation for legal rules, and that law should promote moral values. *(30 marks)*

Potential Content

- (A) Explanation/evaluation of the relationship between law and morals; the meaning and nature of legal and moral rules: similarities and differences between legal and moral rules; areas of overlap; areas where each is distinct. Appropriate examples and illustration
- (B) Evaluation of the argument that law should promote moral values: theoretical and/or specific analysis (eg Hart/Devlin debate, criticism of particular decisions)

NB A good theoretical evaluation may be sound even in the absence of examples/illustration.

Mark Bands

The candidate deals with (A) and (B) as follows:

- 26 – 30 Sound (A) and (B)
 or
 sound on one, clear on the other (**max 26**).
- 21 - 25 Sound on one, some on the other (**max 23**)
 or
 clear on both.
- 16 - 20 Sound on one (**max 18** if no (B))
 or
 clear on one, some on the other.
- 11 - 15 Clear on one
 or
 some on both (**max 11** for one).
- 6 – 10 Some on one.
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge
 or
 a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

2

Total for this question: 30 marks

Write a critical analysis of the relationship between law and justice.
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(30 marks)

Potential Content

- (A) Explanation of the different possible meanings of 'justice' - from the simple 'fairness' approach to distinctions between procedural and substantive justice, perhaps taking account of the views of philosophers. Explanation of the meaning of law
- (B) Evaluation of the 'relationship' between law and justice - almost certainly developing an explanation of the extent to which law does, or does not, achieve justice
- (C) Analysis of relevant area(s) of law with use of appropriate examples

Mark Bands

- 26 – 30 The candidate presents a sound examination of the issues which incorporates all three elements (A)-(C), and soundly relates (C) to (A) in making the evaluation in (B).
- 21 - 25 The candidate presents an examination of all three elements but there is some weakness in one which prevents the account from being fully rounded (for example, there is a little hesitancy in the discussion of (A) **or** the examples chosen in (C) are not properly integrated into the analysis **or** the evaluation in (B) does not quite succeed in relating (A) to (C)).
- 16 - 20 The candidate develops sound explanation of (A) or (C) without being able to develop explanation of the other sufficiently to permit a fully coherent evaluation in (B)
or
develops sound explanation of (A) and (C) but does not attempt the evaluation in (B) (**max 18**)
or
attempts to deal with all three elements but with some degree of superficiality or confusion.
- 11 - 15 The candidate presents sound explanation of (A) or (C)
or
there is an attempt to develop the answer largely by way of (B) against an inadequate framework of explanation in aspects of (A) and/or (C)
or
the candidate attempts to deal with all three elements but neither explanation nor evaluation are properly developed or related to each other so that the answer tends to lack coherence.
- 6 – 10 The candidate displays some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate attempts to deal with a range of material from (A)-(C), explanations will be superficial and may show significant confusion, whilst evaluation will be poorly expressed and not well related to the explanations.

- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge
or
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

3

Total for this question: 30 marks

Consider what is meant by “fault”, and discuss its significance for liability in English law. (30 marks)

Potential Content

- (A) Explanation of the possible meaning of fault (which, inevitably, will take account of the civil and/or criminal law context) - explanation should explore possible variations in levels of fault, where appropriate. Discussion of the extent of the requirement for fault in the chosen area(s) - both in civil and criminal law, this will involve discussion not only of fault requirements (including variations) but also some discussion of liability in the absence of fault (strict liability and, perhaps, vicarious liability)
- (B) Evaluation of the importance of fault - this will involve assessing how important it is and how important it should be, and should be carefully related to the discussion in (A) and (C)
- (C) Identification of appropriate area(s) of law and use of relevant examples

Mark Bands

- 26 – 30 The candidate presents a sound examination of the issues which incorporates all three elements (A)-(C), and soundly relates evaluation to explanation. There may be some imbalance in treatment across the elements but this will not undermine the quality of the explanation and analysis offered.
- 21 – 25 The candidate demonstrates a sound understanding of any two of (A) to (C) with reference to the third
or
all three elements are dealt with but the explanations are not fully developed or not related to each other or to the discussion in a fully coherent way.
- 16 – 20 The candidate demonstrates sound understanding of one of (A)-(C) with reference to another
or
the candidate demonstrates clear understanding of any two of (A)-(C)
or
there is some discussion of all three of (A)-(C).
- 11 – 15 The candidate presents clear discussion of any one of the elements (A)-(C)
or
the candidate attempts to deal with the range of material but explanation and evaluation are not developed and (C) is not properly utilised so that the answer tends to lack coherence.
- 6 – 10 The candidate displays some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate attempts to deal with a range of material from (A)-(C), explanation and evaluation will be superficial and may show significant confusion, whilst examples will be poorly expressed or not well related to the explanation and evaluation.

- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation or evaluation emerge
or
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

4

Total for this question: 30 marks

It is often suggested that one of the functions of law is to promote a balance between conflicting interests. Explain and discuss this suggestion. (30 marks)

Potential Content

- (A) Identification and explanation of appropriate area(s) of law – whether substantive, procedural, or aspects of institutions and structure. Explanation of the interests which may allegedly be in conflict, and of what might represent an ‘appropriate balance’ between those interests
- (B) Analysis of the area(s) of law selected which focuses in particular on the devices by which the balance may be engineered. Evaluation of the extent to which the balance can be achieved by law, taking account of the explanations in (A)

Mark Bands

The candidate deals with (A) and (B) as follows:

- 26 – 30 Sound (A) and (B)
 or
 sound on one, clear on the other (**max 26**).
- 21 - 25 Sound on one, some on the other (**max 23**)
 or
 clear on both.
- 16 - 20 Sound on one (**max 18** if no (B))
 or
 clear on one, some on the other.
- 11 - 15 Clear on one
 or
 some on both (**max 11** for one).
- 6 – 10 Some on one.
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge
 or
 a more substantial attempt at explanation and evaluation 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 Level Law (LAW6)

UNIT 6	AO1 No. of Marks	AO2 No. of Marks	AO3 No. of Marks
Question 1	20	10	
Question 2	20	10	
Question 3	20	10	
Question 4	20	10	
	(x2 from 4)	(x2 from 4)	
AO3 (Quality of written communication for the paper as a whole)			10
Total marks	40	20	10
% of the A2	23	11	6
% of the A Level	11.5	5.5	3