



GCE MARKING SCHEME

SUMMER 2016

LAW - PAPER LA4

**UNDERSTANDING LAW IN CONTEXT:
FREEDOM, THE STATE AND THE INDIVIDUAL**

**OPTION 1: CONTRACT & CONSUMER LAW
1254/01**

INTRODUCTION

This marking scheme was used by WJEC for the 2016 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

It is hoped that this information will be of assistance to centres but it is recognised at the same time that, without the benefit of participation in the examiners' conference, teachers may have different views on certain matters of detail or interpretation.

WJEC regrets that it cannot enter into any discussion or correspondence about this marking scheme.

GENERAL MARKING GUIDANCE

General Instructions to LA4-01 Marking Scheme

Please refer to the marking matrix sent to you by the WJEC and apply the marks directed. The matrix reflects the assessment objectives for A2 Level Law and the marks are distributed precisely on the basis of these objectives. The various levels in the mark scheme according to the assessment objectives will be standardised at the Examiners' Meeting on the basis of sample scripts. At this time we can determine precisely what is reasonable in terms of the various components in the mark scheme. The marking instructions attached therefore, represent only a broad outline as to what is required.

You will note that marks are allocated for spelling, grammar and syntax. All questions are marked out of 25. You will be required to provide 10 scripts, that is, a cross-section of marks for the Chief Examiner very early in your marking work. You may be instructed to alter your pattern of marking as a result of this scrutiny. All Assistant Examiners shall do this in order to ensure that standards are acceptable and consistent. A second group of scripts will be required. If there is anything unusual about an answer or about the script please make a note on the front cover for the Chief Examiner. Borderline scripts can be read again at the grading stage and such notes will be helpful. Please initial all scripts in the box provided. If you have any queries then please contact the **Principal Examiner Professor Iwan Davies, Tel: 01792 295832 or at home, Tel: 01792 882232**. If you have any administrative queries - contact the **Subject Officer Joanna Lewis on (029) 20265167 or e-mail joanna.lewis@wjec.co.uk**

Whilst comments on each question are not required you are nevertheless requested to isolate your final mark into the categories anticipated in the mark scheme. Please examine the rubric carefully as candidates are only required to answer **two** questions from Section A and **one** question from Section B.

Principles of Marking ***(for LA4-01)***

1. The assessment is based upon levels of attainment for Objectives AO1, AO2 and AO3, as indicated in the mark scheme.
2. The levels of assessment used in the mark schemes indicate the relative value of knowledge, understanding and skills which are relevant and may occur in the answers. In order to allow for different approaches by the candidates and to achieve flexibility, the sub-totals of each assessment objective must be indicated at the end of each answer, in accordance with A2 suggested weighting.
3. The range of marks allocated to each of the levels for each of the objectives is recorded in the mark schemes.

Levels-of-response marking is to be used in all questions and parts of questions. The whole response is to read and then, taking everything into account, allocate to the level of 'best fit' on the mark scheme. There is usually a band of marks allocated to each level: discrimination will be made with reference to the development of the answer.

4. The question specific mark scheme indicates the kind of material and analysis that a candidate might display in his/her answer. This is neither prescriptive nor exhaustive but indicates the general level likely to be achieved by a 17/18 year old under examination conditions having followed an appropriate course of study. Other approaches of equal merit will be awarded at the appropriate level. The question specific mark scheme is NOT a set of model answers and every point does not need to be covered in order to achieve full marks.
5. Examiners should not hesitate to award full marks to answers which are well argued and well presented or which show a freshness of treatment even if they do not fall fully within the suggested marking scheme, provided the answer demonstrates a high level of understanding and argument relevant to the question as set.
6. Wholly narrative or descriptive answers to questions requiring analysis and evaluation can only receive marks for Assessment Objective 1 (Knowledge and Understanding) and full marks can be awarded within this section if the answer so justifies.
7. For evaluation, at the top for AS level, it will be sufficient for candidates to demonstrate a sound analysis of reasoning and arguments in relation to legal issues. Candidates at the top level of A2 will be expected to have progressed beyond this, as demonstrated by the level 4 descriptor for Assessment Objective 2 in the A2 mark schemes.

MARKING INSTRUCTIONS

ASSESSMENT

1. Each question is to be marked according to the stated level descriptors in the mark schemes. In such marking, it is essential that the whole response to a part-question is read and then allocated to the level it best fits. Examiners may wish to underline significant features or make a brief comment to justify the level allocated.
2. Where a band of marks is allocated to a level, discrimination will be made with reference to the development of the response.
3. Aim to use the full mark range. Do not hesitate to award maximum marks to responses which meet the criteria of the relevant level descriptor in the Matrix. Equally, responses which are completely irrelevant should be awarded no marks.
4. Apply the principle of salvage between part-questions in an essay so that due credit is given for relevant knowledge, understanding and evaluation, even if the material is misplaced.

METHOD OF MARKING

5. No half marks or bonus marks are to be awarded under any circumstances.
6. A ringed total, indicating the total marks gained in responses to all parts of a question, should be shown at the end of each complete answer.
7. Any written comments on scripts should be factual, preferably using the terminology found in the level descriptors. No reference should be made to the possible grade achieved and no derogatory comment should be made. **Always mark using a red pen. Pencil or any other colour is not acceptable.**
8. The key to fair marking is consistency. Do not change your marking pattern once scripts have been despatched to the WJEC.

SAMPLE SCRIPTS

9. Send ten scripts to the Principal Examiner by first class letter post within 60 hours of the standardisation meeting of examiners. Do not send any scripts to the WJEC until the Principal examiner contacts you by phone or letter. **Please ensure that you send in to WJEC at least 70-100 scripts well in advance of the return of scripts date to ensure that the WJEC can select specimen scripts for standardisation purposes.**

EXAMINER'S REPORT

10. A written question-by-question report on the performance of candidates, as evidenced in the scripts you have marked, should be sent to the Principal Examiner within FIVE DAYS of the stated date for completion of marking. Your report is most helpful if it contains comments on frequent misunderstandings, weaknesses, common errors and questions which caused difficulties, as well as positive qualities, good practice and encouraging features. A comment that a particular question was answered well or badly is of no value unless accompanied by some specific explanation.

GCE LAW - PAPER LA4

**UNDERSTANDING LAW IN CONTEXT:
FREEDOM, THE STATE AND THE INDIVIDUAL**

**OPTION 1: CONTRACT & CONSUMER LAW
1254/01**

Answer **two** questions from Section A and **one** question from Section B.

SECTION A

- 1. Critically evaluate the protection provided to consumers for defective goods which cause injury. [25]**

Credit reference to:

- Consumer protection under contract law.
- Consumer protection under the law of negligence.
- Consumer protection under the Consumer Protection Act 1987.
- The rationale for consumer protection under the Consumer Protection Act 1987.
- The limitations on protection given by contract, negligence and the Act.
- Credit will be given for relevant citation.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

Marks	AO3
3	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

2. Consider critically the legal position if a consumer credit contract has been improperly executed. [25]

Credit reference to:

- Formulation of a consumer credit agreement and s56 CCA 1974. Compare s75.
- Withdrawal from prospective agreements.
- Making the Agreement and key financial information under the 2004 Regulations s60-64 CCA.
- Improper execution of the agreement and s65(1) CCA.
- Cancelling a regulated agreement.
- Extortionate credit terms.
- Credit will be given for relevant citation.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-5	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Marks	AO3
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2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

3. Evaluate the legislation which protects consumers against traders who offer a sub-standard service. [25]

Credit reference to:

- Consumer Protection Act.
- Unfair Trading Regulations 2008.
- Unfair commercial practices and the Unfair Terms in Consumer Contract Regulations 1999.
- What is material information? What is aggression when there is undue influence?
- Note schedule 1 of the CPUTR (2008).
- Candidates will be given for relevant citation.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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Marks	AO3
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2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
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0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

4. Critically consider the protection provided by consumer law to those who wish to buy products online. [25]

Credit reference to:

- Unsolicited Goods and Service Act 1971.
- Consumer Protection (Distance Selling) Regulations 2000.
- Electronic Communications Act 2000.
- Electronic Signatures Regulations 2002
- Electronic Commerce (EC Directive) Regulations 2002.
- Electronic Commerce Directive 2000.
- Cross border considerations.
- Candidates will be given for relevant citation.

	AO1
Marks	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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	AO2
Marks	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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2	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

SECTION B

Answer one question.

5. Study the text below and answer the questions based on it

'Office of Fair Trading has closed

The Office of Fair Trading was responsible for protecting consumer interests throughout the UK. It closed on 1 April 2014 with its responsibilities passing to a number of different organisations. For advice or help with a consumer problem, contact Citizens Advice'.

[Source: Office of Fair Trading Website]

(a) Explain the reasons for the abolition of the Office of Fair Trading. [11]

Credit reference to:

- Background to OFT established under Fair Trading Act 1973 with its role modified and its powers changed under the Enterprise Act 2002.
- Role of BIS – establishment of Competition and Market Authority and the Financial Conduct Authority.
- Impact of reform on driving up standards and enforcement.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

Marks	AO1
Knowledge and Understanding	
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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(b) Evaluate the mechanisms available for consumer law reform in England and Wales. [14]

Credit reference to:

- Role of Law Commission citing examples.
- Role of Government Agencies.
- Review by Judges.
- Role of Pressure Groups.
- Integration of EU market promoting reform and associated political movement.
- Candidates will be given credit for relevant citation.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO2
	Skills
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
7-10	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation, making a convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
3-6	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way, making a limited synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-2	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply the law to a given factual situation in a generally inaccurate and unsubstantiated way, making some basic synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

6. Study the text below and answer the questions based on it

“The movement of the progressive societies has hitherto been a movement from Status to Contract”

[Sir Henry Maine]

“Freedom of contract is a qualified and not an absolute right”

[Chief Justice Charles Hughes]

(a) By reference to Consumer Protection legislation and Consumer Credit explain the development of the exceptions to the freedom of contract principle [11].

Credit reference to:

- Rise of welfarism and the consumer as having status in law.
- Interface between civil law and criminal sanctions for false statement and safety consideration.
- Role of enforcement agencies.
- Development of statutory implied terms.
- Freedom of contract tends to monopoly and legislative response
- Credit will be given for relevant citation.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from a mostly effective communication of meaning.

Marks	AO1
	Knowledge and Understanding
8-9	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
6-7	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical applications of the law.

(b) Evaluate the significance of human rights in the development of common law in England and Wales

[14]

Credit reference to:

- The application of the Human Rights Act.
- Possible reform of the HRA.
- Relationship between human rights and consumer credit law, e.g. declaration of incompatibility.
- The concept of unfair relationships and human rights.
- Credit will be given for appropriate and relevant citation.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO2
Skills	
11-13	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation, making an entirely convincing synoptic connection with elements of skills gained in understanding legal reasoning, personnel and methods and understanding legal values, structures and processes. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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