



GCE MARKING SCHEME

SUMMER 2016

**UNDERSTANDING LEGAL REASONING,
PERSONNEL AND METHODS**

**LAW – PAPER LA2 (AS)
1252/01**

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.

AS LEVEL LAW

General Instructions to LA2 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 AS 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 being marked out of 25, each question is sub-divided. 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 **Chief Examiner, Prof. Iwan Davies either at Swansea University Tel: (01792) 295832 or at home, Tel: (01792) 882232.** If you have any administrative queries - contact the **Subject Officer Joanna Lewis on (029) 2026 5167 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 in LA1 and LA2.

Principles of Marking
(for LA2)

1. The assessment is based upon the levels of attainment for Objectives AO1, AO2, AO3, as indicated in the mark scheme.
2. The levels of assessment used in the mark scheme 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 AS suggested weighting.
3. The range of marks allocated to each of the levels for each of the objectives is recorded in the mark scheme.

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 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. The level of assessment is **below** that of Advanced (A2) Level and an answer should not be equated with what would be expected at A2. AS represents an intermediate stage between GCSE level and Advanced (A2) level.
8. 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 mark schemes. Equally, responses which are completely irrelevant should be awarded no marks.

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.

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Answer two questions.

1. Study the following: [14]

“The Supreme Court has not thought it necessary to reissue the Practice Statement in a fresh statement of practice in the Court’s own name. This is because it has as much effect in this Court as it did before the Appellate Committee in the House of Lords. It was part of the established jurisprudence relating to the conduct of appeals in the House of Lords which was transferred to this Court”. (Lord Hope in *Austin v Southwark LBC* (2011)).

(a) Explain the role of the Supreme Court in the doctrine of precedent.

Credit reference to:

- Role of the ECJ which is binding in matters of interpretation of EU law.
- 1966 Practice Statement with relevant citation. Reluctance of House of Lords to depart from settled law. Issues relating to mistake, etc.
- Privy Council is not binding.
- Role of Court of Appeal; *Young v British Aeroplane* (1944).
- Credit will be given for accurate 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	AO1
Knowledge and Understanding	
11-13	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.
7-10	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.
3-6	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.

(b) Discuss how Courts can avoid an awkward precedent.

[11]

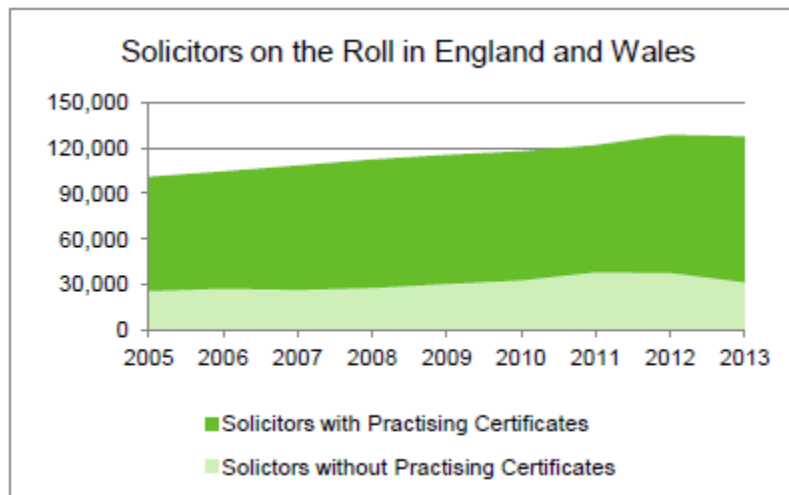
Credit reference to:

- Distinguishing
- Overruling and effect on retrospective law
- Reversing
- 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	AO2
	Skills
8-9	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.
6-7	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 and support their conclusions by citation.
4-5	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.
0-3	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.

2. Study the graph below and answer question (a) based on it.



(a) Explain the role and training of solicitors in the legal profession of England and Wales [14]

Credit reference to:

- As at 31 July 2013 there were 158,644 solicitors on the Roll, and 127,676 solicitors with practising certificates. Both figures were marginally down on 2012. However, the year-on-year declines reflect delays in the removal of 'inactive' practising certificate holders from systems supporting the Annual Statistics Report in 2012 (meaning that 2012 figures were artificially inflated).
- The numbers of practising solicitors working both in-house and in private practice declined slightly on a year earlier. The long term trend is one of growth for the in-house sector but principally in commerce and industry. The number of private practice firms declined on a year earlier (for the third year in a row), with only very large firms (81+ partners) expanding in number.
- Front line of the legal profession but nature and composition of solicitors firms vary greatly.
- Comparative in terms of gender balance more or less equal.
- Work of solicitors has changed including new rights of audience.

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	AO1
	Knowledge and Understanding
11-13	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.
7-10	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.
3-6	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.

(b) Discuss the regulation of the legal profession..

[11]

Credit reference to:

- Regulation through LSB as a result of Legal Services Act 2007.
- Role of Law Society, Solicitors Regulation Authority, Solicitors Disciplinary Tribunal.
- 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	AO2
	Skills
8-9	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.
6-7	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 and support their conclusions by citation.
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0-3	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.

3. Study the following and answer the questions based on it.

“If we cannot reach agreement that our Courts and Parliament will have the final say over these matters then we will have to withdraw [the vetoing of certain Judgments of the European Court of Human Rights]. We have a treaty right to withdraw, it is specifically provided for in the Convention. We would exercise that right. There is always a first time for everything.” [Chris Grayling, Justice Secretary, October 2014].

(a) Explain the role of the ECHR [14]

Credit reference to:

- UK was one of the original signatories.
- Re-ignition of the power of the ECHR to hear complaints from individual citizens.
- Continued membership of Council of Europe if withdrawal?
- Breach of Good Friday Agreement.
- Candidates will be rewarded for accurate citation and also knowledge of academic debate and criticism.

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	AO1
Knowledge and Understanding	
11-13	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.
7-10	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.
3-6	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.

(b) Discuss the provisions and effect of the Human Rights Act 1998. [11]

Credit reference to:

- Various sections of the HRA, in particular s2, 3, 6.
- The impact of the HRA 1998 is “entrenched law” noting declarations of incompatibility and s4 of the HRA.
- Impact of abolition and current debate, for example, the replacement with a British Bill of Rights and Responsibilities.
- Credit will be given for accurate citation of the law.

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	AO2
Skills	
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0-3	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.

4. (a) “Delegated legislation is a necessary framework of law maturing in a modern state”.

Explain the different types of delegated legislation in English and Welsh law. [14]

Credit reference to:

- Statutory instruments.
- Byelaws.
- Orders in Council.
- Devolved administration, e.g. devolution of powers by exception.

Credit will be given for accurate 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	AO1
	Knowledge and Understanding
11-13	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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- (b) Using your knowledge of statutory interpretations, explain how a Court might approach the interpretation of these sections in the light of the facts set out below.

Repeal of Identity Cards (Fictitious) Act 2015:

Section 1 “No Identity Cards are to be issued at any time on or after 1st March 2015.”

Section 2 “All Identity Cards that are valid before 1st March 2015 are to be treated as cancelled at the end of one month”.

John had an identity card issued by the UK Government. He had in the past used his identity card as proof of his identity in raising funds from his bank. On 30 March 2015 he tried to raise cash with his bank but was refused the money as the cashier declared that he had no valid proof of identity. As a result, John missed out on purchasing a valuable rare painting and wants to make a claim against the bank. Advise John [11]

Credit reference to:

- The basis of any claim would be the Act.
- Application of different rules of construction.
- Other aids to interpretation.
- Note distinction between Civil and Criminal law context on statutory interpretation.
- 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	AO2
Skills	
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