

GCE 2005
January Series



Mark Scheme

Law Specification

LAW2 Dispute Solving

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.

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) Nadia, aged 23, has been accused of theft (an either way offence). Identify the courts in which she could be tried and briefly describe the procedure for dealing with Nadia in those courts.
(15 marks)

Potential Content

- (A) Identification and brief description of magistrates court trial, eg plea before venue, dealt with as summary trial, representation by solicitors, relative informality, magistrates decide guilt/innocence & sentence, limited sentencing powers
- (B) Identification and brief description of Crown Court, eg dealt with as indictable trial, representation by barristers, formality, jury decides verdict, judge decides questions of law & sentence

Note: Reference to committals will enhance the quality of (A) and (B).

Mark Bands

- 12 - 15 The candidate deals with (A) and (B) as follows:
max 15: two sound
max 13: one sound, one clear
max 12: one sound, one some.
- 8 - 11 The candidate deals with (A) and (B) as follows:
max 11: two clear
max 10: one sound
max 9: one clear, one some
max 8: one clear **or** two some.
- 4 - 7 The candidate displays some understanding by introducing consideration of any of the material in (A) - (B).
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes or confusion.
- 0 The answer contains no relevant information.

(b) Outline and comment on the various forms of legal advice available to Nadia. (15 marks)

Potential Content

- (A) Outline of forms of legal advice, eg Duty Solicitors, Legal Help, Criminal Legal Representation by solicitors and/or barristers, role of Criminal Defence Service
- (B) Comment on advantages, eg Assistance at police station and at first appearance in court, no initial costs, offsets resources of police/CPS, provision of advice to vulnerable defendants
- (C) Comment on disadvantages, eg Problems of 24 hour cover, quality of duty solicitors, restrictions on Representation based on type of offence, cost issues at end of case

Note: If candidate deals with 24 hour duty solicitor advice, this may enhance the quality of (A).

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 displays some understanding by introducing consideration of any of the material in (A)-(C).
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no coherent approach 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) Describe the role of a judge in both civil and criminal trials.	(15 marks)
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Potential Content

- (A) Description of role of judge in civil trial, eg managing pre trial procedures, issuing pre trial orders, hearing evidence and arguments at trial, deciding liability, deciding compensation, issuing injunctions and/or permanent orders
- (B) Description of role of judge in criminal trial, eg keeping order in court, ruling on law and admissibility of evidence, directing jury, passing sentence

Mark Bands

- 12 - 15 The candidate deals with (A) and (B) as follows:
max 15: two sound
max 13: one sound, one clear
max 12: one sound, one some.
- 8 - 11 The candidate deals with (A) and (B) as follows:
max 11: two clear
max 10: one sound
max 9: one clear, one some
max 8: one clear **or** two some.
- 4 - 7 The candidate displays some understanding by introducing consideration of any of the material in (A) - (B).
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes or confusion.
- 0 The answer contains no relevant information.

- (b) Briefly explain the principle of judicial independence and consider why it is an important part of the United Kingdom constitution. *(15 marks)*

Potential Content

- (A) Brief explanation of judicial independence, eg separation from Executive and Legislature, judges' freedom from dismissal
- (B) Need for judicial independence, eg fairness, impartial and open justice, public confidence in legal system, judges upholding Rule of Law and individual rights
- (C) Effect of judicial independence, eg decisions free of Government interference and political pressure, conflicts of interest, immunity within court, challenge of decisions through appeals and court system, judicial review

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 displays some understanding by introducing consideration of any of the material in (A)-(C).
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

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

Lay people work throughout the criminal justice system both as lay Magistrates and as members of juries.

(a) Describe any **three** aspects of the work of lay Magistrates. (15 marks)

Potential Content

- (A) Description of first aspect of work of lay magistrates
- (B) Description of second aspect
- (C) Description of third aspect

Work of lay magistrates may cover:

- judicial decisions, eg hearing summary trials, deciding questions of law, deciding guilt/innocence & sentence, committals;
- specialist work, eg Youth or Family courts, drug testing and treatment orders;
- administrative decisions, eg bail/custody applications, custody extensions, issue of warrants, grant of Legal Representation;
- sitting on appeals;
- training.

Mark Bands

- 12 – 15 The candidate deals with all three of (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 displays some understanding by introducing consideration of any of the material in (A)-(C).
- 1 – 3 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

- (b) Outline the role of the jury in a criminal trial and discuss the advantages and disadvantages of the use of juries in the criminal justice system. (15 marks)

Potential Content

- (A) Outline of the role of jury, eg hearing evidence, secret discussions, reaching verdict
- (B) Discussion of the advantages of jury trials, eg open justice, trial by peers, public confidence, fairness
- (C) Discussion of the disadvantages of jury trials, eg perverse verdicts, feelings of bias, unrepresentative nature, selection procedures, influence, media pressure, complexity of issues

Mark Bands

- 12 – 15 The candidate deals with all three of (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 displays some understanding by introducing consideration of any of the material in (A)-(C).
- 1 – 3 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

4

Total for this question: 30 marks

- (a) Arbitration is an alternative process to a court for hearing certain types of civil cases. Outline the types of cases that can be dealt with by arbitration and briefly explain **two** of the key features of arbitration. *(10 marks)*

Potential Content

- (A) Outline of types of Arbitration cases, eg holidays, telephones, business, small claims, employment
- (B) Brief explanation of one feature of Arbitration
- (C) Brief explanation of second feature

Features could include issues such as: privacy, qualified arbitrator, paper based submissions, alternative call for oral evidence, relative informality, finality of decision, limited appeal rights

Mark Bands

- 8 - 10 The candidate deals with all three of (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).
- 1 - 2 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

- (b) Briefly describe **two other** main forms of Alternative Dispute Resolution (ADR) and discuss the advantages and disadvantages of ADR as a form of dispute resolution. (20 marks)

Potential Content

- (A) Brief description of two other methods of ADR, eg Tribunals, Conciliation, Mediation, Negotiation
- (B) Discussion of advantages of ADR, eg informal, self representation, use of experts, speed, convenience, less confrontational attitude
- (C) Discussion of disadvantages of ADR, eg lack of reasoning, use of precedent, appeals to court system, enforcement of awards, lack of legal aid

Mark Bands

- 16 - 20 The candidate deals with all three of (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).
- 1 - 5 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

5

Total for this question: 30 marks

- (a) Richard is currently studying for his A levels. Explain to him how he could train and qualify **either** as a solicitor **or** as a barrister. (Choose **one** only.) *(10 marks)*

Potential Content

(A) Explanation of academic training & qualification of solicitors – eg degree entry, CPE/Diploma for non law degree, LPC, training contracts, enrolled in Law Society

OR

(B) Explanation of academic training & qualification of barristers – eg degree entry, CPE/Diploma for non law degree, BVC, pupillage, membership of Inn, call to Bar

Note: Reference to qualifying through Legal Executive route may enhance the quality of (A).

Mark Bands

- 8 - 10 The candidate demonstrates a sound understanding of either (A) or (B).
- 5 - 7 The candidate demonstrates a clear understanding of either (A) or (B).
- 3 - 4 The candidate displays some understanding by introducing consideration of any of the material in (A) or (B).
- 1 - 2 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes or confusion.
- 0 The answer contains no relevant information.

Note: if the candidate covers (A) and (B), consider both, and credit the stronger only.

- (b) Outline the various duties owed to their clients by **both** barristers **and** solicitors. Discuss how members of **both** professions can be held responsible for poor work. (20 marks)

Potential Content

- (A) Outline of duties of Barristers and Solicitors, eg for Barristers, Non Contractual (Honorarium) Cab rank, duty to court. For Solicitors, eg Contractual, privilege, disclosure
- (B) Discussion of how Barristers are held responsible, eg responsibility for negligent work and advice both in and out of court, appeals, reference to disciplinary process
- (C) Discussion of how Solicitors are held responsible, eg responsibility for negligent work and advice both in and out of court, appeals, reference to disciplinary process

Mark Bands

- 15 - 20 The candidate deals with all three of (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).
- 1 - 5 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at explanation is fundamentally undermined by mistakes or confusion.
- 0 The answer contains no relevant information.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW2)

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)	(x 2 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