

GCE 2004

June Series



Mark Scheme

Law

(Subject Code LAW2)

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. They may well 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) Outline the stages in training and qualifying as a barrister. *(10 marks)*

Potential Content

- (A) Outline of academic training and qualifying of barristers, eg degree entry, CPE/Diploma for non-law degree, BVC, pupillage, membership of Inns of Court, call to Bar

Mark Bands

- 8 – 10 The candidate demonstrates a sound understanding of (A).
- 5 – 7 The candidate demonstrates a clear understanding of (A).
- 3 – 4 The candidate displays some understanding by introducing consideration of any of the material in (A).
- 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.

- (b) Briefly describe **and** compare the different work carried out by solicitors, barristers and legal executives. (20 marks)

Potential Content

- (A) Brief description of solicitor's work and comparison with (B) - (C), eg negotiation, initial advice on contentious work when assessing merits of claim, preparation of claim, obtaining evidence, possible advocacy with increased right of audience, solicitor advocates, advice on non contentious work in areas such as conveyancing, probate, family and commercial work
- (B) Brief description of barrister's work and comparison with (A) and (C), eg initial legal opinion, advocacy, advice on presentation and possible appeals, presentation of appeal
- (C) Brief description of legal executive's work and comparison with (A) - (B), eg principally working for solicitors, ability to practice as licensed (conveyancing, probate) practitioners, limited rights of audience

Note: Mention of lawyers' work outside the professions, such as in local government, CPS and companies, can enhance the quality of (A) - (C)

Mark Bands

- 16 – 20 The candidate deals with all three of (A) - (C) as follows:
max 20: two sound, one clear
max 18: one sound, two clear **or** two sound, one some
max 16: two sound **or** three clear **or** one sound, one clear, one some.
- 11 – 15 The candidate deals with (A) - (C) as follows:
max 15: two clear, one some **or** one sound one clear **or** one sound, two 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.

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

- (a) Briefly describe where and how an individual can obtain legal **advice** in civil **and** criminal cases.
(15 marks)

Potential Content

- (A) Brief description of obtaining legal advice in civil cases, eg from lawyers, other sources such as CAB, Law Centres, Advice Centres, trade unions, insurance companies, organisations providing other services, for example AA, RAC, banks and building societies, telephone/internet, media, how advice is funded
- (B) Brief description of obtaining advice in criminal cases, eg lawyers providing duty solicitor services, Legal Help or providing private advice

Mark Bands

- 12 - 15 The candidate demonstrates a sound understanding of (A) and (B), though there may be some imbalance in treatment between them (**max 13 for one sound, one clear**).
- 8 - 11 The candidate demonstrates a clear understanding of (A) and (B) (**max 8 for one**)
or
the candidate demonstrates a sound understanding of (A) or (B) (**max 10**)
or
the candidate demonstrates some understanding of (A) and (B) (**max 8**).
- 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 and confusion.
- 0 The answer contains no relevant information.

- (b) Identify and consider the problems associated with these different forms of advice. (15 marks)

Potential Content

- (A) Identification and consideration of problems in civil Legal Help, eg narrow means tests, reducing availability of solicitors offering service, availability of Law Centres, availability in types of cases, cost of professional advice
- (B) Identification and consideration of problems with criminal legal advice, eg issues of quality of advice by inexperienced and/or unqualified advisers, problems with 24 hour cover, cost of professional advice
- (C) Identification and consideration of problems with other forms of advice, eg CAB voluntary advisers, limitations on insurance cover and cost, general nature of public advice (media), access (internet)

Mark Bands

- 12 – 15 The candidate deals with **two** of (A) - (C) and demonstrates a sound understanding of any two, though there may be some imbalance between them (**max 13 for one sound, one clear**).
- 8 – 11 The candidate demonstrates a clear understanding of **two** of (A) - (C) (**max 8 for one**)
or
the candidate demonstrates a sound understanding of **one** of (A) - (C) (**max 10**)
or
the candidate demonstrates some understanding of **two** of (A) - (C) (**max 8**).
- 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.

NB: If the candidate deals with all three of (A) – (C), this may enhance the quality of the answer.

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

- (a) ADR (Alternative Dispute Resolution) has been described as being “at the heart of today’s civil justice system”. Briefly describe the main forms of ADR. *(15 marks)*

Potential Content

- (A) Brief description of Tribunals, eg reasons for existence, types of cases heard, make up of panel
- (B) Brief description of Arbitration, eg types of cases heard, qualifications of arbitrator, nature of hearing
- (C) Brief description of other methods of ADR, eg Mediation, Conciliation, Negotiation and other methods

Mark Bands

- 12 - 15 The candidate deals with all three of (A) - (C) as follows:
max 15: two sound, one clear
max 13: one sound, two clear **or** two sound, one some
max 12: two sound **or** three clear **or** one sound, one clear, one some.
- 8 - 11 The candidate deals with (A) - (C) as follows:
max 11: two clear, one some, **or** one sound, one clear **or** one sound, two 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 description is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

- (b) Identify and briefly discuss the advantages and disadvantages of ADR as a form of civil dispute resolution. (15 marks)

Potential Content

- (A) Identification and brief discussion of advantages of ADR, eg cost, informality, lack of legal representation, efficiency, preservation of relationship, convenience, expertise, procedure, encouragement by courts
- (B) Identification and brief discussion of disadvantages of ADR, eg funding, appeal rights, unpredictable decisions, public awareness, imbalance between parties

Mark Bands

- 12 – 15 The candidate demonstrates a sound understanding of (A) and (B), though there may be some imbalance in treatment between them (**max 13 for one sound, one clear**).
- 8 - 11 The candidate demonstrates a clear understanding of (A) and (B) (**max 8 for one**)
or
the candidate demonstrates a sound understanding of (A) or (B) (**max 10**)
or
the candidate demonstrates some understanding of (A) and (B) (**max 8**).
- 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) Explain how **either** judges **or** lay magistrates are selected and appointed. *(15 marks)*

Potential Content**EITHER**

- (A) Explanation of selection and appointment of Judges, eg chosen from ranks of barristers and solicitors, advertisements for inferior judges, secret soundings for superior judges, inferior judges' appointment, superior judges' appointment

OR

- (B) Explanation of selection and appointment of lay magistrates, eg application, role of advisory committee, requirement of balance, role of Lord Chancellor in appointment

Mark Bands

- 12 – 15 The candidate demonstrates a sound understanding of (A) **or** (B).
- 8 – 11 The candidate demonstrates a clear understanding of (A) **or** (B).
- 4 – 7 The candidate displays some understanding by introducing consideration of any of the material in (A) **or** (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 and confusion.
- 0 The answer contains no relevant information.

- (b) Identify and comment on the problems associated with the methods of selection and appointment of **either** judges **or** lay magistrates. *(15 marks)*

Potential Content

EITHER

- (A) Identification and comment on selection and appointment issues of judges, eg drawn from narrow range with issues such as education, legal background, social class, predominantly male, predominantly white, recruitment problems, influence of Lord Chancellor

OR

- (B) Identification and comment on selection and appointment issues of lay magistrates, eg middle aged, middle class, middle minded, narrow social class, race, disability, employment difficulties and general recruitment problems

Mark Bands

- | | |
|---------|--|
| 12 - 15 | The candidate demonstrates a sound understanding of (A) or (B). |
| 8 – 11 | The candidate demonstrates a clear understanding of (A) or (B). |
| 4 – 7 | The candidate demonstrates some understanding of (A) or (B). |
| 1 - 3 | The answer consists of brief fragmented comments or examples so that no coherent approach emerges
or
a more substantial attempt at description is fundamentally undermined by mistakes and confusion. |
| 0 | The answer contains no relevant information. |

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

- (a) Describe the system of qualification and selection for jury service. *(20 marks)*

Potential Content

- (A) Explanation of basic jury qualification and selection, eg age, electoral register, residence, random selection by Central Summoning Bureau, vetting and challenges
- (B) Explanation of good reasons for not serving, eg disqualification, excusal, deferral

Note: Candidates may refer to Pre or Post April 2004 qualification and selection method

Mark Bands

- 16 - 20 The candidate deals with (A) and (B) as follows:
max 20: two sound (there may be some imbalance in treatment as between them)
max 18: one sound, one clear
max 16: one sound, one some **or** two clear.
- 11 - 15 The candidate deals with (A) and (B) as follows
max 15: one sound
max 13: one clear, one 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) and (B).
- 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.

- (b) Consider the **disadvantages** of using juries in the English legal system. *(10 marks)*

Potential Content

- (A) Consideration of disadvantages of use of juries, eg perverse verdicts, feelings of bias, unrepresentative nature, selection procedures, influence, media pressure, jury nobbling, complexity of issues

Mark Bands

- 8 - 10 The candidate demonstrates a sound understanding of (A).
- 5 - 7 The candidate demonstrates a clear understanding of (A).
- 3 - 4 The candidate displays some understanding by introducing consideration of any of the material in (A).
- 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.

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