



# **General Certificate of Education**

## **Law 5161**

### **Unit 2 (LAW2R) Dispute Solving**

## **Mark Scheme**

*2008 examination – June series*

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.

Further copies of this Mark Scheme are available to download from the AQA Website: [www.aqa.org.uk](http://www.aqa.org.uk)

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**LAW2****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**

### The level of understanding in AS Law – LAW2

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year-old, so the level of understanding required by these criteria will be that of the notional 17-year-old.

<b>Sound</b>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain relevant material to the Potential Content.</li> <li>• The material will be supported by generally relevant authority and/or examples.</li> <li>• It will generally deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<b>Clear</b>	<ul style="list-style-type: none"> <li>• The material is broadly accurate and relevant to the Potential Content.</li> <li>• The material will be supported by some use of relevant authority and/or examples.</li> <li>• The material will broadly deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.</p>
<b>Some</b>	<ul style="list-style-type: none"> <li>• The material shows some accuracy and relevance to the Potential Content.</li> <li>• The material may occasionally be supported by some relevant authority and/or examples.</li> <li>• The material will deal with some of the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.</p>

**1****Total for this question: 30 marks**(a) Describe any **three** forms of Alternative Dispute Resolution (ADR). (20 marks)**Potential Content**

- (A) Description of one form of ADR
- (B) Description of second form of ADR
- (C) Description of third form of ADR

Note: Forms of ADR may include Tribunals, Arbitration, Mediation, Conciliation or Negotiation.

Description may cover reasons for existence, types of cases heard, make up and qualification of panel/decision maker, nature of hearing, result.

**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** one sound, two some **or** two clear, one some  
**max 14:** one sound, one some **or** two clear **or** one clear, two some  
**max 13:** one sound **or** one clear, one some **or** three some  
**max 11:** one clear **or** two some.
- 6 - 10      The candidate displays limited 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.

- |  |            |
|--|------------|
| (b) Discuss the <b>disadvantages</b> of ADR as a form of dispute resolution. | (10 marks) |
|--|------------|

**Potential Content**

- (A) Discussion of disadvantages of ADR, eg cost and funding, unpredictable decisions, public awareness, imbalance between parties, limited appeal rights

**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 of (A).  |
| 1 - 2  | The answer consists of brief, fragmented comments or examples so that no coherent approach emerges<br><b>or</b><br>a more substantial attempt at explanation is fundamentally undermined by mistakes or confusion. |
| 0      | The answer contains no relevant information.   |

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

- (a) Describe the roles of lay magistrates **and** jurors in the courts in which they operate.  
(20 marks)

**Potential Content**

- (A) Description of the role of lay magistrates, eg pre trial considering the grant of warrants, bail, trials – considering evidence, verdicts and sentencing; serious cases – committals/ sending to trial in Crown Court, Youth Court, Family Proceedings Court, Licensing Appeals Panel, Enforcement of local taxation, sitting in appeals in the Crown Court.
- (B) Description of the role of juries in criminal cases, eg listening to evidence and judges' direction, secret discussion, unanimous and majority verdicts, public announcement of verdict. Possible reference to civil role in cases of defamation, fraud and malicious prosecution including the award of damages.

**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 17:** one sound, one clear.
- 11 - 15      The candidate deals with (A) and (B) as follows  
**max 15:** one sound, one some **or** two clear  
**max 14:** one sound  
**max 13:** one clear, one some  
**max 11:** one clear **or** two some.
- 6 - 10      The candidate displays limited 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) Discuss the advantages of using lay people in the **criminal** justice system. (10 marks)

**Potential Content**

- (A) Discussion of advantages of using lay people, eg trial by peers, open justice, public confidence, fairness, limited number of appeals, cost, reduction of professional involvement

**Mark bands**

- |        |  |
|--------|--|
| 8 - 10 | The candidate demonstrates a sound understanding of (A) ( <b>max 8</b> if discussion refers to one only of juries or lay magistrates or fails to distinguish between them).  |
| 5 - 7  | The candidate demonstrates a clear understanding of (A).   |
| 3 - 4  | The candidate displays some understanding of (A).  |
| 1 - 2  | The answer consists of brief, fragmented comments or examples so that no coherent approach emerges<br><b>or</b><br>a more substantial attempt at explanation is fundamentally undermined by mistakes or confusion. |
| 0      | The answer contains no relevant information.   |

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**3****Total for this question: 30 marks****(a)** Explain how inferior **and** superior judges are selected and appointed. *(15 marks)***Potential Content**

- (A) Explanation of selection and appointment of inferior judges, eg eligibility, advertisements, application, testing, promotion, reference to Judicial Appointments Commission and consideration of application, appointment by Lord Chancellor after recommendation by JAC
- (B) Explanation of selection and appointment of superior judges, eg eligibility, advertisements, application, reference to JAC and consideration of application, appointment by Queen, after recommendation by JAC, possible reference to choice of appeal judges by Lord Chancellor when vacancy arises

**Mark Bands**

- 12 - 15            The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11            The candidate deals with (A) and (B) as follows:  
**max 11:** one sound, one some **or** two clear  
**max 10:** one sound  
**max 9:** one clear, one some  
**max 8:** one clear **or** two some.
- 4 - 7            The candidate displays limited 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) Outline how a judge can be dismissed. Consider why it is difficult to dismiss a judge from office. (15 marks)

### Potential Content

- (A) Outline of dismissal of judges, eg powers of Lord Chief Justice in conjunction with Lord Chancellor in cases of incapacity and misbehaviour for inferior level judges, possible reference to expiry of fixed term appointments, parliamentary petition for superior level judges. Role of the Office for Judicial Complaints
- (B) Consideration of reasons why dismissal of judge is difficult, eg security of tenure, impartiality of decisions, independence from Executive, freedom from pressure, status given to judiciary.

### Mark Bands

- 12 - 15            The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11            The candidate deals with (A) and (B) as follows:  
**max 11:** one sound, one some **or** two clear  
**max 10:** one sound  
**max 9:** one clear, one some  
**max 8:** one clear **or** two some.
- 4 - 7            The candidate displays limited 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.

4

**Total for this question: 30 marks**

Emma has been charged with theft, an offence which is triable either way.

- (a) Identify the courts (including any appeal courts) in which she could appear and outline the nature of the court hearings. (15 marks)

### Potential Content

- (A) Identification and brief description of magistrates court, eg plea before venue, dealt with as summary trial, representation by solicitors, relative informality, magistrates decide guilt/innocence & sentence, limited sentencing powers, committal
- (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
- (C) Identification & brief description of appeals, eg Court of Appeal and grounds for appeal against conviction and/or sentence/ point of law. House of Lords based on appeal against conviction only on a point of law. Possible reference to appeal to the Crown Court following summary trial.

### 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 clear **or** one sound, two some **or** two clear, one some  
**max 10:** one sound, one some **or** two clear **or** one clear, two some  
**max 9:** one sound **or** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 - 7      The candidate begins to display limited understanding by introducing discussion of any of the material in (A)-(C). Where the candidate introduces material across the range, it will be superficial.
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

<b>(b)</b>	Briefly describe and comment on the different forms of legal advice and representation available to Emma.	<b>(15 marks)</b>
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### Potential Content

- (A) Brief description of forms of legal advice and representation, eg Duty Solicitors, Legal Help, Criminal Legal Representation, role of Criminal Defence Service
- (B) Comment on positive issues, eg providing assistance at police station and at first appearance at court, no initial costs for duty solicitors, ensures defendant can be represented, offsets resources of police/CPS
- (C) Comment on negative issues, eg availability of 24 hour cover, quality of duty cover and advice, restrictions on Representation based on type of offence/ means of defendant, delay caused by providing evidence of entitlement, difficulties of finding representative, trust in CDS

### 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 clear **or** one sound, two some **or** two clear, one some  
**max 10:** one sound, one some **or** two clear **or** one clear, two some  
**max 9:** one sound **or** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 - 7      The candidate begins to display limited understanding by introducing discussion of any of the material in (A)-(C). Where the candidate introduces material across the range, it will be superficial.
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

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

- (a) Describe the stages in qualifying as a solicitor, as a barrister **and** as a legal executive.  
(20 marks)

**Potential Content**

- (A) Description of qualifying stages of Solicitor, eg degree entry, CPE/GDL for non-law degree, entry via ILEX route, LPC, training contract, enrolling in Law Society
- (B) Description of qualifying stages of barrister, eg degree entry, CPE/GDL for non law degree, BVC, enrolling with Bar Council and Inns of Court, pupillage
- (C) Description of qualifying stages as a legal executive, eg Professional Qualification in Law, membership of ILEX, 5 years qualifying employment in legal practice, Fellowship of ILEX

**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** one sound, two some **or** two clear, one some  
**max 14:** one sound, one some **or** two clear **or** one clear, two some  
**max 13:** one sound **or** one clear, one some **or** three some  
**max 11:** one clear **or** two some.
- 6 - 10      The candidate displays limited 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.

- (b) Discuss how **either** solicitors **or** barristers can be held responsible for their poor work.  
(10 marks)

**Potential Content**

- (A) Discussion of solicitor's responsibility, eg responsibility for negligent work and advice both in and out of court, disciplinary process of Law Society (Solicitors Regulation Authority), Legal Services Ombudsman/Complaints Commissioner

**OR**

- (A) Brief discussion of barrister's responsibility, eg responsibility for negligent work and advice both in and out of court, appeals, disciplinary process of Inns of Court and/or Bar Standards Board, Legal Services Ombudsman/Complaints Commissioner

**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 of (A).  |
| 1 - 2  | The answer consists of brief, fragmented comments or examples so that no coherent approach emerges<br><b>or</b><br>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)**

<b>UNIT 2</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
Question 1	20	10	
Question 2	20	10	
Question 3	20	10	
Question 4	20	10	
Question 5	20	10	
	(x2 from 5)	(x2 from 5)	
<b>AO3</b> (Quality of written communication for the paper as a whole)			5
<b>Total marks</b>	40	20	5
<b>% of the AS</b>	18.5	9	2.5
<b>% of the A Level</b>	9.25	4.5	1.25