



ASSESSMENT and
QUALIFICATIONS
ALLIANCE

Mark scheme January 2004

GCE

Law

Unit LAW6

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General Marking Guidance

You should remember that your marking standards should reflect the levels of performance of candidates, mainly 18 years old, 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. **8-10 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. **4-7 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. **1-3 marks**
- 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**

Consider whether moral rules and values are of any significance in the development of law.

(30 marks)

Potential Content

- (A) Explanation of the meaning of, and distinction between, law and morals
- (B) Explanation of the possible similarities between legal and moral rules, and the possible areas of overlap
- (C) Explanation of the evidence and arguments for and against the significance of moral rules and values in the development of law
- (D) Evaluation of the significance, drawing on the explanations in (A)-(C) and utilising the examples in (E)
- (E) Identification of appropriate area(s) of law and morals and use of relevant examples

Mark Bands

- 26 – 30 The candidate presents a comprehensive examination of the issues which incorporates all five elements (A)-(E), and clearly relates discussion in (D) to that in (A)-(C) and (E). There may be some imbalance in the treatment of the elements.
- 21 - 25 The candidate incorporates (E) and develops sound explanations of (A)-(C) but approaches (D) rather more hesitantly
or
incorporates (E) and develops a strong emphasis on (D) whilst presenting a slightly weaker set of explanations in (A)-(C)
or
deals confidently with (A)-(D) but does not fully succeed in integrating examples in (E) into the explanation and evaluation.
- 16 - 20 The candidate incorporates some (E) and presents some discussion of (A)-(C) with limited discussion of (D)
or
there are sound explanations of (A)-(C) with some (D) but little (E)
or
the emphasis is on (D)-(E) with weak framework explanation in (A)-(C).

- 11 - 15 The candidate presents discussion of (A)-(C) (accompanied, at the higher end of the band, by some (E))
or
attempts to develop the evaluative approach in (D) against an inadequate framework of explanation in any of (A)-(C)
or
seeks to develop explanation and evaluation largely by way of (E) but in which aspects of explanation and evaluation do emerge
or
the candidate attempts to deal with the range of material but explanation and evaluation are not developed and (E) is not properly utilised so that the answer tends to lack coherence.
- 6 – 10 The candidate displays some understanding by introducing discussion of any of the material in (A)-(E). Where the candidate attempts to deal with a range of material from (A)-(E), explanations will be superficial and may show significant confusion, whilst evaluation will be poorly expressed and not well related to the explanations.
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge
or
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

2

Total for this question: 30 marks

Discuss the suggestions that fault **is** a central element of liability in English law, but that it should **not** be. (30 marks)

Potential Content

- (A) Explanation of the possible meaning of fault, expressed at a general level and adapted as appropriate to a criminal or civil law context (or incorporating both). Consideration of the "is" issue: discussion of the extent of the requirement for fault in the chosen area(s) - both in civil and criminal law, this will involve discussion not only of fault requirements (including variations in the degree of fault) but also some discussion of liability in the absence of fault (strict liability and, perhaps, vicarious liability)
- (B) Consideration of the "should not" issue: discussion of the importance of fault and whether (and if so, why) it is acceptable to dispense with it in some or all instances
- (C) Identification of appropriate area(s) of law and use of relevant examples

Mark Bands

- 26 – 30 The candidate presents a comprehensive examination of the issues which incorporates all four elements (A)-(C), and clearly relates conclusions to reasons. There may be some imbalance in treatment across the elements but this will not undermine the quality of the explanation and analysis offered.
- 21 - 25 The candidate demonstrates sound understanding of any **two** of (A)-(C) with reference to the third
or
all **three** elements are dealt with but the explanations are not fully developed or not related to each other or to the conclusions in a fully coherent way.
- 16 - 20 The candidate demonstrates sound understanding of **one** of (A)-(C) with reference to another
or
the candidate demonstrates clear understanding of any **two** of (A)-(C)
or
there is some discussion of all **three** of (A)-(C).
- 11 - 15 The candidate presents a clear discussion of any **one** of the elements (A)-(C)
or
the candidate attempts to deal with the range of material but explanation and analysis are not developed and (C) is not properly utilised so that the answer tends to lack coherence.
- 6 – 10 The candidate displays some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate attempts to deal with a range of material from (A)-(C), explanations will be superficial and may show significant confusion, whilst examples will be poorly expressed or not well related to the explanations.

- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation or analysis emerge
or
a more substantial attempt at explanation and analysis is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

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

Discuss the suggestion that the doctrine of precedent and the approaches to statutory interpretation impose such restrictions on the creativity of judges that they are unable to develop the law in appropriate ways. (30 marks)

Potential Content

- (A) Explanation of the doctrine of precedent. Consideration of the ways in which, and extent to which, judges can develop the law despite the apparent constraints of the doctrine of precedent (eg, distinguishing, reinterpreted ratio, overruling, flexibility available to House of Lords because of the Practice Statement)
- (B) Explanation of the approach to statutory interpretation. Consideration of the extent of the flexibility available to judges in statutory interpretation (eg, the inherent problems in certainty of language, unforeseen changes or events, choice of different approaches to interpretation)
- (C) Evaluation of the extent of the restrictions on creativity in developing the law in view of (A)-(B)
- (D) Identification of appropriate area(s) of law and use of relevant examples

Mark Bands

- 26 – 30 The candidate presents a sound examination of the issues which incorporates all four elements (A)-(D). There may be some imbalance in treatment across the elements (for example, (A) may be more extensively treated than (B), or vice versa) but this will not undermine the quality of the explanation and evaluation offered.
- 21 – 25 The candidate incorporates (D) and develops sound explanation of (A) or (B) but approaches the other rather more hesitantly whilst still presenting a rounded evaluation in (C)
or
incorporates (D) and develops a strong emphasis on flexibility and evaluation in (A)-(C) without establishing a sound framework of explanation
or
deals confidently with (A)-(C) but does not fully succeed in integrating examples in (D) into the explanation and evaluation (again, in all of the above, there may be greater emphasis on common law than on statute). (**max 23** where the answer deals thoroughly with the issues by reference to precedent/common law or statutory interpretation).
- 16 – 20 The candidate tends to concentrate on (A) and (D) with some (C) or on (B) and (D) with some (C)
or
presents sound explanation of (A)-(B) and incorporates (D) but is unable to present the evaluation required in (C)
or
develops some explanation and evaluation in (A)-(C) with some use of (D).

- 11 – 15 The candidate presents sound discussion of (A) or (B) (accompanied, at the higher end of the band, by some (D))
or
attempts to develop the evaluative approach in (C) against an inadequate framework of explanation in either (A) or (B)
or
seeks to develop explanation and evaluation largely by way of (D) but in which aspects of explanation and evaluation do emerge
or
the candidate attempts to deal with the range of material but explanation and evaluation are not developed and (D) is not properly utilised so that the answer tends to lack coherence.
- 6 – 10 The candidate displays some understanding by introducing discussion of any of the material in (A)-(D). Where the candidate attempts to deal with a range of material from (A)-(D), explanation and evaluation will be superficial and may show significant confusion, whilst examples will be poorly expressed or not well related to the explanations and evaluation.
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation or evaluation emerge
or
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

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

Consider how, and to what extent, law can be used to achieve a balance between conflicting interests.
(30 marks)

Potential Content

- (A) Identification and explanation of appropriate area(s) of law – whether substantive, procedural, or aspects of institutions and structure
- (B) Explanation of the interests which may allegedly be in conflict, and of what might represent an ‘appropriate balance’ between those interests
- (C) Analysis of the area(s) of law selected which focuses in particular on the devices by which the balance may be engineered – ‘how’
- (D) Evaluation of the extent to which the balance can be achieved by law, taking account of the explanations in (A)-(C) – ‘to what extent’

Mark Bands

- 26 – 30 The candidate presents a comprehensive examination of the issues which incorporates all four elements (A)-(D), and clearly relates the explanations in (A)-(C) to the evaluation in (D). There may be some imbalance in treatment between the elements (A)-(C) but this will not undermine the quality of the explanation and evaluation offered.
- 21 - 25 The candidate presents an examination of all four elements but there is some weakness in one which prevents the analysis and evaluation from being fully rounded
or
the evaluation in (D) is not convincingly related to the explanation and analysis in (A)-(C).
- 16 - 20 The candidate develops sound explanation of (A)-(C) but is hesitant in developing the evaluation in (D) (**max 17** if no (D))
or
develops evaluation in (D) against a hesitant framework of explanation in (A)-(C)
or
attempts to deal with all four elements but with some degree of superficiality or confusion.
- 11 - 15 The candidate presents explanation of aspects of (A)-(C) but does not develop evaluation
or
there is an attempt to develop the answer largely by way of the evaluation in (D) against an inadequate framework of explanation in aspects of (A)-(C)
or
the candidate attempts to deal with all four elements but neither explanation nor evaluation are properly developed or related to each other so that the answer tends to lack coherence.

- 6 – 10 The candidate displays some understanding by introducing discussion of any of the material in (A)-(D). Where the candidate attempts to deal with a range of material from (A)-(D), explanations will be superficial and may show significant confusion, whilst evaluation will be poorly expressed and not well related to the explanations.
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge
or
a more substantial attempt at explanation and evaluation 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)

UNIT 6	AO1 No. of Marks	AO2 No. of Marks	AO3 No. of Marks
Question 1	20	10	
Question 2	20	10	
Question 3	20	10	
Question 4	20	10	
	(x2 from 4)	(x2 from 4)	
AO3 (Quality of written communication for the paper as a whole)			10
Total marks	40	20	10
% of the A2	23	11	6
% of the A Level	11.5	5.5	3