GradeMax

edexcel

Mark Scheme (Results)

Summer 2016

Pearson Edexcel International Advanced Level in Law (YLA0) Paper 2

General marking guidance

- All candidates must receive the same treatment. Examiners must mark the first candidate in exactly the same way as they mark the last.
- Mark schemes should be applied positively. Candidates must be rewarded for what they have shown they can do rather than penalised for omissions.
- Examiners should mark according to the mark scheme not according to their perception of where the grade boundaries may lie.
- There is no ceiling on achievement. All marks on the mark scheme should be used appropriately.
- All the marks on the mark scheme are designed to be awarded. Examiners should always award full marks if deserved, ie if the answer matches the mark scheme. Examiners should also be prepared to award zero marks if the candidate's response is not worthy of credit according to the mark scheme.
- Where some judgement is required, mark schemes will provide the principles by which marks will be awarded and exemplification may be limited.
- When examiners are in doubt regarding the application of the mark scheme to a candidate's response, the team leader must be consulted.
- Crossed-out work should be marked **unless** the candidate has replaced it with an alternative response.

General Marking Bands

The guidance on different types of responses below should be read in conjunction with the detailed marking content for each question.

Level	Mark	Descriptor
An excellent answer	**25–22**	Presents a well-structured response to the question and consistently demonstrates a thorough knowledge and understanding of legal rules and legal institutions and excellent appreciation of the function of law in society. Shows a thorough understanding of legal classification and an excellent approach to problem solving with a particular strength in the use of legal authority, together with a demonstrable awareness of matters of legal controversy and legal reform. Demonstrates an ability to appraise and criticise the application of legal principles across different branches of the law. The candidate will express complex ideas extremely clearly and fluently. Sentences and paragraphs will follow on from each other smoothly and logically. Arguments will be consistently relevant and well structured. There will be few, if any, errors of grammar, punctuation and spelling.
A very good answer	**21–17**	Presents a clearly written answer with a detailed knowledge and understanding of legal rules and also the place and role of institutions, as well as demonstrating a very good appreciation of the role and function of law in society. Shows a good understanding of legal classification and demonstrates a clear grasp of analysis of legal problems, with a real ability to apply rules and use authority. Shows a good understanding of different branches of law and gives evidence of a critical awareness of controversial issues in law and law reform. The majority of relevant legal issues raised by the question are included with appropriate supporting material. The candidate will express complex ideas extremely clearly and fluently. Sentences and paragraphs will follow on from each other smoothly and logically. Arguments will be consistently relevant and well structured. There will be few, if any, errors of grammar, punctuation and spelling.
A good answer	**16–13**	Demonstrates a sound knowledge and understanding of legal rules, and the role and function of law in society with some evidence of depth and breadth of argument. Is able, where required to distinguish between civil and criminal liability, and shows a sound approach to problem solving. Quotes some appropriate legal authority. Demonstrates a sound knowledge of some of the relevant issues raised by the question and shows awareness of current controversies and legal reform. Identifies significant points in the marking scheme but with some imbalance in the treatment of issues raised by the question.

		The candidate will express moderately complex ideas clearly and reasonably fluently through well-linked sentences and paragraphs. Arguments will be generally relevant and well structured. There may be occasional errors of grammar, punctuation and spelling.
Level	**Mark**	**Descriptor**
A satisfactory answer	**12-8**	Presents an answer that demonstrates some knowledge and understanding of legal rules and institutions, and awareness of the role and function of law in society. Demonstrates some ability to solve problems, to identify sources, and to quote relevant authority. Shows knowledge of different branches of law, with some understanding shown also of legal classification. Although awareness of current controversies and reform issues is demonstrated, answers are more descriptive than analytical. The candidate will express straightforward ideas clearly, if not always fluently. Sentences and paragraphs may sometimes not 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 suggest a weakness in these areas.
A basic answer	**7-4**	Presents an attempt to deal with the question with a superficial knowledge and understanding of legal rules, institutions and the role and function of law in society. Shows an attempt to deal with legal classification and problem solving and uses legal authority, with a little understanding of appropriate branches of law. Gives evidence of a little awareness of issues of controversy and reform. Answers may be commonsense with simple conclusions and little law. The candidate will express simple ideas clearly but may be imprecise and awkward in dealing with complex or subtle concepts. Arguments may be of doubtful relevance or obscurely presented. Errors in grammar, punctuation and spelling may be noticeable and intrusive, suggesting weakness in these areas.
	3-0	Presents an answer that demonstrates difficulty in understanding the subject. Although struggling, may produce some relevant points. Perhaps produces a social answer with little relevance to law.

Part One

Question Number	Indicative content	Mark
1	Account of the meanings associated with legal positivism, centrally the denial of any necessary connection between law and morality. Reference to chief exponents such as Austin and Hart with supporting exposition, inevitably introducing the views of the opposing camp, natural law thinking, exemplified by writers such as Aquinas and more recently Finnis. For a mark in the higher achievement bands candidates must not dwell on a separate question, the extent to which law should enforce morality.	**(25)**

Question Number	Indicative content	Mark
2	This calls for both theoretical input in the form of sociological analysis from Durkheim and other writers, and provision of concrete examples, either those commonly used or instances within the candidate's own jurisdiction and knowledge.	**(25)**

Question Number	Indicative content	Mark
3	Candidates will be expected to begin analysis in relatively recent history and not dwell on the reasons for the origins of equity. Exposition of 19th century problems should be supplemented by a detailed account of the legislation from the 1850s to the 1870s, encompassing the claims of Ashburner and others on the subsequent relationship between common law and equity.	**(25)**

Question Number	Indicative content	Mark
4	This question requires theoretical exposition of the justifications for strict liability and detailed reference to legislation which enforces such liability.	**(25)**

Question Number	Indicative content	Mark
5	Account of the rationale of the 1998 Act and expectations of it, with particular reference to ss 2 , 3 and 4 of the Act. Discussion of case law and of the extent to which judges have exceeded the bounds of the stated proposition and indulged in judicial activism in cases such as Ghaidan. Description of constitutional differences surrounding any apparent expansion of role of judges.	**(25)**

Part Two

Question Number	Indicative content	Mark
6	Account of different "rules", including analysis of the claim that "rules" is a misnomer. Focus on modern relationship between literal rule and purposive/contextualist approach, discussing reasons why predictability is difficult (eg judges declare that a word has a literal meaning but cannot agree what that is.) Case law illustration indispensable.	**(25)**

Question Number	Indicative content	Mark
7	This requires exposition of the doctrine at different levels of the hierarchy, with contextual appreciation of the respective roles of the Court of Appeal and the Supreme Court. Analysis of the tension between steadying factors in the system and the extent to which flexibility and leeways are built in.	**(25)**

Question Number	Indicative content	Mark
8	Account of problems of access and attempts at reform in recent years, including reference to the reports of Carter and Jackson.	**(25)**

Question Number	Indicative content	Mark
9	Traditional justifications and criticisms are readily available, and candidates should be given credit for reference to case law, reports such as Auld, and any research into the role of the jury.	**(25)**

Question Number	Indicative content	Mark
10	Exposition of Diceyan account of sovereignty and of the extent to which encroachments such as the 1972 Act and landmark cases such as Costa and Factortame have eroded traditional assumptions.	**(25)**

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