GradeMax



Mark scheme (Results)

June 2017

Pearson Edexcel International Advanced Level in Law (YLA1)

Paper 1: Underlying Principles of Law and the English Legal System

GradeMax

Edexcel, BTEC and LCCI qualifications

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General marking guidance

- All candidates must receive the same treatment. Examiners must mark the last candidate in exactly the same way as they mark the first.
- 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.
- All the marks on the mark scheme are designed to be awarded. Examiners should always award full marks if deserved. Examiners should also be prepared to award zero marks if the candidate's response is not worthy of credit according to the mark scheme.
- 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.

How to award marks

Finding the right level

The first stage is to decide which level the answer should be placed in. To do this, use a 'best-fit' approach, deciding which level most closely describes the quality of the answer. Answers can display characteristics from more than one level, and where this happens markers must use their professional judgement to decide which level is most appropriate.

Placing a mark within a level

After a level has been decided on, the next stage is to decide on the mark within the level. The instructions below tell you how to reward responses within a level. However, where a level has specific guidance about how to place an answer within a level, always follow that guidance.

Markers should be prepared to use the full range of marks available in a level and not restrict marks to the middle. Markers should start at the middle of the level (or the upper-middle mark if there is an even number of marks) and then move the mark up or down to find the best mark. To do this, they should take into account how far the answer meets the requirements of the level:

- If it meets the requirements *fully*, markers should be prepared to award full marks within the level. The top mark in the level is used for answers that are as good as can realistically be expected within that level
- If it only *barely* meets the requirements of the level, markers should consider awarding marks at the bottom of the level. The bottom mark in the level is used for answers that are the weakest that can be expected within that level
- The middle marks of the level are used for answers that have a *reasonable* match to the descriptor. This might represent a balance between some characteristics of the level that are fully met and others that are only barely met.

Question number	Answer	Marks
1(a)	**(4 AO1)** **One mark for stating each feature of judicial precedent (JP) up to four marks.** • JP is the reason given by the judge in his judgement for his decision in a court case (1) • Decisions of judges in higher courts bind lower courts (1) • Civil Court hierarchy described/ used to illustrate point above(1) • Criminal Court hierarchy described/used to illustrate (1) • The part of the judgement that forms the *ratio decidendi* (1) • Things said by the judge *obiter dicta*(1) • Persuasive precedent (1) • Treating like cases alike (1)	**(4)**

Question number	Indicative content	Marks
1(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** When considering a case before them in court judges are bound by a previous similar case decision made by a higher court unless: • using the 1966 Practice Direction , Horton v Sadler 2006, Kay and others v Lambeth LBC 2006, The Wagon Mound • disapproving of a precedent • reversing a precedent • judges can use distinguishing • explanation of what distinguishing is o which court(s) can distinguish o how a court can distinguish from an earlier decision in a different but similar case. o case examples such as Balfour and Merritt or Brown and Wilson • judges can use overruling o explanation of what overruling is o which courts can overrule o overruling of its own decision by the Supreme Court/Court of Appeal o case examples such as Hedley Byrne v Heller & Partners	**(6)**

	which overruled Candler v Crane Christmas; Herrington overruling Addie v Dumbreck; Young v Bristol Aeroplane	

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and applied to the given legal situation. Logical chains of reasoning are presented in a consistent and balanced manner, and supported by appropriate legal authorities.

Question number	Indicative content	Marks
1(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** Advantages of precedent: • The system provides detailed rules for later cases • The system is flexible as it deals with new situations as they arise, or updates out-of-date rules as in R v R and/or Herrington • It deals with real, as opposed to theoretical cases • It is just as judges are impartial and base their decisions on legal rules • Reporting of cases, so publicity • It is authoritative due to the numbers and experience of the judges in the Supreme Court and Court of Appeal. • It provides certainty and saves time Disadvantages of precedent: • The system is rigid and bad decisions are difficult to change • Courts have to be careful not to interfere with supremacy of parliament • The system causes uncertainty for claimants and defendants • in some appeal cases each judge may give a different reason for their decision which may result in the difficulty for later judges/lawyers identifying the ratio of a case • the nature of law making is undemocratic as a judge's role can be said to be applying law passed by Parliament rather than making law • precedent depends on a case coming to court, which may be a lottery based on funding and the lawyer's advice • the system results in large numbers of precedents made and then there is difficulty of finding a relevant one. • It produces a retrospective kind of decision	**(10)**

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to address competing arguments based on interpretations of the law.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to gauge the validity of competing arguments based on interpretations of the law.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and support of legal authorities may be inconsistent or unbalanced. The response attempts to contrast the validity and significance of competing arguments, which may include comparisons, based on valid interpretations of the law.
Level 4	**7–10**	Accurate and thorough knowledge and understanding are demonstrated. Knowledge and understanding are supported throughout by relevant and legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. The response shows an awareness of the validity and significance of competing arguments, leading to balanced comparisons based on justified interpretations of the law.

Question number	Answer	Marks
2(a)	**One mark for accurate definition of the term (1 AO1), and one mark for further description of that term (1 AO2) (up to a maximum of 2 marks in total).** Conciliation is a voluntary, confidential and informal dispute settlement process (1AO1) Where the parties try to reach an amicable settlement with the assistance of a conciliator who is a neutral third party. (1AO2).Who will suggest a non-binding proposal to settle the dispute. (1AO2).	(2)

Question number	Answer	Marks
2(b)	**One mark for explaining what a tribunal is and one mark for its role in settling disputes, up to two marks (2 AO1), and one mark for each linked explanation up to a maximum of 2 marks(2 AO2).** **Responses are likely to include:** • tribunals used as an alternative to courts for settlement of disputes • tribunal panel of 3 hear case comprising one lawyer and two laypeople, but who have relevant expertise • wide range of cases heard such as employment, asylum, mental health, eligibility for certain benefits • decision made by panel and witnesses can be called • no need for representation • tribunals can be statutory or disciplinary • 2 tier structure for first hearing and appeals • more formal nature of hearings where evidence may be given on oath and use of lawyers/representatives • outcome will be a legally enforceable award	(4)

Question number	Indicative content	Marks
2(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** Advantages of Conciliation, Mediation and Negotiation: • Held in private, aim is to compromise and avoid publicity • Qualified independent person • Informal Disadvantages of Conciliation, Mediation and Negotiation: • Even if compromise may lead to both parties being dissatisfied • Not binding, no appeals • No public airing of grievance Advantages of Tribunals: • experts on panel • hearings quicker and cost less than courts • allows dispute to be heard publically, so better than other types of ADR Disadvantages of Tribunals: • no state funding and although costs less than court one party may not be able to afford a solicitor • even though all panel experts, chair of panel may influence lay panel members • can only appeal on legal grounds • hearing could attract publicity. Disadvantages of court: • Taking a claim through the court system is costly and process takes time and is complicated for claimants to understand • Once a court case starts, the aim is to win (as it is adversarial), and not to compromise • Judge may not be an expert in the technical details of the claim, whereas there would be experts on the tribunal panel. Advantages of Courts: • Clear process, time limits and procedure • Funding opportunities and availability • Precedent available for lawyers to provide advice • Appeal structure and rules for courts. Ombudsman services: • Availability for types of dispute	**(14)**

	• Advantages and disadvantages • Overall conclusion weighing up evidence on the overall effectiveness **Normally answers only providing basic evaluation of one type of ADR with the courts will only go to the top of Level 2 mark band** **Normally answers only providing basic evaluation of two types of ADR with the courts will only go to the top of Level 3 mark band** **Answers evaluating three or more types of ADR with the courts can go to the top of Level 4 mark band** **However, an excellent evaluation of only one or two types of ADR with the courts, can go to the top of Level 4 mark as depth can compensate for breadth.**	

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–3**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 2	**4–6**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding is applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 3	**7–10**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and/or unbalanced support of legal authorities may be inconsistent or unbalanced. Evaluation attempts to contrast the validity and significance of competing arguments, which may include unbalanced comparisons, possible outcomes and conclusions based on valid interpretations of the law.
Level 4	**11–14**	Accurate and thorough knowledge and understanding is demonstrated. Knowledge and understanding are supported throughout by relevant legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. Evaluation shows a full awareness of the validity and significance of competing arguments, leading to balanced comparisons, possible outcomes and effective conclusions based on justified interpretations of the law.

Question number	Answer	Marks
3(a)	**(1 AO1), (1 AO2)** **One mark for providing an accurate definition (1 AO1), and one mark for an example or expansion (1 AO2).** • A standard of behaviour accepted, set or followed by society but not enforced by law(1 AO1) EXAMPLES • Intervening in a fight – immoral but not illegal(1 AO2) • Diving in to rescue an unrelated drowning child – immoral but not illegal (1 AO2) • Committing adultery – moral but not illegal • Or similar correct example (1 AO2).	(2)

Question number	Answer	Marks
3(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Salmond's view – intersecting circles of law and morality • Changes in the law (body of rules which society must abide by) can result in changes in morals: Race Relations Act, Homosexuality and same sex marriage • Changes in morals can result in changes in the law: resulted in rape in Marriage - RvR , Abortion Act • Wolfenden Report – law should not intervene in private lives of citizens – public and private morality distinctions and examples • Hart - legal enforcement of morals unnecessary and interferes with individual liberty Just comparison of law and morality MAX 2 marks – level 1	(6)

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and applied to the given legal situation. Logical chains of reasoning are presented in a consistent and balanced manner, and supported by appropriate legal authorities.

Question number	Indicative content	Marks
3(c)	**(2 AO1), (2 AO2), (4 AO3), (4 AO4)** **Responses are likely to include:** • Similarities: both set standards of behaviour • Stating the definition of law as a set of legal rules • Contrasting this with rules that are defined by standards of morality Differences: penalties or punishments for breaches of law • Differentiating law from morals and recognising that rules adopted by people following personal conscience may not necessarily be reflected in legislation • Illustrating the similarities and differences between moral and legal rules John Stuart Mill – harm to others Hart / Devlin Debate the latter arguing the damage caused by law lacking morality against the view that some people's moral values ought not to be used to stop others' behaviour Discussion on legal theories - Hart – positivist – no valid connection between law and morals Natural law – man made laws depend on a higher morality and if not, then they are not valid Wolfenden Committee Examples: Human Fertilisation and Embriology Act Surragacy Euthanasia - Diane Pretty St George's Healthcare trust vS Equality Act Mandatory Life sentences Anti-terrorism laws Evaluating decided cases on above topics and cases such as R v Brown, Shaw v DPP, R v R, the Gillick case and concluding as to the extent to which morals ought to inform English laws. Conclusion, weighing up the evidence	(12)

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–3**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 2	**4–6**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 3	**7–9**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and/or unbalanced support of legal authorities may be inconsistent or unbalanced. Evaluation attempts to contrast the validity and significance of competing arguments, which may include unbalanced comparisons, possible outcomes and conclusions based on valid interpretations of the law.
Level 4	**10–12**	Accurate and thorough knowledge and understanding are demonstrated. Knowledge and understanding are supported throughout by relevant legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. Evaluation shows a full awareness of the validity and significance of competing arguments, leading to balanced comparisons, possible outcomes and effective conclusions based on justified interpretations of the law.

Question number	Answer	Marks
4(a)	**(2 AO1), (2 AO2)** **One mark for each accurate explanatory point up to two marks (2 AO1), and one mark for each linked expansion/example up to two marks (2 AO2).** • Ensures treaties of law are applied and interpreted in the same way by all members states(1 AO1) and can also settle disputes over this between member states(1 AO2) • Hears cases brought by the Commission or other states to decide if a member state has failed to implement a law (1 AO1), for example, the UK failed to implement a regulation on fitting tachographs in commercial vehicles (1 AO2). • Hears references from national courts on the scope and meaning of EU law (1 AO1) and must have a case referred when there is no further appeal in a country , for example from the Supreme Court (1 AO2). OR **One mark for each accurate explanatory point up to two marks (2 AO1), and one mark for each linked expansion/example up to two marks (2 AO2).** • Proposes and drafts legislation to the European Parliament and Council. Article 17(1 AO1) only EU institution with power to instigate legislation(1 AO2). • Manages and implements EU policies(1 AO1) for example fisheries (1 AO2). • Ensures EU law upheld by member states(1 AO1) it can start proceedings for infringement or then refer to the Court of Justice (1 AO2).	**(4)**

Question number	Indicative content	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** Definition of both: • a regulation is a binding EU legislative act (1 AO1) for example Regulation (EC) No 2027/97 imposes unlimited liability on Community air carriers in the event of death or injury to passengers (1 AO2) • a directive lays down certain results to be effected by member countries by a given date (1 AO1), for example Council Directive 2000/43/EC of 29 June 2000 implementing	**(6)**

	the principle of equal treatment between persons irrespective of racial or ethnic origin (1 AO2). Analysis of differences to include: (2 AO3) • Regulations become law in all the EU member states immediately after they come into force (Snyder 2000). Do not require any implementing measures and override conflicting domestic laws in each member state. • Directives need the member states to achieve a result but they can choose how to achieve the result, such as the format in which to implement the law. It the duty of the member states individually, to decide on how to implement these directives.	

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	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented in a consistent and balanced manner, and supported by appropriate legal authorities.

Question number	Indicative content	Marks
4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • power and impact of EU on UK law could reduce and disappear, as will that of the institutions - the European Commission (EU) and European Court of Justice and their roles • necessity to adopt directives and regulations and the process under which the UK as a member state can be declared to be in breach of EU law could disappear, for example 'Client Earth' case sent to ECJ for judgment • discussion of the supreme law-making powers of Parliament and how full parliamentary sovereignty could eventually be restored and how this sovereignty was lost through the European Communities Act 1972 • assessment of the impact on the courts in the UK caused by currently carrying out EU Law and the impact on statutory interpretation • discussion of authorities such as Van Gend en Loos, Costa v ENEL, Factortame and Brassiere du Pechier • an assessment of the issues caused by balancing the current prevailing effect of EU Law over UK national law • an assessment of how / whether regaining parliamentary sovereignty could benefit (or indeed continue to threaten) national interests.	**(10)**

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to address competing arguments based on interpretations of the law.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to gauge the validity of competing arguments based on interpretations of the law.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and support of legal authorities may be inconsistent or unbalanced. The response attempts to contrast the validity and significance of competing arguments, which may include comparisons, based on valid interpretations of the law.
Level 4	**7–10**	Accurate and thorough knowledge and understanding are demonstrated. Knowledge and understanding are supported throughout by relevant and legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. The response shows an awareness of the validity and significance of competing arguments, leading to balanced comparisons based on justified interpretations of the law.

Question number	Indicative content	Marks
5	**(2 AO1), (2 AO2), (8 AO3), (8 AO4)** **Responses are likely to include:** Explanation of requirements for jury selection, and their role could include: • age, electoral role, numbers, exceptions/ exemptions, courts in which used • listen to evidence, cross examination and summing up by prosecution and defence • listen to judge's summing up of evidence and legal directions • role – to decide on facts and give verdict • secret discussion, unanimous & majority verdicts • public announcement of verdict Discussion of disadvantages of use of jurors could include: • return of perverse verdicts • compulsory, so reluctant to be there • influence / pressure from outside or inside jury • pressure from media publicity • complex issues / lack of understanding, ability to follow • reaching the verdict - issues and problems • cost of jury trial Discussion of advantages of use of jury could include: • cross section of community • wide variety of views / backgrounds/ ages • local knowledge • trial by peers Explanation of requirements for magistrates selection, and their role could include: • qualification –respond to advert/put self forward, age, live/work within area • selection – interviews by local advisory committee, required qualities • appointment – balance and requirements of bench, background checks, appointment by Lord Chancellor Discussion of advantages of use of lay magistrates could include: • local knowledge • volunteering, so want to do role • panel of three	**(20)**

	• inexpensive system, and they deal with a large number of cases, freeing up Crown courts • given training • variety of penalties, but only able to give fines, or small prison sentences Discussion of disadvantages of use of lay magistrates could include: • perverse/inconsistent sentencing • feelings of possible bias towards police/prosecution • make up of panel and selection issues • influence by clerk or within panel • complexity of issues Reference to examples such as Lord Devlin's view, Quakers Penn 1670, Clive Ponting, Kronlid, Stephen Young, Home Office reports, Magna Carta. Discussion could also include civil and coroners courts. Conclusion with justification	

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–4**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 2	**5–8**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 3	**9–14**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and/or unbalanced support of legal authorities may be inconsistent or unbalanced. Evaluation attempts to contrast the validity and significance of competing arguments, which may include unbalanced comparisons, possible outcomes and conclusions based on valid interpretations of the law.
Level 4	**15–20**	Accurate and thorough knowledge and understanding is demonstrated. Knowledge and understanding are supported throughout by relevant legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. Evaluation shows a full awareness of the validity and significance of competing arguments, leading to balanced comparisons, possible outcomes and effective conclusions based on justified interpretations of the law.