GradeMax



Mark scheme (Results)

October 2017

Pearson Edexcel International Advanced Level in Law (YLA1)

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

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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 describing a form of delegated legislation, and one mark for giving an example of it, up to four marks.** • Statutory instruments –law made by government ministers with delegated powers under the authority of primary legislation (enabling Acts) (1), example. (1) • By-laws – made by local authority and other bodies, e.g. public corporations, to cover matters within their own area, they require authority of enabling Act or government minister (1) example. (1) • Orders in Council – the Queen and Privy Council, can make laws when Parliament is not sitting for use in emergencies (1) example. (1)	**(4)**

Question number	Indicative content	Marks
1(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • It is flexible – different rules can be introduced in different areas (by-laws) as required by local need, or to deal with specific issues. (1) Example (1) • It saves parliamentary time and so allows parliament to focus on major issues. (1) • It can be made quickly because it does not have to go through either or both houses and can be used in the case of emergency, (1) • It can be used to fill in the gaps in primary legislation and experts can be consulted for specific detail, (1) Example (1) • Statutory instruments can complete the detail of a framework Act Example (1), or deal with regular amendments, such as the change in the annual amounts of the minimum wage (1) • Control by either Parliament or the judiciary is possible (1) • Democracy is involved, as by-laws are made by local politicians and statutory instruments are made by or in the name of elected ministers. (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
1(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses on Judicial control are likely to include assessment of:** • Validity of delegated legislation can be made through judicial review procedure or in a civil claim. (1) Example (1) • Delegated Legislation can be challenged on grounds of ultra vires, that it is beyond the powers granted in the enabling act. (1) Example (1) • Any delegated legislation ruled ultra vires is void and not effective. (1) Example (1) • Delegated Legislation can be challenged on grounds of unreasonableness. (1). Strictland v Hayes Borough Council 1896. (1) • Delegated Legislation can be challenged because the correct procedure has not been followed. (1) Aylesbury Mushroom Case 1972. (1) • Delegated Legislation can be challenged if it is in conflict with EU law. (1) Example (1)	**(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 role in the relevant process (1 AO1), and one mark for further description of the role in that context (1 AO2) (up to a maximum of 2 marks in total).** • pre-trial ~~(1)~~ - sentence following guilty plea (1), grant bail or custody if case is adjourned for any reason. (1) • trial as summary offence – hearing evidence as bench of three (1), deciding guilt/innocence as unanimous/majority decision (1). • post-trial ~~(1)~~– deciding sentence (1), committing case to Crown Court if their powers are insufficient (1).	**(2)**

Question number	Answer	Marks
2(b)	**One mark for explaining qualification criteria, up to two marks (2 AO1), and one mark for further explanation of disqualification or selection criteria up to a maximum of 2 marks. (2 AO2).** **Responses are likely to include:** • Qualification: Age limits, Electoral register, Residence • Reasons for not qualifiying: disqualification, deferral, excusal, or other good reason for not serving • Selection: initial selection by Jury Central Summoning Bureau (JCSB), in jury waiting room and in court, challenges, swearing in.	**(4)**

Question number	Indicative content	Marks
2(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** Discussion of disadvantages of use of jurors could include: • return of perverse verdicts • compulsory, so reluctant to be there • burden on employers of absentee staff through jury service • 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 • number of jurors on jury • burden of proof and need for unanimous / majority verdict • guidance and direction of judge on legal issues A conclusion that could include: • discussion of and connections made between the competing advantages and disadvantages • contrasting and comparing these advantages and disadvantages • weighing up the validity and significance of each • effective justification to support the conclusion reached	**(14)**

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 of the law commission (1 AO1), and one mark for an example of their influence for expansion (1 AO2).** Description of Law Commission could include: who sits on the Commission and its aims (1 AO1) how it chooses and investigates an issue (1 AO1) AND one of: • its role in codifying law, e.g. Offences against the Person Act 1861 (1 AO2). • its role in consolidating law, e.g. Powers of Criminal Courts (Sentencing) Act 2000. (1 AO2). • its role in recommending the repeal of old law, e.g. removal of double jeopardy rule. (1 AO2).	(2)

Question number	Answer	Marks
3(b)	**(2 AO1), (2 AO2)** **One mark for explaining either media or pressure group influence up to two marks (2 AO1), and one mark for further explanation up to a maximum of 2 marks. (2 AO2).** **Responses are likely to include:** **Explanation of media as an influence could include:** • What is meant by media – radio, TV, Press, Internet, Social Media • how media can influence Parliament such as campaigns, articles, features, specific events • when they can influence –Hillsborough or as part of a regular campaign e.g. immigration, EU membership • effect of influence no change in law or eventual change in the law, e.g. Dangerous Dogs Act 1991 and recent amendment OR **Explanation of pressure group as an influence could include:** • meaning of pressure group, including reference to the different types of group (insider and outsider, sectional and cause groups) • when and whom they can influence – insider groups involved in the drafting of a bill and consulted by minister or civil servants; sectional groups only likely to be consulted when legislation is being drafted that affects their group of members • how they influence - consultation may be arranged following lobbying, direct action such as strikes or demonstrations likely to be used by outsider or cause groups who may not be consulted in law making process • effect of influence by campaigns such as Snowdrop, or Fathers4Justice.	**(4)**

Question number	Indicative content	Marks
3(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** **Advantages of the Law Commission could include:** • Commissioners have considerable legal expertise • Reports are well informed and researched, based on considerable evidence • Law Commission is independent and non-political • Draft laws are presented with their report. **Disadvantages of the Law Commission could include:** • Only a small percentage of reports are accepted and acted on by Parliament • Lack of power – there is no obligation to consult the Law Commission before any new law is introduced • Investigations can be lengthy • Several areas of law are investigated at one time • Investigations may not be completely thorough. **Advantages of media could include:** • They raise issues of public concern with decision makers • They can support pressure groups • They can raise public awareness of an issue • They can generate public support **Disadvantages of the media could include:** • Creating a panic and causing 'knee jerk' legislation • They may represent a small percentage of the population • They may not be able to effectively influence parliament • Ownership of the media source and possible bias A conclusion that could include: • discussion of and connections made between the competing advantages and disadvantages • contrasting and comparing these advantages and disadvantages • weighing up the validity and significance of each • effective justification to support the conclusion reached	**(14)**

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	**7–10**	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 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).** • Burden of proof is – on the balance of probabilities **(1 AO1)** • The claims of both parties to the case are weighed up and the one that is more probable should win the claim**. (1 AO2)** AND • Damages means the payment of monetary compensation. **(1 AO1)** • Object of the award of damages is to put the claimant in the position, as far as money can, as he would have been before the civil wrong. **(1 AO2)**	**(4)**

Question number	Indicative content	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **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).** **Responses are likely to include:** Explanations of definitions or descriptions: • General damages are those that cannot be precisely calculated. (1 AO1). For example, pain and suffering for injuries, future nursing costs. (1 AO2). • Special damages are those that can be calculated specifically (1 AO1). For example, the damage to a car after a crash can be precisely calculated (1 AO2) • Exemplary damages are those intended to punish the defendant. (1 AO1). For example, they are only used in tort where the defendant intended to make a profit which would be greater than any compensation payable. (1 AO2). • Nominal Damages are the award of a small amount of money to indicate the claimant has won the case (1 AO1). However, the amount is small as he has not actually suffered any financial loss. (1 AO2). An example would be in the tort of trespass. (1 AO2). **One mark for each accurate point of analysis made up to two marks (2 AO3).** **Responses are likely to include:** • Analysis of differences • Frequency of use / rarity, • Applicability to contract / and or tort	**(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 of at least one type of damages. 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 of at least two types of damages. 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:** **Descriptions of equitable remedies** • Injunctions – order to do or not do something • Specific Performance – order to complete contract • Rescission – puts parties back in their pre-contract position • Rectification – alters document to show parties real intention **Impact of equitable remedies** • All are discretionary, so award lies in the remit of the particular judge • Judge may decide that damages are sufficient • Problem with injunction – damages are often seen as sufficient • Problem with Specific Performance – only rarely used, not used to make someone carry out personal services, or against a minor. • Problem with Rescission – used where a misrepresentation has induced one party to enter a contract.	**(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:** • 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 Salmond's View 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 do or ought to inform English laws. Other relevant examples must be credited. Conclusion, weighing up the evidence and justification for conclusion.	**(20)**

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.