GradeMax



Mark Scheme (Results)

Summer 2018

Pearson Edexcel International Advanced Level in History (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 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, i.e. 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.

Question number	Answer	Marks
1(a)	**(2 AO1)** **One mark for stating each stage of the legislative process up to four marks.** • A bill is presented in Parliament, usually in the House of Commons (1) • First reading (1) • Committee stage (1) • Second reading (1) • Report stage and process in other House (1) • third reading (1) • becomes an Act after receiving Royal Assent (1)	**(4)**

Question number	Indicative content	Marks
1(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** **internal aids:** • long and short titles (1) • preamble (1) • definitions (1) • interpretation section (1) • schedule. (1) **external aids:** • authorised dictionary of the year the Act was passed (1) • an external treaty, e.g. The Treaty of Rome, if the word is defined there (1) • a report (such as a Law Commission report) on which Act is based (1) • if the word is included in the Interpretation Act 1978 ('he' includes 'she') (1) • if the word has been discussed in a parliamentary debate and included in a Hansard report (1) (Hart v Pepper)	**(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 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
1(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Description of literal rule - judges giving words their ordinary dictionary meaning, even if the result is an absurdity. (1) Case example to illustrate the application of the rule. (1) **Advantages of literal rule could include:** • Judges apply the will of parliament, and this is democratic as unelected judges are not making law, merely applying law passed by an elected Parliament. (1) • The rule allows predictability as the same meaning is given every time a word is used in an Act. (1) • It ensures certainty so lawyers can advise their clients on the likely outcome. (1) **Disadvantages literal rule could include:** • Rigidity – judges have no discretion so if a bad precedent or absurdity results then judges cannot provide justice in individual cases, e.g. Berriman (1) • The rule cannot be used if words to be interpreted are not in an Act or if the words can have more than one meaning. (1) • The rule assumes that the Act is perfectly written. (1) • There may be a requirement for Parliament to rectify error following case, e.g. Fisher v Bell. (1) • It is assumed that Parliament meant the result which the rule achieves. (1)	**(10)**

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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. 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 identification of one alternative dispute method (1 AO1) and one mark for further detail (1 AO2) (up to a maximum of 2 marks in total).** Arbitration (1) **-** voluntary, arbitrator someone other than a judge, can be written into a contract. (1AO2). Conciliation (1) - parties try to reach an amicable settlement with the assistance of a conciliator who is a neutral third party. who will suggest a non-binding proposal to settle the dispute. (1AO2). Mediation (1) – neutral mediator, confidential, go-between. (1AO2). Negotiation (1) – Private and cheap, between the parties. (1AO2).	(2)

Question number	Answer	Marks
2(b)	**(2 AO1), (2 AO2).** **Responses are likely to include:** **Up to two marks for courts of first instance (2 AO1) and up to two marks for each linked explanation of jurisdiction / route for appeals, up to a maximum of 2 marks. (2 AO2).** • Courts of first instance: - County court – tracks and small claims (1) - High Court - divisions, tracks and work allocation. (1) • Appeal courts, examples: - Court of appeal (civil division) (1) - Supreme court (1) Possible references to ECJ (1).	(4)

Question number	Indicative content	Marks
2(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** Brief description of selection, appointment and removal of judges – • Selection - eligibility, advertisements for posts, application, testing, promotion, reference to Judicial Appointments Commission (JAC) and consideration of application • Appointment –inferior judges' appointment by Minister of Justice and Lord Chancellor after recommendation by JAC; superior judges' appointment by Queen, after recommendation by JAC • Removal -Superior judges free from political interference, can't be made to resign although contrast Lord Chancellor. Inferior judges can be removed for incapacity / misbehaviour by Lord Chancellor Advantages of selection, and appointment and removal process could include: • legal knowledge of appointees as they will have existing knowledge of court rules and procedure • selection methods provide choice of best applicants, and this now includes solicitors and academics as well as barristers • independence of JAC • Superior are free from political interference • Incompetent inferior judges can be removed Disadvantages of selection, appointment and removal process could include: • best lawyers may not apply • predominance of barristers applying • judiciary is not representative of sexual/racial/educational mix of country • judges may not have practical experience or knowledge or be a specialist in the law they are required to deal with in court • limited training given for appointees • Superior can be removed by crown, but not used since 1830. • Removal of inferior judges can take time and has only been used rarely.	**(14)**

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	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 maximum for providing an accurate description (1 AO1), and one mark maximum for an example for expansion (1 AO2).** **Responses are likely to include:** • Solicitors (1 AO1) • Citizens' Advice (1 AO1) • Both the above are readily available throughout the country and accessible in town centres or high streets (1 AO2) • Barristers (1 AO1), these can now be approached direct, but are less accessible and more expensive and specialised. (1 AO2) • Web sites (1 AO1), readily accessible, but unlikely to give personalised advice. (1 AO2)	(2)

Question number	Answer	Marks
3(b)	**(2 AO1), (2 AO2)** **One mark for explaining the meaning of the role, up to two marks (2 AO1), and one mark for further explanation of examples up to a maximum of 2 marks. (2 AO2).** • Someone who has been appointed to investigate complaints about companies and organisations. (1 AO1). Examples include the energy, communications, consumer sectors (1 AO2) • It is a way of trying to resolve a complaint without going to court. (1 AO1). But you must complain to the organisation first, before you make a complaint to the ombudsman. (1 AO2) and also it is independent, free of charge and impartial (1 AO2)	(4)

Question number	Indicative content	Marks
3(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include correct explanation and demonstration of knowledge and understanding of:** • Sources of advice, Citizens' Advice, Trade Union, Solicitor • Sources of representation – Solicitor / Barrister • Payment / cost/ funding available ▪ Insurance ▪ State funding ▪ Conditional fees ▪ Trade Union Membership ▪ Pro bono • Both the advantages and disadvantages of the above sources of advice and representation in civil cases should be considered • A conclusion, weighing up and balancing the evidence should be reached	**(14)**

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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.
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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).** • Laws are enforced by the state (1 AO1) and have been through an official process when created, breach will incur a penalty (1 AO2) AND **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).** • Moral or social rules are not enforced by the state, they are informal and more flexible (1 AO1) so breaking them will not carry serious consequences (1 AO2).	(4)

Question number	Indicative content	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** Choice of **either Utilitarianism** • Utilitarianism is an ethical theory stating that the best action is to ensure the well-being of all – humans and animals (1 AO1) • Jeremy Bentham was the founder of utilitarianism, • described theory as utility being the sum of all pleasure that results from an action, minus the suffering of anyone involved in the action. (1 AO2) • Utilitarianism – happiness is the basis, not whether an action is good or bad – the happiness of the greatest number of people is the most important thing (2 AO3) **OR Positivism** • Positivism is a philosophical theory stating that positive knowledge is based on natural phenomena and their properties and relations (1 AO1). • Defined as a sensory experience derived from reason and logic forms the only source of all knowledge (1 AO2). Positivism based on science – 3 stages – theological, metaphysical and positive – where science is most important – and everything is explained in terms of cause and effect. (2 AO3).	(6)

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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.

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4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** 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 v S 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 have informed the development of laws. Conclusion, weighing up the evidence.	**(10)**

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	0	A completely inaccurate response.
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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 aim of sentencing and could include discussion of: • Retribution • Denunciation • Protection of the public • Deterrence • Rehabilitation • Reparation • Conclusion with justification • Sanctions include: Prison sentences, guidelines and tariffs, mitigating or aggravating factors, suspended sentences; probation, community service, tagging, driving bans, fines, curfews, exclusion orders. • Theories of punishment linked to sanctions • Simple statistical information can be provided in support • 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.

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