GradeMax



Mark Scheme (Results)

October 2018

Pearson Edexcel International Advanced Level in Law

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)	**(1 AO1), (1 AO2)** **One mark for an accurate explanatory point (1 AO1), and one mark for a linked expansion/example (1 AO2).** • Burden of proof is – beyond reasonable doubt **(1 AO1)** • The burden of proof is on the prosecution **(1 AO2)** • Proof of guilt would be demonstrated by a unanimous or majority verdict **(1 AO2).**	**(2)**

Question number	Indicative content	Marks
1(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** Suspended prison sentence • Adult sentence – over 18 • Sentence does not take effect immediately • Court fix a time for the suspension – up to two years • If no further offence during the suspended period, the sentence is not served. If a further offence is committed then the original sentence is 'activated'. • Examples needed for maximum marks Conditional discharge • Used where court considers punishment not necessary • No penalty for the crime is imposed for a set conditional period up to 3 years • If offender reoffends during the time limit of the conditional period, the court can impose another sentence in place of the conditional owe discharge as well as sentencing for the new offence. • Examples needed for maximum marks Community service order • Court can combine any requirements necessary in such an order. • Sentence available for those 16+ • Mix and match restrictions and rehabilitation • Examples of restrictions are curfew, prohibited activity, exclusion order, residence orders • Examples of rehabilitation are mental health, drug or alcohol treatment orders	**(6)**

	• Attendance centre, unpaid work elements • Examples needed for maximum marks **If answer only covers one sanction then a maximum of 3 marks**	

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)	**(3 AO1), (3 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** Explanation of the aims of the theories of retribution, deterrence and rehabilitation • Retribution Offender needs to be punished. It does not try to reduce crime in society or try to alter the future behaviour of the offender. 'Eye for an eye'. Idea expressed by Kant. • Deterrence – Aim is to reduce crime. Individual deterrence –to make sure the offender does not reoffend General deterrence –to try to prevent others committing crime. • Rehabilitation Aim to reform offender and rehabilitate into society. Hope is behaviour will be influenced by sentence. Effect or impact of the theories on criminal sanctions imposed on offenders. • Retribution – tariffs, and sentence required to be proportionate to the crime • Deterrence – heavy fines or long sentences to deter others • Rehabilitation – forward looking and positive aim in 20th century. Important for young offenders. Problems / criticisms of impact / effect of theories • Retribution – does not allow for mitigating factors and can be unjust • Deterrence – does not stop offenders acting on spur of moment, or under influence of drugs or alcohol • Rehabilitation – individualised sentence, but criticism that it leads to inconsistency in sentencing. **Level 4 answers must include reference to all 3 theories**	**(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 address competing arguments 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 gauge the validity of competing arguments 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 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	**10–12**	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)	**Up to two marks for accurate definition of the European Court (2 AO1), and up to two marks for each linked example /expansion (2 AO2).** • Ensures treaties of law are applied and interpreted in the same way for all member states **(1 AO1)** and can 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)**.	**(4)**

Question number	Answer	Marks
2(b)	**(2 AO1), (2 AO2)** **Responses are likely to include:** Definition of both: • a regulation is a binding EU legislative act **(1 AO1)** for example stating Regulation (EC) No 2027/97 **or** 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 stating Council Directive 2000/43/EC of 29 June 2000 **or** implementing the principle of equal treatment between persons irrespective of racial or ethnic origin **(1 AO2)**. Explanation of differences to include: • 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. **(1 AO2)** • 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 is the duty of the member states individually, to decide on how to implement these directives. **(1 AO2)**	**(4)**

Question number	Indicative content	Marks
2(c)	**(2 AO1), (2 AO2), (4 AO3), (4 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 judgement • discussion of the supreme law-making powers of parliament and how full parliamentary sovereignty could 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 current EU Law • assessment of the impact of negotiations for leaving the EU on the UK and of the transition period • discussion of authorities such as Van Gend en Loos, Costa v ENEL, Factortame and Brassiere du Pechier and other relevant authorities • 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 threaten national interests • assessment of potential advantages and disadvantages.	**(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. Assessment 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 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
3(a)	**(1 AO1), (1 AO2)** **One mark for providing an accurate definition of a solicitor's role (1 AO1), and one mark for expansion/example (1 AO2).** • Provides advice on legal matters directly to clients and is the first point of contact **(1 AO1)** AND one of: • Solicitor firms available on every high street and online **(1 AO2)** • Provide general advice and staff duty solicitor rota for help when a person detained at police station **(1 AO2)** • Can represent clients in court **(1 AO2)**.	**(2)**

Question number	Answer	Marks
3(b)	**(2 AO1), (2 AO2)** **One mark for identifying each way that a barrister's role differs from a solicitor's role, up to two marks (2 AO1), and one mark for each linked explanation (2 AO2).** • More common to instruct solicitor (general advice) first and then be referred to appropriate specialist barrister **(1 AO1)**, as barristers can appear to represent clients in all courts **(1 AO2)** • Barristers are specialists who group together in Chambers that are not usually in offices on the high street, and are self-employed. **(1 AO1)**. In most parts of the country they are not as assessible to the general public for advice. **(1 AO2)** • Barristers provide advice or briefs to clients, usually via a referral by solicitors. **(1 AO1)**. Solicitors do the majority of the communicating with the client and preparation and research prior to handing the evidence over to the barrister, who then represents the client in court **(1 AO2).**	**(4)**

Question number	Indicative content	Marks
3(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Different training required for both • Regulation and professional bodies • The Royal Commission on Legal Services in 1979 (the Benson Commission) • The Marre Committee (set up by the Bar Council and Law Society) in 1988 and recent surveys • Rights of audience **Courts and Legal Services Act 1990** and the **Access to Justice Act 1999** • Availability of training places for both professions, selecting route and cost to trainees • Availability of employment / pupillage on qualification • Duplicating work • Cost to clients • Independence of the Bar and cab-rank rule • Alternative business structures - **Legal Services Act 2007** • Legal Education and Training Review (LETR)	**(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 providing an accurate definition of the composition of the Law Commission (1 AO1), and one mark for example / expansion (1 AO2). One mark for an accurate definition of its role (1 AO1) and one mark for example / expansion (1 AO2).** • Who sits on the Law Commission **(1 AO1)** • Its aims **or** how it chooses and investigates an issue **(1 AO2)** AND one of: • Role in codifying law **(1 AO1)**, e.g. Offences against the Person Act 1861 **(1 AO2)**. • Role in consolidating law **(1 AO1)**, e.g. Powers of Criminal Courts (Sentencing) Act 2000. **(1 AO2)**. • Role in recommending the repeal of old law **(1 AO1)**, e.g. removal of double jeopardy rule. **(1 AO2)**.	**(4)**

Question number	Indicative content	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses on influence of political parties are likely to include:** • Importance of voting in general elections and government selected and power resulting • Manifesto promises and Queen's speech • Majority in government and impact on legislative programme • Impact on government of Europe, Law Commission, media and pressure groups with examples.	**(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
4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** Internal • Government policy • Individual members of parliament • House of Lords • Reform bodies and commissions • Consolidation and codification • Advantages and disadvantages of all and their impact • Examples / illustrations External • European Law • Pressure groups • The media • Advantages and disadvantagesof all and their impact • Examples / illustrations **Level 4 responses must include reference to both internal and external influences**	**(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 the methods of civil dispute resolution, to include both the specific civil courts and their jurisdiction together with the specific types of alternative dispute resolution. Evaluation of the advantages and disadvantages of each of the above: 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 public hearing of the dispute, 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. Advantages of courts: • clear process, time limits and procedure • funding opportunities and availability • precedent is available for lawyers to provide advice • appeal structure and rules for courts. Disadvantages of courts: • taking a claim through the court system is costly and process takes time and is complicated for claimants to	**(20)**

	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. Ombudsman services: • availability for types of dispute. A justified conclusion based on these advantages and disadvantages **Answers only comparing and evaluating two methods of civil dispute resolution can only go to the top of Level 2 mark band.** **Answers comparing and evaluating three methods of civil dispute resolution can only go to the top of Level 3 mark band.** **Answers comparing and evaluating four or more methods of civil dispute resolution can go to the top of Level 4 mark band.**	

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.