GradeMax



Mark Scheme (Results)

Summer 2019

Pearson Edexcel International A Level

In Law (YLA1) Paper 01

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Summer 2019
Publications Code YLA1_01_1906_MS
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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 the meaning of ratio decidendi and one mark for an example/or expansion up to two marks.** Ratio decidendi is the reason given in the judgement for a decision in a court case **(1)** • Decisions of judges in higher courts bind lower courts **(1)** • Civil court hierarchy used to illustrate point above **(1)** • Criminal court hierarchy described/used to illustrate **(1)**	**(2)**

Question number	Indicative content	Marks
1(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Jurisdiction of first instance courts, and how this is bound by higher courts, and judicial precedent • Appeal courts, grounds for appeal, leapfrog and reasons • Case law as illustration of workings of judicial precedent, e.g. Young v Bristol Aeroplanes **Level 3 answers will require case 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
1(c)	**(2 AO1), (2 AO2), (4 AO3), (4 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 future users • In some appeal cases each judge may give a different reason for their decision which may result in 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 retrospective decisions. **Level 4 responses will require balanced 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 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)	**(4 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 the other House **(1)** • Third reading **(1)** • Becomes an Act after receiving Royal Assent **(1)**	**(4)**

Question number	Answer	Marks
2(b)	**(2 AO1, 2 AO2, 2AO3)** **Responses are likely to include:** • Description of ONE of the rules used by judges for interpretation – Literal, Golden, Mischief. • Case examples of where rule used • Advantages of rule • Disadvantages of rule • Case examples to illustrate both advantages and disadvantages • Analysis	**(6)**

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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
2(c)	**(2 AO1), (2 AO2), (2 AO3), (4 AO4)** **Responses are likely to include:** • Public and Private member bills • **Advantages** • Democratic • Green Papers allow consultation • Thorough scrutiny and debate • The many stages encourage discussion and consultation • Parliament Acts 1911 and 1949 and limitations on the Lords' powers to block legislation • Examples of important statutes • Preferable to undemocratic law making • **Disadvantages** • Language obscure, complex and inaccessible • Acts over-elaborate trying to meet every contingency • Time it takes for the bill to pass all the stages • Delays and undemocratic elements of process • Examples of statutes illustrating these problems **Level 4 responses will require balanced advantages and disadvantages.**	**(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
3(a)	**(1 AO1), (1 AO2)** **One mark for describing the purpose of the role (1 AO1), and one mark for further detail (1 AO2).** • Someone who has been appointed to investigate complaints about companies and organisations. **(1 AO1).** Examples include the energy, communications, consumer sectors **(1A O2).** • 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).**	**(2)**

Question number	Answer	Marks
3(b)	**(2 AO1), (2 AO2)** **One mark each for explaining role and meaning up to two marks (2 AO1), and one mark for each linked explanation (2 AO2).** Explain meaning of ACAS – Advisory, Conciliation and Arbitration Service **(1 AO1)** • Expert and impartial advice service available in employment disputes **(1 AO1)** • Available to both employers and employees **(1 AO1)** • Provides advice, conciliation and training **(1 AO2)** • Governed by an independent council **(1 AO2)** • Anyone lodging action with an employment tribunal needs to contact ACAS first **(1 AO2)** • Provide individual or collective conciliation **(1 AO2)** • Provide mediation **(1 AO2)** • Research and publish papers **(1 AO2)**	**(4)**

Question number	Indicative content	Marks
3(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • First tier and upper tier explained with examples of purpose • Composition of panel • Informal • Representation • Appeals • **Advantages –** cheap, not so intimidating, decisions in private, not so much publicity • **Disadvantages –** not properly funded, viewed as inferior, not bound by precedent, no reasons given, or appeals allowed from some tribunals, chairperson not always sufficiently impartial • Improvements – Franks Committee • Problems with court system and why tribunals have a place • Examples • Conclusion	**(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)	**(4 AO1)** **One mark for each accurate statement of a way of funding legal advice and representation** • Insurance **(1)** • State funding **(1)** • Conditional fees **(1)** • Trade union Membership/CAB **(1)** • Pro bono **(1)** • Self financing **(1)**	**(4)**

Question number	Indicative content	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Insurance – premiums paid in advance, often on car or home policies, costly addition to policy, well before any issue arises • State funding • Civil – only if in public interest to fund need merits for actual representation in court. Not available for tribunals, or personal injury. • Criminal – only for those on low incomes, must be in interests of justice for defendant to be represented. Means and merits. Limited choice of lawyer, but free advice at police stations. • Conditional fees – need to find solicitor willing to act, uplift on fee and additional cap on success fee. Used over 50,000 times for personal injury since 1990 • Trade Unions – need to be a member • CAB – available to the public • Pro bono – need to find lawyer willing to take the case on/quality of advice/representation • Solicitors: advantages and disadvantages	**(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:
	• 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 reached, may lead to both parties being dissatisfied
	  ○ Not binding, no appeals
	  ○ No public airing of grievance
	• Advantages of arbitration:
	  ○ Needs agreement of parties
	  ○ Time and date fixed by parties
	  ○ Arbitrator(s) agreed by parties and expert in the problem
	  ○ Hearings can be paper, and are quicker and cost less than courts
	  ○ Very flexible process and in private
	• Disadvantages of arbitration:
	  ○ No state funding and although costs less than court one party may not be able to afford it
	  ○ Even though expert(s), could be unexpected legal problems
	  ○ Rights of appeal limited
	  ○ Can be delays
	• By comparison – Disadvantages of courts:
	  ○ Taking a claim through the court system is costly and the 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
	• By comparison – Advantages of courts:
	  ○ Clear process, time limits and procedure
		(10)

	○ Funding opportunities and availability ○ Precedent is available for lawyers to provide advice ○ Appeal structure and rules for courts. Ombudsman services ○ Availability for types of dispute. Responses that do not specifically name types of ADR but give generic advantages and disadvantages for ADR can get up to level 3. **Level 4 responses will require balanced advantages and disadvantages.**	

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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	Indicative content	Marks
5	**(2 AO1), (2 AO2), (8 AO3), (8 AO4)** **Responses are likely to include:** • Subjective nature of morality and whether it can be certain • Stating the definition of law as a set of legal rules • Contrasting this with rules that are defined by standards of morality • 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 • Explaining the debate following the Wolfenden Committee report on homosexuality and prostitution • The 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 • Evaluating decided 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.	**(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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