GradeMax



Mark Scheme (Results)

October 2020

Pearson Edexcel

International Advanced Level in Law (YLA1/01)

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	State the meaning of both ***Stare decisis*** **AND** ***Obiter dicta*** **Answer**	Marks
1(a) **i)** **ii)**	**(2 AO1), (2 AO2)** **One mark for stating the English meaning of each phrase (2 AO1), and one mark for expansion/example of each (2 AO2).** **Stare Decisis** – standing by what has been decided / previous decisions **(1 AO1),** this is the foundation of binding precedent and brings certainty in the law **(1 AO2).** **Obiter Dicta –** other things said / things said by the way **(1 AO1),** the remainder of the judgement, left over after the binding precedent, judges do not have to follow it **(1 AO2).**	4

Question number	Explain the impact of the 1966 Practice Statement on the development of judicial precedent in England and Wales. **Indicative content**	Marks
1(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Change to the rule brought in by London Street Tramways v London County Council1898. House of Lords / Supreme Court not now bound by previous precedent. Advantages: • Flexibility • Ability to apply law to individual cases • Orderly development of legal rules while keeping some degree of certainty • Allows change in law if feel earlier decision wrong – if 'right to do so' Disadvantages • Not used initially • Vague statement giving little guidance • Criminal law needs to be certain Impact since 1980's R v Shivpuri, Pepper v Hart	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	Assess the advantages and disadvantages of judicial precedent **Indicative content**	Marks
1(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** **Advantages of precedent:** ● The system provides detailed rules for later cases • The system is flexible as it deals with new situations as they arise, or updates out-of-date rules as in R v R and/or Herrington • It deals with real, as opposed to theoretical cases • It is just as judges are impartial and base their decisions on legal rules • Reporting of cases, so publicity • It is authoritative due to the numbers and experience of the judges in the Supreme Court and Court of Appeal. • It provides certainty and saves time **Disadvantages of precedent:** ● The system is rigid and bad decisions are difficult to change • Courts have to be careful not to interfere with supremacy of parliament • The system causes uncertainty for claimants and defendants • in some appeal cases each judge may give a different reason for their decision which may result in the difficulty for later judges/lawyers identifying the ratio of a case • the nature of law making is undemocratic as a judge's role can be said to be applying law passed by Parliament rather than making law • precedent depends on a case coming to court, which may be a lottery based on funding and the lawyer's advice • the system results in large numbers of precedents made and then there is the difficulty of finding a relevant one. • It produces a retrospective kind of decision	10

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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	Describe the burden of proof in a civil court case. **Answer**	Marks
2(a)	**(1 AO1), (1 AO2)** **One mark for stating that the burden is 'on the balance of probabilities' (1 AO1).** **One mark for expansion/example, e.g. the burden is on the Claimant (1 AO2).**	2

Question number	Explain two differences between tort and contract. **Answer**	Marks
2(b)	**(2 AO1), (2 AO2)** **Responses are likely to include:** **Tort – civil wrong done by one person to another (1 AO1), can be to person or property such as negligence, trespass, nuisance, defamation (1 AO2).** **Contract – legally binding agreement between two or more people (1 AO1), only enforceable if all rules complied with – offer, acceptance, consideration (1 AO2).**	4

Question number	Evaluate the purpose of the remedies available to resolve civil disputes and when they may best be used. **Indicative content**	Marks
2(c)	**(3 AO1), (3 AO2), (4 AO3), (4 AO4)** **Responses are likely to include:** **Descriptions and purpose of both common law and equitable remedies** **Damages:** General damages are those that cannot be precisely calculated. Special damages are those that can be calculated specifically Exemplary damages are those intended to punish the defendant. Nominal Damages are the award of a small amount of money to indicate the claimant has won the case • 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 use of common law remedies** Damages often unable to put claimant back in position they were in before civil action, often if personal injuries and permanent disability**.** **Impact of use 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	14

	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.	

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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	Explain the difference between European Regulations and Directives **Answer**	Marks
3(a)	**(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	Analyse the role of the European Court of Justice in settling disputes **Indicative content**	Marks
3(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Ensures treaties of law are applied and interpreted in the same way for all member states and can settle disputes over this between member states • Hears cases brought by the Commission or other states to decide if a member state has failed to implement a law for example the UK failed to implement a regulation on fitting tachographs in commercial vehicles • Hears references from national courts on the scope and meaning of EU law and must have a case referred when there is no further appeal in a country, for example from the Supreme Court. Analysis of success, importance and reputation with examples	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 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	Assess the role, composition and importance of the European Commission in the law-making process. **Indicative content**	Marks
3(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** **Role and composition** The European Commission is the senior executive branch of the EU. A commissioner is selected from each member country to form a cabinet. They swear allegiance to the European Union and act on behalf of the union as a whole rather than their own country. One commissioner is called to be the President. The role of the European Commission is to develop strategies for the whole of the EU and to draft legislation, make rules and regulations and to represent the EU in trade negotiations (Article 17 of the Treaty if the European Union). **Importance** It is the only body within the EU framework that can create law. This is so that there is one voice in the creation of pan-European law. Most of its laws relate to trading relations between member countries and beyond. However, it is now beginning to develop criminal law. This was challenged in the ECJ but upheld. **Assessment of role, composition and importance**	10

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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	Describe what is meant by '*legal personality*'. **Answer**	Marks
4(a)	**(1 AO1), (1 AO2)** One mark for describing the meaning in law e.g. to be capable of having legal rights and duties (1 AO1), and one mark for giving an example – e.g. a limited company (1 AO2).	2

Question number	Analyse the differences between rules and laws. **Indicative content**	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** Laws are enforced by the state and have been through an official process when created, breach will incur a penalty Moral or social rules are not enforced by the state, they are informal and more flexible so breaking them will not carry serious consequences A sport or society may have rules, which if broken may lead to expulsion from the sport / society. Unwritten rules may exist within a community / religion, but they are not enforced by legal sanctions. Examples of decided cases to illustrate Legal theories	6

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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	Assess the theory of legal positivism in relation to law making. **Indicative content**	Marks
4(c)	**(2 AO1), (2 AO2), (4 AO3), (4 AO4)** • **Law is a reflection of the beliefs and perceptions of society and what is considered to be 'just'.** • **Explanation of the command theory of law proposed by John Austin** • **Criticism from Professor H.L.A Hart and Hans Kelsen. The beliefs of the positivists should be compared and contrasted with those defined as natural lawyers.** • **Overall assessment**	12

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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 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	Evaluate the relationship between the theories of punishment and the criminal sanction available to the court. **Indicative content**	Marks
5	**(5AO1), (5 AO2), (5 AO3), (5 AO4)** **Responses are likely to include:** **Explanation of the aims of the theories of reparation, restoration, retribution, deterrence, denunciation and rehabilitation** • **Reparation – compensating the victim** • **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.** • **Denunciation – society expressing disapproval** • **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.** **Conclusion** **Level 4 answers must include reference to at least 3 theories**	20

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	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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