



GCE MARKING SCHEME

SUMMER 2016

**UNDERSTANDING LEGAL VALUES, STRUCTURES
AND PROCESSES**

**LAW – PAPER LA1 (AS)
1251/01**

INTRODUCTION

This marking scheme was used by WJEC for the 2016 examination. It was finalised after detailed discussion at examiners' conferences by all the examiners involved in the assessment. The conference was held shortly after the paper was taken so that reference could be made to the full range of candidates' responses, with photocopied scripts forming the basis of discussion. The aim of the conference was to ensure that the marking scheme was interpreted and applied in the same way by all examiners.

It is hoped that this information will be of assistance to centres but it is recognised at the same time that, without the benefit of participation in the examiners' conference, teachers may have different views on certain matters of detail or interpretation.

WJEC regrets that it cannot enter into any discussion or correspondence about this marking scheme.

AS LEVEL LAW

General Instructions to LA1 Marking Scheme

Please refer to the marking matrix sent to you by the WJEC and apply the marks directed. The matrix reflects the assessment objectives for AS Level Law and the marks are distributed precisely on the basis of these objectives. The various levels in the mark scheme according to the assessment objectives will be standardised at the Examiners' Meeting on the basis of sample scripts. At this time we can determine precisely what is reasonable in terms of the various components in the mark scheme. The marking instructions attached therefore, represent only a broad outline as to what is required.

You will note that marks are allocated for spelling, grammar and syntax. All questions are being marked out of 25, each question is sub-divided. You will be required to provide 10 scripts, that is, a cross-section of marks for the Chief Examiner very early in your marking work. You may be instructed to alter your pattern of marking as a result of this scrutiny. All Assistant Examiners shall do this in order to ensure that standards are acceptable and consistent. A second group of scripts will be required. If there is anything unusual about an answer or about the script please make a note on the front cover for the Chief Examiner. Borderline scripts can be read again at the grading stage and such notes will be helpful. Please initial all scripts in the box provided. If you have any queries then please contact the **Chief Examiner Prof. Iwan Davies at Swansea University**. If you have any administrative queries - contact the **Subject Officer Joanna Lewis on (029) 2026 5167 or e-mail joanna.lewis@wjec.co.uk**

Whilst comments on each question are not required you are nevertheless requested to isolate your final mark into the categories anticipated in the mark scheme. Please examine the rubric carefully as candidates are only required to answer **two** questions in LA1.

Principles of Marking
(for LA1)

1. The assessment is based upon the levels of attainment for Objectives AO1, AO2, AO3, as indicated in the mark scheme.
2. The levels of assessment used in the mark scheme indicate the relative value of knowledge, understanding and skills which are relevant and may occur in the answers. In order to allow for different approaches by the candidates and to achieve flexibility, the sub-totals of each assessment objective must be indicated at the end of each answer, in accordance with AS suggested weighting.
3. The range of marks allocated to each of the levels for each of the objectives is recorded in the mark scheme.

Levels-of-response marking is to be used in all questions and parts of questions. The whole response is to read and then, taking everything into account, allocate to the level of 'best fit' on the mark scheme. There is usually a band of marks allocated to each level: discrimination will be made with reference to the development of the answer.

4. The question specific mark scheme indicates the kind of material and analysis that a candidate might display in his/her answer. This is neither prescriptive nor exhaustive but indicates the general level likely to be achieved by a 17 year old under examination conditions having followed an appropriate course of study. Other approaches of equal merit will be awarded at the appropriate level. The question specific mark scheme is NOT a set of model answers and every point does not need to be covered in order to achieve full marks.
5. Examiners should not hesitate to award full marks to answers which are well argued and well presented or which show a freshness of treatment even if they do not fall fully within the suggested marking scheme, provided the answer demonstrates a high level of understanding and argument relevant to the question as set.
6. Wholly narrative or descriptive answers to questions requiring analysis and evaluation can only receive marks for Assessment Objective 1 (Knowledge and Understanding) and full marks can be awarded within this section if the answer so justifies.
7. The level of assessment is **below** that of Advanced (A2) Level and an answer should not be equated with what would be expected at A2. AS represents an intermediate stage between GCSE level and Advanced (A2) level.
8. For evaluation, at the top for AS level, it will be sufficient for candidates to demonstrate a sound analysis of reasoning and arguments in relation to legal issues. Candidates at the top level of A2 will be expected to have progressed beyond this, as demonstrated by the level 4 descriptor for Assessment Objective 2 in the A2 mark schemes.

MARKING INSTRUCTIONS

ASSESSMENT

1. Each question is to be marked according to the stated level descriptors in the mark schemes. In such marking, it is essential that the whole response to a part-question is read and then allocated to the level it best fits. Examiners may wish to underline significant features or make a brief comment to justify the level allocated.
2. Where a band of marks is allocated to a level, discrimination will be made with reference to the development of the response.
3. Aim to use the full mark range. Do not hesitate to award maximum marks to responses which meet the criteria of the relevant level descriptor in the mark schemes. Equally, responses which are completely irrelevant should be awarded no marks.

METHOD OF MARKING

5. No half marks or bonus marks are to be awarded under any circumstances.
6. A ringed total, indicating the total marks gained in responses to all parts of a question, should be shown at the end of each complete answer.
7. Any written comments on scripts should be factual, preferably using the terminology found in the level descriptors. No reference should be made to the possible grade achieved and no derogatory comment should be made. **Always mark using a red pen. Pencil or any other colour is not acceptable.**
8. The key to fair marking is consistency. Do not change your marking pattern once scripts have been despatched to the WJEC.

SAMPLE SCRIPTS

9. Send ten scripts to the Principal Examiner by first class letter post within 60 hours of the standardisation meeting of examiners. Do not send any scripts to the WJEC until the Principal Examiner contacts you by phone or letter. **Please ensure that you send in to WJEC at least 70-100 scripts well in advance of the return of scripts date to ensure that the WJEC can select specimen scripts for standardisation purposes.**

EXAMINER'S REPORT

A written question-by-question report on the performance of candidates, as evidenced in the scripts you have marked, should be sent to the Principal Examiner within FIVE DAYS of the stated date for completion of marking. Your report is most helpful if it contains comments on frequent misunderstandings, weaknesses, common errors and questions which caused difficulties, as well as positive qualities, good practice and encouraging features. A comment that a particular question was answered well or badly is of no value unless accompanied by some specific explanation.

GCE LAW

PAPER LA1 (AS)

UNDERSTANDING LEGAL VALUES, STRUCTURES AND PROCESSES

Answer *two* questions

1 (a) Explain the role of bail in the Criminal Justice System [14]

Credit reference to:

- Presumption of Bail and Bail Act 1976, s25 CJPOA1994; CJA2003.
- Conditional bail.
- The role of sureties.
- Refund of bail.
- Breach of bail.
- Bail and human rights noting significance of Article 5 ECHR.
- Credit shall be given for relevant and accurate citation.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO1
Knowledge and Understanding	
11-13	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
7-10	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-6	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

(b) Discuss effectiveness of bail legislation.

[11]

Credit reference to:

- Advantages and disadvantages of bail.
- Court bail.
- Police bail.
- Bail bandits.
- Importance of bail conditions.
- Relevant citations.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from communication of meaning.

Marks	AO2
	Skills
8-9	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
6-7	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
4-5	Candidates demonstrate a limited evaluation of some of the points of how the law operates, or apply the law to a given factual situation in a partly accurate and occasionally unsubstantiated way. This is achieved through a limited selection of legal authorities and limited ability to apply the law to a given question.
0-3	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply to the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

2. (a) Explain the impact on trial by jury by the Criminal Justice Act 2003.

[14]

Credit reference to:

- The bias of jury trial allegation.
- The CJA severely compromising jury trial.
- Detailed consideration of s43 and s44.
- Case law including *KS v R* [2010] and *J, S, M v R* [2010].
- Credit shall be given for relevant and accurate citation.
- The Auld report.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO1
	Knowledge and Understanding
11-13	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
7-10	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
3-6	Candidates display a limited knowledge and understanding of the subject content relevant to the question with limited insight into some of the concepts and principles underlying that subject content. They display a limited understanding of the practical application of the law and are aware in general terms of some of the current criticisms.
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(b) Discuss the alternatives to jury trial

[11]

Credit reference to:

- Diplock Courts in Northern Ireland.
- Trial by Judge alone.
- Trial by a Panel of Judges.
- Trial by Judge and lay people.
- Credit will be given for relevant citation.
- R. V. Twomey.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from communication of meaning.

Marks	AO2
	Skills
8-9	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
6-7	Candidates demonstrate an adequate evaluation of how the law operates, or a generally accurate and substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question and support their conclusions by citation.
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0-3	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply to the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

Q3 (a) Explain how conditional fee agreements and damages – based agreements work.

[]

Credit reference to:

- s58 of the CLSA 1990.
- To what extent is a CFA true representation?
- Jackson Review introducing principle of qualified one-way cost-shifting and that the success fee and any after the event insurance premium be not recoverable.
- The introduction of damage-based agreements under the LASPO 2012.
- Credit should be given for relevant citation, e.g. *Campbell v MGN Limited* (2005), *Callery v Gray* (2002).
- Damages based agreements.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO1
	Knowledge and Understanding
11-13	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
7-10	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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(b) Discuss whether there is equality of access to justice in England and Wales [11]

Credit reference to:

- Historic role of Legal Aid.
- The AJA 1999 which introduced the LSC.
- The reform and introduction of the Legal Aid Agency which significantly reduces public funding.
- Credit will be given for relevant citation, e.g. *Munby J in the matter of D (A Child)* (2014).

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from communication of meaning.

Marks	AO2
Skills	
8-9	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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0-3	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply to the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

4. (a) Explain the role of the Court of Justice of the E.I.

[14]

Credit reference to:

- The role of the Court in deciding whether Member states have failed to fulfil obligations under the Treaties.
- The role of the court in hearing references from national Courts for preliminary rulings on points of law.
- Discretionary and mandatory referrals by national Courts.
- Significance of the court in promoting uniformity.
- Credit will be given for accurate citation and discussion.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO1
Knowledge and Understanding	
11-13	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
7-10	Candidates display an adequate knowledge and understanding of the subject content relevant to the question and have a perception of some of the concepts and principles underlying that subject content. They display a general understanding of the practical application of the law and are aware of aspects of current debate and criticism.
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(b) Discuss the role of Equity in English and Welsh Law**[11]**

Credit reference to:

- Historical role and the Common Law.
- Fusion and the impact of the Judicature Acts 1873-75.
- The modern role of Equity.
- Candidates will be rewarded for accurate citation of case law and statutes.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from communication of meaning.

Marks	AO2
	Skills
8-9	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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0-3	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply to the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

5. (a) Explain the Rule of Law doctrine

[14]

Credit reference to:

- The Constitutional Reform Act 2005.
- The separation of powers.
- The centrality of Dicey and the concept of the Rule of Law as a buttress against arbitrary power.
- Reference to other theorists, e.g. Hayek.
- Rule of law examples in overseas jurisdictions.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO1
Knowledge and Understanding	
11-13	Candidates display a sound knowledge and understanding of the subject content relevant to the question and a good perception of the concepts and principles underlying that subject content. They display a sound understanding of the practical application of the law and are aware of current debate and criticism including the major proposals for reform.
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(b) Discuss the extent to which the law promotes morality.

[11]

Credit reference to:

- Natural law and positivism.
- Woolfenden report.
- Hart v Devlin
- Current debate.
- Credit will be given for relevant citations.
- Dignity and moral personhood.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from communication of meaning.

Marks	AO2
	Skills
8-9	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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0-3	Candidates demonstrate a basic evaluation of one of the simpler points of how the law operates or apply to the law to a given factual situation in a generally inaccurate and unsubstantiated way. There will be little or no reference to legal authorities and points will not be developed. There will be very limited evidence of structure in the candidate's response.

6. (a) **Explain the emphasis of Alternative Dispute Resolution in the Civil Justice System of England and Wales** [14]

Credit reference to:

- Post Woolf focus on ADR.
- Issues of efficiency in Civil Justice.
- The issue of cost control may lead to unfair settlements.
- The appropriateness of Courts and ADR for different types of dispute.
- Credit should be given for accurate citation of the CPR and relevant case law.

Marks	AO3
1	Presents effective communication using appropriate legal terminology. Nonetheless, there may be several errors in grammar, punctuation and spelling, although not enough to detract from communication of meaning.
0	Fails to communicate and present logical argument, including inadequate use of legal terminology. There are significant errors of grammar, punctuation and spelling which detract from communication of meaning.

Marks	AO1
	Knowledge and Understanding
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0-2	Candidates display a basic knowledge and understanding of the subject content relevant to the question and/or identify some of the relevant principles. They demonstrate occasional basic insights into some of the concepts and principles underlying the subject content. They display a basic understanding of the practical application of the law.

(b) Discuss the role of Tribunals in the English and Welsh Legal System

[11]

Credit reference to:

- The Leggatt Report and the Tribunals, Courts and Enforcement Act 2007.
- Seven Chambers of the First-tier Tribunal dealing with different jurisdictions.
- Upper-tier Tribunal is split into four separate jurisdiction.
- Nature of Tribunals including advantages and disadvantages.
- Alternative to Court.

Marks	AO3
2	Presents a wholly logical and coherent argument and provides clear application using appropriate legal terminology. This does not mean that there are no errors in grammar, punctuation and spelling but these will only be occasional.
1	Presents a mostly logical and coherent argument and provides a reasonably adequate application using appropriate legal terminology. Whilst there may be errors in grammar, punctuation and spelling, these are not enough to detract from communication of meaning.

Marks	AO2
	Skills
8-9	Candidates demonstrate a sound evaluation of how the law operates, or an accurate and well-substantiated application of the law to a given factual situation. This is achieved through their selection of legal authorities, by appropriate methodologies and by their ability to apply the law to a given question. They support their conclusions by citation, analysis and analogy.
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