



**General Certificate of Education**

**Law 5161**

**Unit 2 (LAW2)      Dispute Solving**

**Mark Scheme**

*2009 examination - January series*

Mark schemes are prepared by the Principal Examiner and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation meeting attended by all examiners and is the scheme which was used by them in this examination. The standardisation meeting ensures that the mark scheme covers the candidates' responses to questions and that every examiner understands and applies it in the same correct way. As preparation for the standardisation meeting each examiner analyses a number of candidates' scripts: alternative answers not already covered by the mark scheme are discussed at the meeting and legislated for. If, after this meeting, examiners encounter unusual answers which have not been discussed at the meeting they are required to refer these to the Principal Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of candidates' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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**LAW2****Assessment Objectives One and Two****General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of candidates, mainly 17 years old, who have completed some part of the Advanced Subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.*

**Positive Marking**

*You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as candidates penalise themselves in terms of the time they have spent.*

**Mark Range**

*You should use the whole mark range available in the mark scheme. Where the candidate's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the candidate's answer does not deserve credit, then no marks should be given.*

**Levels of Response for Essay Marking**

*When reading an essay it is useful to annotate your recognition of the achievement of a response level. This will help the Team Leader follow your thought processes. Levels of response marking relies on recognition of the highest Level achieved by the candidate. When you have finished reading the essay, therefore, think top-down, rather than bottom-up. In other words, has the candidate's overall answer met the requirements for the top level? If not, the next level?*

**Citation of Authority**

*Candidates will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.*

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### Assessment Objective Three

#### Quality of Written Communication

The Code of Practice for GCSE, GCSE in vocational subjects, GCE, VCE and GNVQ requires the assessment of candidates' quality of written communication wherever they are required to write in continuous prose. In this unit, this assessment will take place by marking the candidate's script as a whole, by means of the following criteria:

- Level 3** Moderately complex ideas are expressed clearly and reasonably fluently, through well linked sentences and paragraphs. Arguments are generally relevant and well structured. There may be occasional errors of grammar, punctuation and spelling  
**4-5 marks**
- Level 2** Straightforward ideas are expressed clearly, if not always fluently. Sentences and paragraphs may not always be well connected. Arguments may sometimes stray from the point or be weakly presented. There may be some errors of grammar, punctuation and spelling, but not such as to detract from communication of meaning.  
**2-3 marks**
- Level 1** Simple ideas are expressed clearly, but arguments may be of doubtful relevance or be obscurely presented. Errors in grammar, punctuation and spelling may be noticeable and intrusive, sufficient to detract from communication of meaning.  
**1 mark**
- Level 0** Ideas are expressed poorly and sentences and paragraphs are not connected. There are errors of grammar, punctuation and spelling, such as to severely impair communication of meaning.  
**0 marks**

### The level of understanding in AS Law – LAW2

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year-old, so the level of understanding required by these criteria will be that of the notional 17-year-old.

<b>Sound</b>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain relevant material to the Potential Content.</li> <li>• The material will be supported by generally relevant authority and/or examples.</li> <li>• It will generally deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<b>Clear</b>	<ul style="list-style-type: none"> <li>• The material is broadly accurate and relevant to the Potential Content.</li> <li>• The material will be supported by some use of relevant authority and/or examples.</li> <li>• The material will broadly deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.</p>
<b>Some</b>	<ul style="list-style-type: none"> <li>• The material shows some accuracy and relevance to the Potential Content.</li> <li>• The material may occasionally be supported by some relevant authority and/or examples.</li> <li>• The material will deal with some of the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.</p>

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**1****Total for this question: 30 marks**

- (a) Alex has been injured in an accident and has suffered serious injuries. She wants to claim compensation for her injuries.
- Identify the courts in which her claim for compensation could be heard (including any appeal courts). Briefly describe the process in these courts. *(15 marks)*

**Potential Content**

- (A) Identification of County Court and brief description of process – eg judge only trial, in local courts, possible reference to tracking, judge acting as case manager, documents and procedure, representation by solicitors or barristers, decision on liability, award of compensation
- (B) Identification of High Court and brief description of process – eg hearing in QBD, judge only trial, judge acting as case manager, documents and procedure, generally representation by barristers, decision on liability, award of compensation
- (C) Identification of appeal courts and brief description of process - eg appeals from county court and High Court to Court of Appeal, grounds of appeal, representation by barristers, possible orders, possible further appeal to House of Lords

**Mark Bands**

- 12 - 15      The candidate deals with (A) – (C) as follows:  
**max 15:** two sound, one clear  
**max 13:** two sound, one some **or** one sound, two clear  
**max 12:** two sound **or** one sound, one clear, one some **or** three clear.
- 8 - 11      The candidate deals with (A) – (C) as follows:  
**max 11:** one sound, one clear **or** one sound, two some **or** two clear, one some  
**max 10:** one sound, one some **or** two clear **or** one clear, two some  
**max 9:** one sound **or** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 - 7      The candidate displays limited understanding by introducing consideration of any of the material in (A) – (C).
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

- (b) Outline ways in which Alex could pay for her claim if it goes to court. Briefly discuss the advantages **and** disadvantages of these forms of funding. (15 marks)

### Potential Content

- (A) Outline of ways of funding civil cases – eg private finance, Legal Help, ‘no win – no fee’ conditional fees, possible reference to Legal (Representation) Aid in limited cases, via insurance policy or union membership
- (B) Brief discussion of advantages – eg Legal Help allowing help to those on limited means, ‘no win no fee’ allows claims from those who could not afford court action or would not qualify for legal aid, funding provided by union or insurance benefiting members
- (C) Brief discussion of disadvantages – eg general expense, limited availability of state funding, cost of insurance policies required for ‘no win no fee’ cases, threshold test for ‘no win no fee’ cases

### Mark Bands

- 12 - 15 The candidate deals with (A) – (C) as follows:  
**max 15:** two sound, one clear  
**max 13:** two sound, one some **or** one sound, two clear  
**max 12:** two sound **or** one sound, one clear, one some **or** three clear.
- 8 - 11 The candidate deals with (A) – (C) as follows:  
**max 11:** one sound, one clear **or** one sound, two some **or** two clear, one some  
**max 10:** one sound, one some **or** two clear **or** one clear, two some  
**max 9:** one sound **or** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 - 7 The candidate displays limited understanding by introducing consideration of any of the material in (A) – (C).
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges  
**or**  
 a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

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**2****Total for this question: 30 marks**(a) Describe the role of a judge in civil **and** criminal cases. (15 marks)**Potential Content**

- (A) Description of role of judge in civil trial – eg pre trial procedures and case management, hearing evidence and arguments, deciding liability, deciding compensation
- (B) Description of role of judge in criminal trial – eg keeping order in court, ruling on law, directing jury, passing sentence

**Note:** Reference to judges' roles in appeals will enhance the quality of (A) and/or (B).

**Mark Bands**

- 12 - 15 The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11 The candidate deals with (A) and (B) as follows:  
**max 11:** one sound, one some **or** two clear  
**max 10:** one sound  
**max 9:** one clear, one some  
**max 8:** one clear **or** two some.
- 4 - 7 The candidate displays limited understanding by introducing consideration of any of the material in (A) – (B).
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges  
**or**  
 a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.



- (b) Outline the principle of judicial independence. Consider why it is important for judges to be independent. *(15 marks)*

### Potential Content

- (A) Outline of judicial independence – eg impartiality, open justice, immunity within court, appeals through court system, separation from the Executive, freedom from dismissal
- (B) Consideration of importance of judicial independence – public confidence in judiciary, upholding Rule of Law, decision making free of pressure, ability to hear judicial review and cases involving the government

### Mark Bands

- 12 - 15      The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11      The candidate deals with (A) and (B) as follows:  
**max 11:** one sound, one some **or** two clear  
**max 10:** one sound  
**max 9:** one clear, one some  
**max 8:** one clear **or** two some.
- 4 - 7      The candidate displays limited understanding by introducing consideration of any of the material in (A) – (B).
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no coherent approach emerges  
**or**  
 a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0          The answer contains no relevant information.

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**3****Total for this question: 30 marks**

- (a) Explain how lay magistrates **and** jurors **qualify** and are **selected** to carry out their respective roles in the English legal system. *(20 marks)*

**Potential Content**

- (A) Explanation of qualification and selection of lay magistrates - eg application or nomination, qualification, interviews, role of local advisory committee, recommendation to and appointment by Minister of Justice (Lord Chancellor) on behalf of the Crown, training, swearing in
- (B) Explanation of juror qualification and selection - eg age, electoral register, residence, reasons for not serving, eg disqualification, discharge, deferral, random selection by Central Summoning Bureau, vetting and challenges

**Mark Bands**

- 16 - 20      The candidate deals with (A) and (B) as follows:  
**max 20:** two sound (there may be some imbalance in treatment as between them)  
**max 17:** one sound, one clear.
- 11 - 15      The candidate deals with (A) and (B) as follows  
**max 15:** one sound, one some **or** two clear  
**max 14:** one sound  
**max 13:** one clear, one some  
**max 11:** one clear **or** two some.
- 6 - 10      The candidate displays limited understanding by introducing consideration of any of the material in (A) – (B).
- 1 - 5      The answer consists of brief fragmented comments or examples so that no coherent approach emerges  
**or**  
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

- (b) Discuss the advantages of using **lay** people to decide cases in the criminal courts.  
(10 marks)

**Potential Content**

- (A) Discussion of the advantages of jurors and lay Magistrates – eg trial by peers, open justice, public confidence, fairness, limited number of appeals, cost, reduction of professional involvement

**Mark Bands**

- |        |   |
|--------|---|
| 8 - 10 | The candidate demonstrates a sound understanding of (A) - (Max 8 if discussion refers to one only of juries or lay magistrates or fails to distinguish between them). |
| 5 – 7  | The candidate demonstrates a clear understanding of (A).  |
| 3 – 4  | The candidate demonstrates some understanding of (A).   |
| 1 - 2  | The candidate demonstrates limited understanding of (A).  |
| 0      | The answer contains no relevant information.  |

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**4****Total for this question: 30 marks**(a) Describe any **two** forms of Alternative Dispute Resolution (ADR). (15 marks)**Potential Content**

- (A) Description of first form of ADR
- (B) Description of second form of ADR

Methods of ADR to be chosen from are Tribunals, Arbitration, Mediation, Conciliation and Negotiation.

Description of forms of ADR can include reference to who is hearing the dispute, nature of hearings, type of cases dealt with, process issues, outcomes, possible appeals.

**Mark Bands**

- 12 - 15      The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11      The candidate deals with (A) and (B) as follows:  
**max 11:** one sound, one some **or** two clear  
**max 10:** one sound  
**max 9:** one clear, one some  
**max 8:** one clear **or** two some.
- 4 - 7      The candidate displays limited understanding by introducing consideration of any of the material in (A) – (B).
- 1 - 3      The answer consists of brief, fragmented comments or examples so that no coherent approach emerges  
**or**  
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

(b) Identify and discuss the advantages <b>and</b> disadvantages of ADR.	(15 marks)
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### Potential Content

- (A) Identification and discussion of advantages of ADR, eg cost, informality, lack of legal representation, efficiency, preservation of relationship, convenience, expertise, procedure, encouragement by courts
- (B) Identification and discussion of disadvantages of ADR, eg funding, appeal rights, unpredictable decisions, public awareness, imbalance between parties

### Mark Bands

- 12 - 15 The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 - 11 The candidate deals with (A) and (B) as follows:  
**max 11:** one sound, one some **or** two clear  
**max 10:** one sound  
**max 9:** one clear, one some  
**max 8:** one clear **or** two some.
- 4 - 7 The candidate displays limited understanding by introducing consideration of any of the material in (A) – (B).
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no coherent approach emerges  
**or**  
 a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

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**5****Total for this question: 30 marks**

(a) Explain how a solicitor is trained and qualifies.	(10 marks)
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**Potential Content**

- (A) Explanation of academic training and qualifying of solicitors – eg degree entry, CPE/Diploma for non-law degree, possible reference to Legal Executive route, LPC (or GDL), training contract, membership of Law Society, application to be called to roll of solicitors

**Mark Bands**

- 8 - 10      The candidate demonstrates a sound understanding of (A).
- 5 – 7      The candidate demonstrates a clear understanding of (A).
- 3 – 4      The candidate demonstrates some understanding of (A).
- 1 - 2      The candidate demonstrates limited understanding of (A).
- 0          The answer contains no relevant information.

- (b) Describe and compare the work of solicitors, barristers and legal executives.  
(20 marks)

### Potential Content

- (A) Description and comparison of solicitor's work with barristers and legal executives – eg negotiation, initial advice on contentious work when assessing merits of claim, preparation of claim, obtaining evidence, possible advocacy with increased right of audience, advice on non contentious work in areas such as conveyancing, probate, family and commercial work, specialisation of city firms
- (B) Description and comparison of barrister's work with solicitors and legal executives – eg initial legal opinion, advocacy, advice on presentation and possible appeals, presentation of appeal
- (C) Description and comparison of legal executive's work with solicitors and barristers – eg working for solicitors, rights of audience, ability to work as licensed practitioners

### Mark Bands

- 16 - 20 The candidate deals with (A) – (C) as follows:  
**max 20:** two sound, one clear  
**max 18:** two sound, one some, **or** one sound, two clear  
**max 16:** two sound **or** one sound, one clear, one some **or** three clear.
- 11 - 15 The candidate deals with (A) – (C) as follows:  
**max 15:** one sound, one clear **or** one sound, two some **or** two clear, one some  
**max 14:** one sound, one some **or** two clear **or** one clear, two some  
**max 13:** one sound **or** one clear, one some **or** three some  
**max 11:** one clear **or** two some.
- 6 - 10 The candidate displays limited understanding by introducing consideration of any of the material in (A) – (C).
- 1 – 5 The answer consists of brief, fragmented comments or examples so that no description emerges  
**or**  
 a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level law (LAW2)**

<b>UNIT 2</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
Question 1	20	10	
Question 2	20	10	
Question 3	20	10	
Question 4	20	10	
Question 5	20	10	
	(x2 from 5)	(x2 from 5)	
<b>AO3</b> (Quality of Written Communication for the paper as a whole)			5
<b>Total marks</b>	40	20	5
<b>% of the AS</b>	18.5	9	2.5
<b>% of the A Level</b>	9.25	4.5	1.25