

Mark scheme January 2004

GCE

Law

Unit LAW4

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General Marking Guidance

You should remember that your marking standards should reflect the levels of performance of candidates, mainly 18 years old, 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 answer it is useful to annotate your recognition of the achievement of a response level. This will help the Senior Examiner 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, statutes and examples 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.

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. | 8-10 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. | 4-7 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. | 1-3 marks |
| 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 |

Substantive law question mark bands

- 21 - 25 The candidate *soundly* explains and applies the rules of law in **two** of (A)-(C) (**max 21**), and *clearly* explains and applies the rules of law in the other (**max 23** for *some* explanation and application of rules of law in the other)
or
the candidate *soundly* explains and applies the rules of law in **one** of (A)-(C) and *clearly* explains and applies the rules of law in the other **two** (**max 21**).
- 16 - 20 The candidate *soundly* explains and applies the rules of law in **one** of (A)-(C), and *clearly* explains and applies the rules of law in another
or
the candidate *clearly* explains and applies the rules of law in any two of (A)-(C) (**max 18**) and presents *some* explanation and/or application of the other
or
the candidate presents *some* explanation and application of the rules of law in all three of (A)-(C) (**max 16**).
- 11 - 15 The candidate *soundly* explains and applies the rules of law in **one** of (A)-(C)
or
the candidate *clearly* explains and applies the rules of law in one of (A)-(C) and presents *some* explanation and/or application of the rules of law in any other one of (A)-(C)
or
the candidate presents *some* explanation and application of any two of (A)-(C) (**max 13**)
or
the answer focuses on explanation of rules of law with no significant application (**max 15** if *sound* on two or *clear* on three, **max 13** if *sound* on one or *clear* on two, **max 11** if *clear* on one or *some* on two)
or
the answer focuses on application to the facts with no significant legal framework (**max 12** where the answer displays a *sound* understanding of the elements of the analysis).
- 6 - 10 The candidate presents *some* explanation and/or application of any of the rules of law in (A)-(C).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and application can emerge
or
though the candidate attempts to explain and/or apply rules of law, the explanation and/or application are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

Substantive law question mark bands – list of maximum marks

25	two sound, one clear
23	two sound, one some
21	two sound or one sound, two clear
20	one sound, one clear or two clear, one some (explanation and/or application))
18	two clear
16	three some
15	one sound or two sound explanation or one clear, one some (explanation and/or application) or three clear explanation
13	one clear or one sound explanation or two clear explanation or two some
12	sound application
11	one clear explanation or two some explanation
10	one some explanation and/or application
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Note: it follows from the above that, however well the law is explained, answers which contain no application can never achieve more than 15 marks.

Evaluative question mark bands (for questions 1(c), 2(c) and 3(c))
[For mark bands for question 4(c), see page 12]

- 21 - 25 The candidate *soundly* explains and evaluates relevant aspects of the rules of law in **two** of (A)-(C)
or
the candidate *clearly* explains and evaluates relevant aspects of the rules of law in **all** of (A)-(C)
or
the candidate *soundly* explains and *clearly* evaluates (or vice versa) in **two** of (A)-(C) (**max 22**).
- 16 - 20 The candidate *soundly* explains and evaluates relevant aspects of the rules of law in **one** of (A)-(C),
or
the candidate *clearly* explains and evaluates relevant aspects of the rules of law in **two** of (A)-(C)
or
the candidate *soundly* explains and *clearly* evaluates (or vice versa) relevant aspects of the rules of law in one of (A)-(C) (**max 17**).
- 11 - 15 The candidate *clearly* explains and evaluates relevant aspects of the rules of law in **one** of (A)-(C)
or
the candidate *clearly* explains and presents *some* evaluation (or vice versa) of the rules of law in **two** of (A)-(C)
or
the candidate presents *some* explanation and *some* evaluation of any **two** of (A)-(C) (**max 13**)
or
the answer focuses on explanation of relevant aspects of the rules of law with no significant evaluation (**max 13** if *sound* on two, **max 11** if *clear* on two).

- 6 - 10 The candidate presents *some* explanation and/or evaluation of relevant aspects of the rules of law in any of (A)-(C).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and evaluation can emerge
or
though the candidate attempts to explain and/or evaluate relevant rules of law, the explanation and/or evaluation are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

Criminal Law (Offences against the Person)**1****Total for this question: 75 marks****(a)** Discuss Alan's criminal liability for the death of Bob.**(25 marks)****Potential Content**

- (A) Explanation of unlawful act manslaughter. Explanation of battery as the offence (including acts to which there is no implied consent) to establish the possible unlawful act (gross negligence manslaughter can be selected as an alternative)
- (B) Explanation of causation issues involving attempted escape, etc. (the pushing raises causation and transferred malice issues which may be dealt with in (A))
- (C) Explanation of the defence of involuntary intoxication

Note: discussion of murder should be treated as 'some' murder + intoxication = **max 15****(b)** Discuss the criminal liability of Alan, Chris and Dave arising out of the incidents during the chase.**(25 marks)****Potential Content**

- (A) In relation to Alan punching Chris – explanation of the offence(s) of battery, assault occasioning abh (s47). Consideration of self-defence issues
- (B) In relation to Dave injuring Alan – explanation of the offence of inflicting gbh (s20). Possible (s47) abh. Consideration of justified use of force issues (equivalent to self-defence/prevention of crime)
- (C) In relation to Chris injuring Alan – explanation of wounding/gbh (s20/s18). Consideration of justified use of force issues

Note: the 'justified use of force' issues may be treated separately as a discussion of self defence/prevention of crime but there should be some discussion of application to at least **two** of the three participants**(c)** Discuss the suggestion that reform of the current law on involuntary manslaughter is unnecessary because it is easy to understand and it correctly identifies the conduct which should be punished as unlawful homicide.**(25 marks)****Potential Content**

- (A) Issues of detail in the definition and interpretation of the elements of unlawful act manslaughter
 - (B) Issues of detail in the definition and interpretation of the elements of gross negligence manslaughter
 - (C) Evaluation of the scope of involuntary manslaughter (this could also include general structural issues in the law of homicide – for example, division between murder and manslaughter) and conclusions on the need for reform (which does not require discussion of possible reforms)
- NB** Discussion of subjective recklessness manslaughter, or of issues in connection with corporate manslaughter, may substitute for either (A) or (B)

2

Total for this question: 75 marks

- | | |
|--|------------|
| (a) Discuss Eric's criminal liability in connection with the incidents involving Fred. | (25 marks) |
|--|------------|

Potential Content

- (A) Explanation of the offence of assault, dealing with issues such as the fear of 'immediate' physical violence
- (B) Explanation of the offence of infliction of gbh (s20) with possible alternative in assault occasioning abh (s47)
- (C) Explanation of the defence of insanity

- | | |
|---|------------|
| (b) Discuss Eric's criminal liability for the death of Geoff. | (25 marks) |
|---|------------|

Potential Content

- (A) Explanation of the offence of murder. Act/omission issues. Malice aforethought issues
- (B) Explanation of the defence of provocation
- (C) Explanation of the defence of diminished responsibility – discussion of insanity (which may rely upon explanations previously introduced) may be regarded as a less accomplished treatment of (C) if there is no discussion of diminished responsibility
- (D) Unlawful act manslaughter
- (E) Gross negligence manslaughter

NB Where the answer deals with (A)-(C), discussion of (D) and/or (E) may enhance quality

21-25 mark band requires murder and at least one of provocation and diminished responsibility

If (D) or (E) as offence + (B) and/or (C), (B)/(C) cannot be more than **clear**

- | | |
|--|------------|
| (c) Relating your answer either to unlawful homicide or to non-fatal offences against the person, discuss the major weaknesses in the current law. | (25 marks) |
|--|------------|

Potential Content

- (A) Murder issues – for example, the difficulties with malice aforethought, deficiencies in the definition and application of provocation and diminished responsibility **or** non-fatal offences issues (1) – antiquated language and associated issues
- (B) Manslaughter issues – for example, the scope of involuntary manslaughter, confusion in the elements of the various forms of involuntary manslaughter **or** non-fatal offences issues (2) – weaknesses in the actual detail of the definition and interpretation of the elements of the offences
- (C) General structural issues in the law of non-fatal offences (for example, sentences available, confusion in the hierarchy) **or** general structural issues in the law of homicide (for example, division between murder and manslaughter, mandatory penalties, etc)

Contract Law**3****Total for this question: 75 marks**

- (a) Assume that Helen refused to sell the TV set to Iris. Consider whether a contract was formed between Helen and Iris for the sale and purchase of the TV set. (25 marks)

Potential Content

- (A) Explanation of initial offer and acceptance issues (offer to Iris, no acceptance but no rejection of offer, no consideration for keeping offer open)
- (B) Explanation of subsequent offer and acceptance issues (communication of withdrawal, advertisement as invitation to treat, even if offer then non-compliance with terms of offer)
- (C) Explanation of intention to create legal relations

- (b) Assume that Helen did sell the TV set to Iris. Taking account of the rules **both** on misrepresentation **and** on breach of contract, discuss Iris's rights arising out of the fact that the TV did not have teletext. (25 marks)

Potential Content

- (A) General explanation of the distinction between terms of a contract and representations which induce the making of the contract
- (B) Explanation of the rules on misrepresentation (including the kinds of misrepresentation) / breach (conditions/warranties)
- (C) Explanation of the remedies available on the alternative assumptions that the availability of teletext was a term or merely a representation

- (c) Consider whether the rules of law **either** on mistake **or** on misrepresentation adequately protect those who enter into agreements in consequence of a mistake **or** misrepresentation. (25 marks)

Potential Content

- (A) Explanation and evaluation of the general notion of mistake and the application of objective criteria in the construction of the contract. The distinction between fundamental and non-fundamental mistakes **or** explanation and evaluation of the general notion of misrepresentation and the distinction between terms and representations
- (B) Analysis and evaluation of particular forms of mistake (common, mutual, unilateral) **or** analysis and evaluation of specific rules concerning the existence of an actionable misrepresentation
- (C) Analysis and evaluation of the effects of mistake, related to the different kinds **or** analysis and evaluation of the consequences of different kinds of misrepresentation (including associated remedies)

4

Total for this question: 75 marks

- (a) Discuss the rights, duties and remedies of Ken, Leo and Jane in connection with the re-fitting of the shop. (25 marks)

Potential Content

- (A) Explanation of the rules on consideration emphasising the approach to claims for more money for the performance of the obligation originally agreed upon. Contrast between traditional and modern approach
- (B) Outline explanation of the new law on privity
- (C) Explanation of possible remedies in damages
- Note:** discussion of economic duress will enhance (A) or compensate for some deficiencies in the discussion of (A) in the 16-20 and 21-25 bands. In the 11-15 band and below, it can substitute for any of (A)-(C).

- (b) Taking account of the rules **both** on frustration **and** on breach of contract, consider Mike's rights and remedies following Jane's refusal to accept and pay for the leaflets. (25 marks)

Potential content

- (A) Explanation of the rules on frustration of contracts, especially on frustration of the common venture
- (B) Explanation of the rules if the contract is frustrated – application of the Law Reform (Frustrated Contracts) Act 1943
- (C) Explanation of the rules on damages for breach of contract if the contract is not frustrated

- (c) Select any **two** aspects of the rules of law on the formation of a contract (drawn from any one or more of offer and acceptance, consideration, and intention to create legal relations) which you believe are unsatisfactory. Explain the reasons for your belief. (25 marks)

Potential Content

- (A) Offer and acceptance issues: problems with invitation to treat and offer, requests for further information, counter offers, withdrawal of offers, acceptance requirements, battle of the forms, modern technology
- (B) Consideration issues: adequacy and sufficiency notions, connection with privity
- (C) Intent to create legal relations issues: need for separate requirement at all, presumptions
- Note:** the two aspects can come from within a particular element or be drawn from two different elements.

Question 4(c) (continued)**Mark Bands**

21 – 25	The candidate <i>soundly</i> explains and evaluates the relevant rules of law in two aspects or <i>soundly</i> explains and <i>clearly</i> evaluates (or vice versa) in two aspects (max 22).
16 – 20	The candidate <i>soundly</i> explains and evaluates relevant rules of law in one aspect or the candidate <i>clearly</i> explains and evaluates relevant rules of law in two aspects or the candidate <i>soundly</i> explains and <i>clearly</i> evaluates (or vice versa) relevant rules of law in one aspect (max 17).
11 – 15	The candidate <i>clearly</i> explains and evaluates relevant rules of law in one aspect or the candidate <i>clearly</i> explains and presents <i>some</i> evaluation (or vice versa) of the rules of law in two aspects or the candidate presents <i>some</i> explanation and <i>some</i> evaluation of any two aspects (max 13) or the answer focuses on explanation of relevant rules of law with no significant evaluation (max 13 if <i>sound</i> on two, max 11 if <i>clear</i> on two).
6 – 10	The candidate presents <i>some</i> explanation and/or evaluation of relevant rules of law in one or more aspects.
1 – 5	The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and evaluation can emerge or though the candidate attempts to explain and/or evaluate relevant rules of law, the explanation and/or evaluation are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
0	The candidate presents no information relevant to the question.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

(One question to be answered from 4)

UNIT 4	AO1	A02	AO3
Question 1 (a)	7	18	10
Question 1 (b)	7	18	
Question 1 (c)	7	18	
Question 2 (a)	7	18	10
Question 2 (b)	7	18	
Question 2 (c)	7	18	
Question 3 (a)	7	18	10
Question 3 (b)	7	18	
Question 3 (c)	7	18	
Question 4 (a)	7	18	10
Question 4 (b)	7	18	
Question 4 (c)	7	18	
Total marks	21	54	10
% of the A2	7.5	19	3.5
% of the A Level	3.75	9.5	1.75