



General Certificate of Education

Law 5161/6161

*LAW4 Criminal Law (Offences against the Person)
or Contract*

Mark Scheme

2005 examination – June 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.

LAW4

Assessment Objectives One and Two

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 |

NOTE

In the mark scheme which follows, there are two standard mark band descriptors:

- The substantive law question mark bands – question parts (a) and (b);
- The evaluative question mark bands – question part (c).

There are versions of both for a scheme with **three** items of potential content and for a scheme with **two** items of potential content.

These mark bands are set out at the beginning and are to be applied to each relevant question part. They are not repeated for each question part.

Substantive law question mark bands (3 potential content)

- 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, **max 13** if *clear* on two, **max 11** if *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* and *comprehensive* 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 (3 potential content) – 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

Substantive law question mark bands (2 potential content)

- 21 - 25 the candidate *soundly* explains and applies the rules of law in (A) and (B) (**max 21**)
or
the candidate *soundly* explains and applies the rules of law in **one** of (A)-(B) and *clearly* explains and applies the rules of law in the other (**max 23**).
- 16 - 20 the candidate *soundly* explains and applies the rules of law in **one** of (A)-(B) (**max 18**) and presents *some* explanation and application of the other
or
the candidate *clearly* explains and applies the rules of law in both of (A)-(B)
or
the candidate *clearly* explains and applies the rules of law in one of (A)-(B) and presents *some* explanation and application of the other (**max 18**).
- 11 - 15 the candidate *clearly* explains and applies the rules of law in one of (A)-(B)
or
the candidate presents *some* explanation and application of both of (A)-(B) (**max 13** if one only)
or
the answer focuses on explanation of rules of law with no significant application (**max 15** if *sound* on two, **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)-(B).
- 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 (2 potential content) – list of maximum marks

- 25 two sound
23 one sound, one clear
20 one sound, one some or two clear
18 one sound or one clear, one some
15 one clear or two some or two sound explanation
13 one some or one sound explanation or two clear explanation
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

Evaluative question mark bands (3 potential content)

- 21 - 25 The candidate *soundly* evaluates relevant aspects of the rules of law in **two** of (A)-(C) (**max 21**) and *clearly* evaluates relevant aspects of the rules of law in the other (**max 23** for *some* evaluation of the other)
or
the candidate *soundly* evaluates relevant aspects of the rules of law in **one** of A)-(C) and *clearly* evaluates relevant aspects of the rules of law in the other two (**max 21**).
- 16 - 20 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(C) and *clearly* evaluates relevant aspects of the rules of law in **one** other
or
the candidate *clearly* evaluates relevant aspects of the rules of law in **two** of (A)-(C) (**max 18**) and presents *some* evaluation of the other
or
the candidate presents *some* evaluation of the rules of law in all of (A)-(C) (**max 16**).
- 11 - 15 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(C)
or
the candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A)-(C) (**max 13**) and presents *some* evaluation of relevant aspects of the rules of law in **one** other
or
the candidate presents *some* evaluation of relevant aspects of the rules of law in **two** of (A)-(C) (**max 13**).
- 6 - 10 The candidate presents *some* 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.

Evaluative question mark bands (3 potential content) – 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 |
| 18 | two clear |
| 16 | three some |
| 15 | one sound or one clear, one some |
| 13 | one clear or two some |
| 10 | one some |
| 05 | relevant fragments or relevant but incoherent |
| 00 | completely irrelevant |

Evaluative question mark bands (2 potential content)

- 21 – 25 The candidate *soundly* evaluates relevant aspects of the rules of law in (A)-(B)
or
the candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(B) and *clearly* evaluates relevant aspects of the rules of law in the other (**max 23**).
- 16 – 20 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(B) (**max 18**) and presents *some* evaluation of the other
or
the candidate *clearly* evaluates relevant aspects of the rules of law in both of (A)-(B)
or
the candidates *clearly* evaluates relevant aspects of the rules of law in **one** of (A)-(B) and presents *some* evaluation of the other (**max 18**).
- 11 – 15 The candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A)-(B)
or
the candidate presents *some* evaluation of relevant aspects of the rules of law in both of (A)-(B) (**max 13 for one**).
- 6 – 10 The candidates presents *some* explanation and/or evaluation of relevant aspects of the rules of law in either of (A)-(B).
- 1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation or 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.

Evaluative question mark bands (2 potential content) – list of maximum marks

- 25 two sound
23 one sound, one clear
20 one sound, one some **or** two clear
18 one sound **or** one clear, one some
15 one clear **or** two some
13 one some
10 one some explanation and/or evaluation
05 relevant fragments **or** relevant but incoherent
00 completely irrelevant

Substantive law question mark bands (3 potential content) – 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	one sound, one some or two clear or one clear, two some
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

Substantive law question mark bands (2 potential content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some or two clear
18	one sound or one clear, one some
15	one clear or two some or two sound explanation
13	one some or one sound explanation or two clear explanation
12	sound application
11	one clear explanation or two some explanation
10	one some explanation and/or application
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Evaluative question mark bands (3 potential content) – 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
18	one sound, one some or two clear
16	three some
15	one sound or one clear, one some
13	one clear or two some
10	one some
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Evaluative question mark bands (2 potential content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some or two clear
18	one sound or one clear, one some
15	one clear or two some
13	one some
10	one some explanation and/or evaluation
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Descriptors

Level	Explanation	Application
sound	The answer correctly identifies and accurately explains the relevant rule(s) in the central aspects of the potential content. Where appropriate, the explanations are supported by relevant statutory and/or case authority and illustration (which is adequately developed where necessary to explain the <i>ratio</i> and/or assist in the application to the facts). Where there are more marginal aspects of the rules, there may be some minor omissions or inaccuracies in the explanation of the rule(s) and/or supporting statutory/case authority and illustration.	The answer selects and emphasises the relevant facts from the scenario and makes close reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. Where appropriate, the application explores the effect of different interpretations of the rule(s) and/or of conflicting rules and/or of different interpretations of the facts. The solution suggested is clearly based on the explanation and application of the rules and is sustainable.
clear	The answer correctly identifies and accurately explains significant parts of the rule(s) in the central aspects of the potential content, though there are omissions of some part(s) of the rule(s), or errors in the explanation, in those central aspects. There may be a little overemphasis on marginal aspects of the rules at the expense of some of the more central aspects. In the higher part of the level, statutory and/or case authority and illustration are used but there may be a little confusion and error in selection and/or explanation or the explanation may be limited. At the lower end of the level, there may be little evidence of statutory and/or case authority and illustration or more evident inaccuracies.	The answer selects and emphasises some of the relevant facts from the scenario and makes reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. The application, though otherwise persuasive, may fail to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts) or there may be a little error or confusion in the application to the facts. The solution suggested is broadly based on the explanation and application of the rules, though there may be some evident weakness.
some	The answer correctly identifies and accurately explains a very limited part of the relevant rule(s) in the central aspects of the potential content. There may be a very evident imbalance between explanation of central and of more marginal aspects of the rule(s). Alternatively, the answer explains a more substantial part of the relevant rule(s) in the central aspects of the potential content but the explanations suffer from significant omission, error or confusion. Explanations may emerge only out of attempts to introduce relevant case authority and illustration. If introduced at all, statutory and/or case authority and illustration may be of marginal relevance or the explanation may be highly superficial or subject to significant inaccuracies or not properly used to support the explanation of the relevant rule(s).	The answer selects and emphasises one or two relevant facts from the scenario and makes reference to them without being able to suggest a coherent application. More broad-ranging attempts to identify and make reference to relevant facts display confusion or error. Alternatively, the answer tends to make simple assertions or assumptions about the way in which the rule(s) apply to the facts, so that application is general and unspecific, being unrelated to particular facts. The application fails to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts). Little use is made of whatever statutory or case authority and illustration is incorporated in explanations. The solution suggested is only imprecisely related to the explanation of the rule(s).

Criminal Law (Offences against the Person)

1

Total for this question: 75 marks

- (a) Discuss Harry's criminal liability arising out of the incident with Ena **and** the injury suffered by Javad. (25 marks)

Potential Content

- (A) In relation to Ena - offences of assault, battery and assault occasioning abh - particular issues involving *mens rea* in relation to assault and battery
- (B) In relation to Javad - causing gbh and causing gbh with intent (possible alternative in abh – treat as max low clear if abh only) - *mens rea* issues
- (C) In relation to Javad - the defence of consent (rough, undisciplined play?)

- (b) Discuss Frank's liability for the murder of Luke. (25 marks)

Potential Content

- (A) *Prima facie* liability for the offence of murder - *actus reus* issue ('take your victim') and *mens rea* issues (intention to kill/cause serious injury?)
- (B) The defence of provocation - subjective and objective tests (relevance of physical illness and consequent problems with self-control)
- (C) The defence of diminished responsibility - general requirements of the defence. Note: insanity is unlikely to succeed and, if dealt with rather than diminished responsibility, should be treated as at best a **clear** explanation and application

- (c) In relation **either** to the offence of murder (including voluntary manslaughter) **or** to the non-fatal offences against the person, discuss the suggestion that the law is in urgent need of reform. (25 marks)

Potential Content

Murder and voluntary manslaughter

- (A) General structural issues - the relationship between murder and manslaughter, the mandatory penalty of life imprisonment, should homicide be more or less structured
- (B) Murder issues - the elements of murder: *actus reus* and *mens rea*
- (C) Partial defence issues - (subjective and objective tests in provocation and general elements of diminished responsibility)

NB This answer may be treated as 2PC or 3PC. Greater detail will be required in the 2PC scheme.

Non-fatal offences

- (A) Structural issues (connected, for instance, with sentencing) , and language and associated issues
- (B) Specific *actus reus* and *mens rea* issues

2

Total for this question: 75 marks

- (a) Discuss the criminal liability of Rob **and** of Tom for the involuntary manslaughter of Salma. (25 marks)

Potential Content

- (A) In relation to Rob – the offence of gross negligence manslaughter
- (B) In relation to Rob – the defence of voluntary/involuntary intoxication
- (C) In relation to Tom - the offence of unlawful act manslaughter and/or gross negligence manslaughter based on presumed omission to assist Salma: particular issue in whether Rob's conduct breaks the chain of causation

- (b) Discuss the criminal liability of Paul **and** of Vera for the incidents involving Mike. (25 marks)

Potential Content

- (A) In relation to Paul - *prima facie* liability for an offence of assault/battery occasioning abh and/or gbh
- (B) In relation to Paul - defence of prevention of crime: particular issues in mistake as to need for use of force; proportionate response
- (C) In relation to Vera - a possible offence of inflicting gbh: particular issues in liability for omission

- (c) In relation **either** to the offence of involuntary manslaughter **or** to the non-fatal offences against the person, discuss the suggestion that the current law is essentially satisfactory. (25 marks)

Potential Content**Involuntary manslaughter**

- (A) Unlawful act issues
- (B) Gross negligence issues
- (C) General overview issues (such as scope of involuntary manslaughter, relationship with rest of homicide – discussion of liability of corporations is not required but will be credited)

NB This answer may be treated as 2PC or 3PC. Greater detail will be required in the 2PC scheme.

Non-fatal offences

- (A) Structural issues (connected, for instance, with sentencing), and language and associated issues
- (B) Specific *actus reus* and *mens rea* issues

Contract Law

3

Total for this question: 75 marks

- (a) Having regard to the rules on offer and acceptance, consider the rights and remedies, if any, of Chris **and** of Dave, if Brightco make both car parking spaces available to Elaine. (25 marks)

Potential Content

- (A) In relation to Chris: the requirements of offer and acceptance, including the distinction between counter offer as rejection of original offer and request for further information as not affecting the original offer; issues of survival of the original offer. Chris's right to damages (unlikely to be specific performance) if the offer was validly accepted
- (B) In relation to Dave: the distinction between offer and invitation to treat; the making of an offer in response to an invitation to treat; the right to accept or reject the offer, with consequent implications for the (lack of) rights of the offeree

- (b) Having regard to the rules on misrepresentation and breach, consider the rights and remedies of Elaine **and** of George. (25 marks)

Potential Content

- (A) The meaning of misrepresentation, including the need for reliance. The kinds of misrepresentation - fraudulent, innocent, negligent. Remedies for misrepresentation related to the kind of representation
- (B) The notion of termination by breach of contract if one party refuses to perform obligations. The notion of anticipatory breach where one party indicates the intention not to perform in advance of the requirement to do so. The remedies for anticipatory breach, including the refusal to accept the breach and continuing to be ready to perform (mitigation issue)

- (c) Critically evaluate the rules **either** on offer and acceptance **or** on misrepresentation in contract. (25 marks)

Potential Content

Offer and acceptance

- (A) Issues concerning offers: for example, problems of distinguishing between offers and invitations to treat, and between counter offers and requests for further information; rules on withdrawal of offers
- (B) Issues concerning acceptance: for example, in different forms of communication, such as face-to-face, electronic and via the postal service; interpretation of prescriptive forms of acceptance

Note: These issues may be approached as part of a consideration of broader problems, such as the 'battle of the forms' or the difficulties in adapting the rules to cope with new technology

Misrepresentation

- (A) Issues concerning, for example, the distinction between terms and representations and the definition of the elements of misrepresentation
- (B) Issues concerning, for example, the classification of misrepresentations and the remedies available

4

Total for this question: 75 marks

- (a) Having regard to the relevant rules on formation of a contract **and** on terms in a contract, consider what rights and remedies, if any, are available to Marie **and** to Nina against Sleekstyle. (25 marks)

Potential Content

- (A) The rules on agreement and consideration in the context of unilateral contracts: offer and invitation to treat in advertisements, acceptance; consideration
- (B) Interpretation of terms of the offer in relation to Marie. Withdrawal of offer in relation to Nina. Remedy of damages for both

- (b) Having regard to the relevant rules on termination of a contract by frustration and by breach, consider the rights and remedies which may be available to Pravin **and** to Transwest in connection with the contract for the hire of the minibus and driver. (25 marks)

Potential Content

- (A) Pravin: the meaning and classification of types of frustrating event. Transwest: the alternative of breach
- (B) The effect of the Law Reform (Frustrated Contracts) Act 1943 if the contract is frustrated - recovery by Pravin of sums already paid, claim for expenses incurred/benefit provided by Transwest. The remedy for breach if the contract is not frustrated - expenses and losses incurred by Transwest

- (c) Critically evaluate the rules **either** on offer and acceptance **or** on frustration in contract. (25 marks)

Potential Content**Offer and acceptance**

- (A) Issues concerning offers: for example, problems of distinguishing between offers and invitations to treat, and between counter offers and requests for further information; rules on withdrawal of offers.
- (B) Issues concerning acceptance: for example, in different forms of communication, such as face-to-face, electronic and via the postal service; interpretation of prescriptive forms of acceptance.

Note: These issues may be approached as part of a consideration of broader problems, such as the ‘battle of the forms’ or the difficulties in adapting the rules to cope with new technology.

Frustration

- (A) Issues concerning, for example, the meaning and classification of types of frustrating event, the notions self-induced frustration and of events for which provision has been made.
- (B) Issues concerning, for example, the legal effects of frustration – the statutory method of distributing the losses.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

A Level Law (LAW4)**(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