

# GCE 2004

## *June Series*



# Mark Scheme

## Law

### *(Subject Code LAW4)*

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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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*Dr Michael Cresswell Director General*

## 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).

The evaluative question mark bands are supplied for both a 3 Potential Content and a 2 Potential Content mark scheme, to be applied as appropriate. 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.

Except where otherwise indicated, ‘sound’, ‘clear’ and ‘some’ refer to both explanation and application/evaluation. Where, for any element of potential content, one is achieved at the higher level but the other at a lower level, the overall description for that potential content will tend towards the lower level.

**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 <b>or</b> one sound, two clear
20	one sound, one clear <b>or</b> two clear, one some (explanation and/or application))
18	two clear
16	three some
15	one sound <b>or</b> two sound explanation <b>or</b> one clear, one some (explanation and/or application) <b>or</b> three clear explanation
13	one clear <b>or</b> one sound explanation <b>or</b> two clear explanation <b>or</b> two some
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
05	relevant fragments <b>or</b> 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 (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 <b>or</b> 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) and (B)  
**or**  
the candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A) and (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) and (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) and (B)  
**or**  
the candidates *clearly* evaluates relevant aspects of the rules of law in **one** of (A) and (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) and (B)  
**or**  
the candidate presents *some* evaluation of relevant aspects of the rules of law in both of (A) and (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) and (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 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

### Criminal Law (Offences against the Person)

1

**Total for this question: 75 marks**

(a) Discuss Ann's criminal liability for the injuries to Ben.	(25 marks)
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**Potential Content**

- (A) The offences under s20 and s18 Offences Against the Person Act 1861 (discussion of s47 in connection with the kick is not required but will be credited) – wounding and gbh issues, *mens rea* issues
- (B) The defence of intoxication – voluntary intoxication, specific and basic intent offences (involuntary intoxication not required but discussion will be credited)
- (C) The defence of self-defence – need for force (striking first blow, mistake, effect of intoxicated mistake), proportionate force

(b) Discuss Charles's criminal liability for unlawful homicide (involuntary manslaughter, murder, voluntary manslaughter) in connection with Derek's death.	(25 marks)
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**Potential Content**

- (A) Involuntary manslaughter – unlawful act manslaughter based on the chase (assault, causation, *mens rea*); possible alternative in gross negligence manslaughter based on the omission to get help
- (B) Murder – based on the failure to get help (omission, duty, malice aforethought)
- (C) Voluntary manslaughter – the defence of provocation

**NB** Where involuntary manslaughter only is discussed, **max 20** for sound treatment of unlawful act and gross negligence related to the stages of the incident (the chase, the failure to get help).

(c) Discuss the suggestion that the current law of murder is satisfactory and does not require any modification.	(25 marks)
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**Potential Content**

- (A) *Actus reus* and *mens rea* issues
- (B) Partial defence issues
- (C) General overview issues (such as structure of homicide, distortions consequent on mandatory penalty)

**NB** Credit should be given for any suggestions for reform which help to elucidate criticisms of the current law.

**Note:** This question can properly be answered either on the 2 Potential Content or 3 Potential Content scheme, and the appropriate one should be applied. In doing this, it is legitimate to choose the scheme which gives the greater advantage to the candidate. Thus, even where the candidate deals with 3 items of the Potential Content, it may still be appropriate to apply the 2 Potential Content scheme, if one item of the Potential Content is significantly weaker than the others. In that case, use the weakest one to compensate for possible deficiencies in either or both of the others. Note also that a slightly lower level of detail in explanation and evaluation will be required in the 3 Potential Content scheme by comparison with the 2 Potential Content scheme.

2

**Total for this question: 75 marks**

- (a) Discuss the criminal liability of Farah and of George for involuntary manslaughter arising out of Emma's death. (25 marks)

**Potential Content**

- (A) Farah's liability for involuntary manslaughter – unlawful act manslaughter based on the piercing (battery/abh – wounding s20 is also appropriate, though s18 would be a poor application since there is no evidence of intention to cause gbh), raising issues of causation

**Note:**

- (1) Candidates who deal only with an appropriate non-fatal offence and do not connect it with involuntary manslaughter (through an unlawful act) can at best be given limited credit ('some') for explaining the 'unlawful act' aspect of unlawful act manslaughter and making a very weak application.
  - (2) Candidates who deal with Farah's liability solely or additionally as gross negligence manslaughter should be given some credit, but double credit is not available for the *explanation* of gross negligence manslaughter (which will also be required in (C)) and application should acknowledge that there is no obvious risk of death and no factual evidence on which to found breach of duty.
- (B) Farah's possible defence of consent – the general rule and the exception for 'body adornment', the validity of the consent (having regard to age and knowledge)
- (C) George's liability for involuntary manslaughter – gross negligence manslaughter

- (b) Discuss Michael's criminal liability arising out of the incidents involving Farah. (25 marks)

**Potential Content**

- (A) The offence of assault (the telephone threats) and consequent possibility of assault occasioning abh (psychiatric injury) or of s20 gbh, if more serious
- (B) The offences of s20 and s18 Offences Against the Person Act 1861 arising out of the car incident
- (C) The defence of insanity

- (c) Relating your answer **either** to involuntary manslaughter **or** to non-fatal offences against the person, discuss the suggestion that the law is in urgent need of reform. (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)

**Non-fatal offences**

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

**NB** Credit should be given for any suggestions for reform which help to elucidate criticisms of the current law.

**Note:** This question can properly be answered either on the 2 Potential Content or 3 Potential Content scheme, and the appropriate one should be applied. In doing this, it is legitimate to choose the scheme which gives the greater advantage to the candidate. Thus, even where the candidate deals with 3 items of the Potential Content, it may still be appropriate to apply the 2 Potential Content scheme, if one item of the Potential Content is significantly weaker than the others. In that case, use the weakest one to compensate for possible deficiencies in either or both of the others. Note also that a slightly lower level of detail in explanation and evaluation will be required in the 3 Potential Content scheme by comparison with the 2 Potential Content scheme.

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

- (a) Having regard to the relevant rules on formation of contract **and** on terms in a contract, consider the rights and remedies which may be available to Jacksons Ltd and to Harry. (25 marks)

**Potential Content**

- (A) Formation issues (offer/acceptance, consideration)
- (B) Terms issues – express and implied terms
- (C) Remedies for breach - damages

- (b) Having regard to the relevant rules on mistake **and** on termination of a contract by frustration, consider the rights and remedies which may be available to Jacksons Ltd and to Imran. (25 marks)

**Potential Content**

- (A) Mistake issues (legal approach to mistakes, objective construction, classification, mutual mistake)
- (B) Frustration issues – meaning of frustration, classification, destruction of subject matter
- (C) Remedies – consequences of mistake, legal effect of frustration (Law Reform (Frustrated Contracts) Act 1943)

- (c) Consider how far it is true to say that there are many uncertainties about the meaning and application of the rules on offer and acceptance in contract. (25 marks)

**Potential Content**

- (A) Offer issues – for example, invitations to treat, counter offer, request for further information, withdrawal
- (B) Acceptance issues – for example, instantaneous and non-instantaneous, restrictions on mode
- (C) General issues – for example, ‘battle of forms’ notions, application to new technology

**Note:** This question can properly be answered either on the 2 Potential Content or 3 Potential Content scheme, and the appropriate one should be applied. In doing this, it is legitimate to choose the scheme which gives the greater advantage to the candidate. Thus, even where the candidate deals with 3 items of the Potential Content, it may still be appropriate to apply the 2 Potential Content scheme, if one item of the Potential Content is significantly weaker than the others. In that case, use the weakest one to compensate for possible deficiencies in either or both of the others. Note also that a slightly lower level of detail in explanation and evaluation will be required in the 3 Potential Content scheme by comparison with the 2 Potential Content scheme.

4

**Total for this question: 75 marks**

- (a) Consider what rights and remedies, if any, are available to Javed in connection with Kevin's refusal to keep his promise to repair Javed's central heating. (25 marks)

**Potential Content**

- (A) Consideration issues – the nature of consideration, past consideration, implied promise
- (B) Intention to create legal relations issues – requirement for such intention, presumptions based on classification of relationship
- (C) Remedies – damages and specific performance

- (b) Having regard to the relevant rules on misrepresentation **and** on terms in a contract, consider the rights and remedies which may be available to Javed against LDS if he wishes no longer to be bound by the contract. (25 marks)

**Potential Content**

- (A) Misrepresentation issues – terms and representations, elements of an actionable misrepresentation, classification
- (B) Terms issues – express and implied terms, conditions, warranties and innominate terms
- (C) Remedies – misrepresentation remedies of rescission and damages; breach remedies – repudiatory breach, damages

- (c) **EITHER**

Select any **one** element required in the formation of a contract (offer and acceptance, intention to create legal relations, consideration) and outline and critically evaluate the relevant rules. (25 marks)

**OR**

Select any **one** method of termination of a contract (breach, frustration, performance, agreement) and outline and critically evaluate the relevant rules. (25 marks)

**Potential Content**

- (A) Outline of relevant rules in the chosen element of formation or of method of termination
- (B) Critical evaluation of relevant rules

**Note:** In the standard mark band descriptions for evaluative questions, “evaluation” should be read as “outline explanation” for Potential Content (A).

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**A Level Law (LAW4)****(One question to be answered from 4)**

<b>UNIT 4</b>	<b>AO1</b>	<b>A02</b>	<b>AO3</b>
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	
<b>Total marks</b>	21	54	10
<b>% of the A2</b>	7.5	19	3.5
<b>% of the A Level</b>	3.75	9.5	1.75