

GCE 2005
January Series



Mark Scheme

Law Specification

LAW4 Criminal Law (Offences against the Person) or Contract

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.

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**
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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
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
05	relevant fragments or relevant but incoherent
00	completely irrelevant

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

Criminal Law (Offences against the Person)**1****Total for this question: 75 marks**

- (a) Discuss Bill's criminal liability for the injuries to Ali, and Ali's criminal liability for the injury to Bill. (25 marks)

Potential Content

- * (A) In relation to Bill - offences of abh (s47) and gbh (s20), including gbh with intent (s18)
- (B) In relation to Ali - wounding (s20) and wounding with intent (possible **alternative** in gbh (s18))
- (C) In relation to Ali - the defence of self-defence: issues of necessity and proportion
- *
 - (i) for **sound**, must discuss abh **and** gbh, but may be heavy emphasis on one
 - (ii) if **assault** only, then some explanation

- (b) Discuss Ali's liability for the murder of Colin, and discuss Derek's liability for the manslaughter of Colin. (25 marks)

Potential Content

- (A) In relation to Ali - *prima facie* liability for the offence of murder – in particular, *mens rea* issues
- (B) In relation to Ali - the defence of provocation
- (C) In relation to Derek - gross negligence manslaughter, including issues of duty and breach

- (c) What criticisms would you make of the current law of homicide? (25 marks)

Potential Content

- (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 - for example, the *mens rea* of murder, the partial defence of diminished responsibility and provocation
- (C) Involuntary manslaughter issues - the definition of the various forms of involuntary manslaughter

Note: This answer may be treated as 2PC or 3PC depending on which is the more beneficial to the candidate. The treatment of any of (A) – (C) will be a little less substantial in a 3PC than in a 2PC scheme.

2

Total for this question: 75 marks

- (a) Discuss the criminal liability of Ernie arising out of the incidents involving Fiona and Gill.
(25 marks)

Potential Content

- (A) In relation to Fiona - the offences of assault and assault occasioning actual bodily harm
- * (B) In relation to Gill - the offences of assault occasioning actual bodily harm (reliance may be placed on the discussion in (A)) and wounding/inflicting grievous bodily harm
- (C) In relation to both incidents - the defence of insanity, involving, in particular, that Ernie does not know that what he is doing is wrong (self-protection)

* a **sound** answer could focus on wounding and gbh, with abh enhancing the quality. An answer **only** on abh is max **clear**.

- (b) Discuss Hari's liability for involuntary manslaughter in connection with Irene's death.
(25 marks)

Potential Content

- (A) Unlawful act manslaughter - based on the assault involved in cycling directly at Irene, and including the causation issue in her attempted escape
- (B) Gross negligence manslaughter - reliance may be placed on any explanation of causation offered in (A)
- (C) The defence of automatism - but possibly unavailable because self-induced (treatment of automatism as **insane** automatism is some explanation)

Note: This answer can be treated as 3PC or 2PC, where 2PC is either (A) **or** (B) **and** (C). Treatment of any of (A) – (C) will be less substantial in a 3PC than a 2PC. (A) **and** (B) only is 3PC scheme.

- (c) What criticisms would you make of the current law on non-fatal offences against the person?
(25 marks)

Potential Content

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

Proposals for reform enhance quality where related to the nature of the criticisms.

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

- (a) Consider whether Jay and Karl made a contract in respect of the iron gates, and consider the rights and remedies which may be available to Jay. (25 marks)

Potential Content

- (A) Formation issues (offer/acceptance, consideration)
- (B) Intention to create legal relations
- (C) Remedies for breach - damages

- (b) Having regard to the rules on misrepresentation, consider the rights and remedies which may be available to Jay against Laura. (25 marks)

Potential Content

- (A) The meaning of misrepresentation, including the distinction between terms and mere representations
- (B) The kinds of misrepresentation - fraudulent, negligent, innocent
- (C) Remedies - related to the classification of misrepresentation

- (c) Agreement is an important aspect in the formation of a contract. How satisfactory are the rules which determine when an agreement has taken place? (25 marks)

Potential Content

- (A) Offer issues - invitations to treat, counter offer, request for further information, withdrawal
 - (B) Acceptance issues - instantaneous and non-instantaneous, restrictions on mode
 - (C) General issues - 'battle of forms' notions, application to new technology
- NB** 'Battle of forms' and/or new technology should be credited as part of (A) and/or (B) as appropriate

4

Total for this question: 75 marks

- (a) Consider what rights and remedies, if any, are available to Newform in connection with the possible contract for the sale of the machine to Mildrive. (25 marks)

Potential Content

- (A) Offer issues. General formation issues – advertisements, invitations to treat, offer/counter offer
- (B) Acceptance issues. Specific formation issues involving acceptance – instantaneous communications, postal communication and exceptions

Note: Discussion of remedies should be credited as part of the discussion of (A) and/or (B) as appropriate. **Max 20** if no discussion of remedies at all. Therefore can have 2 x clear without remedies.

- (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 Mildrive and to Planright in connection with the contract for the sale of the machine. (25 marks)

Potential content

- (A) The meaning and classification of types of frustrating event. The alternative of breach
- (B) The effect of the Law Reform (Frustrated Contracts) Act 1943 if the contract is frustrated. The remedy for breach if the contract is not frustrated – including remedies for losses and consequential losses sustained

- (c) Outline and comment critically on the rules on **either** misrepresentation **or** mistake in contract. (25 marks)

Potential Content

- *(A) Outline of the rules on misrepresentation or on mistake
- (B) Critical comment on first aspect of the rules – for example, on the distinction between terms and representations and the definition of misrepresentation; on the nature of the classification of mistakes
- (C) Critical comment on second aspect of the rules – for example, on the classification of misrepresentations and the effects on remedies; on the operation of the rules on different kinds of mistakes

***Note:** In the standard mark band descriptions for evaluative questions, ‘evaluation’ should here be interpreted as an explanation in *outline*, as required by the question.

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