

Version 1.0



**General Certificate of Education  
June 2010**

**Law** **LAW04**  
**Criminal Law (Offences against the  
Property) or Tort AND Concepts of Law**

**Unit 4**

***Mark Scheme***

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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## **LAW04**

### **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.*

#### **Citation of Authority**

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

### **Assessment Objective Three**

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

## Maxima for Substantive Law questions

### Mark bands (3 potential content) – list of maximum marks

25	two sound, one clear
23	two sound, one some <b>or</b> one sound, two clear
21	two sound <b>or</b> one sound, one clear, one some <b>or</b> three clear
19	one sound, one clear <b>or</b> one sound, two some <b>or</b> two clear, one some
17	one sound, one some <b>or</b> two clear <b>or</b> one clear, two some
14	one sound <b>or</b> one clear, one some <b>or</b> three some
13	two sound explanation only
11	one clear <b>or</b> two some
09	one sound explanation only <b>or</b> two clear explanation only <b>or</b> three some explanation only
07	one some <b>or</b> one clear explanation only <b>or</b> two some explanation only
05	one some explanation only
04	fragments or substantial error/incoherence
00	completely irrelevant

### Mark bands (2 potential content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some <b>or</b> two clear
17	one sound <b>or</b> one clear, one some
13	one clear <b>or</b> two some <b>or</b> two sound explanation only
11	one sound explanation only <b>or</b> two clear explanation only
08	one some <b>or</b> one clear explanation only <b>or</b> two some explanation only
06	one some explanation only
05	fragments or substantial error/incoherence
00	completely irrelevant

#### Note:

In *substantive* law questions, the two components are explanation and application. The references above to explanation only are to be understood as explanation without application. The quality of treatment of these two components, in combination, determines whether the treatment overall for that PC element is sound, clear or some. In determining the overall quality of treatment, descriptions of the quality of treatment of the individual components should be combined as follows:

sound/sound	- sound
sound/clear	- low sound
sound/some	- clear
clear/clear	- clear
clear/some	- low clear
some/some	- some

### Descriptors for Substantive Law questions

Level	Description
<b>Sound</b>	Accurate and comprehensive explanation and application, so that the answer reveals strong knowledge and understanding of the correct (or sustainable) analysis, leading to satisfactory conclusions. There may be some omission, error, or confusion but it will be insufficient to undermine the basic characteristics of the answer.
<b>Clear</b>	<p>Broadly accurate and relatively comprehensive explanation and application, though a little superficial in either or both and with some error and/or confusion that begins to affect the quality of the analysis.</p> <p>Or</p> <p>Accurate explanation and application over a narrower area, omitting some significant aspect(s) of the analysis.</p> <p>So that an answer emerges which reveals knowledge and understanding of the broad framework of the analysis, or of some of its detailed aspect(s).</p>
<b>Some</b>	<p>Explanation and/or application in relation to relevant aspects but characterised by significant omissions and/or errors and/or confusion.</p> <p>Or</p> <p>Explanation (including definitions of relevant offences/defences) and/or application which is generally accurate but confined to a limited aspect.</p> <p>So that, at best, a very superficial or partial analysis emerges.</p>
<b>Fragments</b>	<p>Isolated words or phrases, including case names and statutes, which have potential relevance but remain entirely undeveloped.</p> <p>Or</p> <p>Mere identification of relevant offences/defences.</p>

#### Use of case authority

1. It is usually sufficient to associate a relevant case with an explained/applied rule. Further explanation of cases is required only where necessary to elucidate the rule or its application.
2. An answer in relation to any Pc should not be described as 'sound' unless some relevant authority appears, where appropriate. However, where there is appropriate use of authority in relation to the other Pc('s) in the mark scheme for the question, an answer in relation to a Pc where no authority appears may be given a 'lower' sound (the candidate will have demonstrated ability to use appropriate authority at some point in the answer to the question, albeit not in the element in issue).

## Section A: Criminal Law (Offences against Property)

### Scenario 1

Total for this scenario: 50 marks

0	1	Discuss Vladic's possible criminal liability for property offences arising out of his dealings with Edna and Luca.	(25 marks)
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### Potential Content

- (A) Theft issues: possible theft when Edna hands the money over to Vladic (assuming he had formed dishonest intent at that point) - appropriation with consent, belonging to another (s.5(1), dishonesty, intention to permanently deprive. Possible theft when he hands the money over to Luca, assuming no initial dishonest intent - appropriation by "later assumption of a right", property belonging to another/s.5(3), dishonesty, intention to permanently deprive

NB Either or both of the above approaches can merit Sound.

- (B) Elements of fraud by false representation in connection with Vladic's assurance to Edna: representation, falsity (did Vladic intend to carry out the assurance, ie did he know that it was or might be untrue or misleading?). *Mens rea* issues: dishonesty, intention to make a gain and/or cause a loss
- (C) Consideration of the defence of duress: threat of death/personal injury to Edna (was she someone for whom Vladic reasonably felt responsible?). The subjective element (threat of imminent harm/opportunity to avoid the harm?). The objective element. The effect of Vladic's voluntary association with a violent group

0	2	Discuss George's possible criminal liability for property offences arising out of his activities in Freda's house.	(25 marks)
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### Potential Content

- (A) Theft issues regarding the chocolates: appropriation, property belonging to another, intention permanently to deprive (Velumyl), the issue of dishonesty
- (B) Criminal damage issues. Basic criminal damage. The meaning of damage and the issue of recklessness. The possibility of aggravated criminal damage. The issue of recklessness regarding the endangering of life by the damage to the carpet. Possible defence of lawful excuse regarding the cushion (s.5(2)(b))
- (C) Burglary issues. Trespass into the living room (part of a building). Possible application of s.9(1)(a) but unlikely that George intended to commit any of the relevant ultimate offences. Possible application of s.9(1)(b) regarding the theft in the living room

**Scenario 2**

**Total for this scenario: 50 marks**

- |          |          |   |
|----------|----------|---|
| <b>0</b> | <b>3</b> | Discuss Ken’s possible criminal liability for property offences arising out of his activities in relation to Norma. <span style="float: right;">(25 marks)</span> |
|----------|----------|---|

**Potential Content**

- (A) Theft issues. Appropriation. Property belonging to another (“possession or control”/s.5(1)). *Mens rea* issues, in particular the issue of dishonesty and s.2(1)(a). Robbery issues. Was force used in order to steal? Was there a continuing appropriation?
  
- (B) Making off without payment issues. Making off, service done, payment required or expected. *Mens rea* issues. Fraud by false representation issues (based on the argument that, when Ken asks Norma for the return of the dry cleaning in the shop, he is representing by conduct that he intends to pay for it) - can operate as an enhancement of, or alternative to, making off. If argued as an alternative to making off, it can merit sound.
  
- (C) Burglary issues: trespass (intention to exceed implied permission to enter the dry cleaners). Possible application of s.9(1)(a) and s.9(1)(b)

- |          |          |   |
|----------|----------|---|
| <b>0</b> | <b>4</b> | Discuss Ken’s possible criminal liability for property offences arising out of his use of Toby’s bank card details on the internet. <span style="float: right;">(25 marks)</span> |
|----------|----------|---|

**Potential Content**

- (A) Sound receives a discussion of any two of the following:
  - Theft in relation to Toby’s bank account funds (the thing in action)
  - Theft in relation to the bank card (this can include a discussion of theft of the bank card details [information])
  - Theft of the phone

ANY ONE OF THE ABOVE ONLY merits MAX CLEAR

- (B) Fraud by false representation in relation to Ken’s use of the card details on the internet. Representation by conduct, falsity, no requirement of human intervention (s.2(5) FA). *Mens rea* issues: dishonesty, intention to make a gain for himself or another/cause risk of loss

A discussion of obtaining services dishonestly can be treated either as an enhancement of, or alternative to, a discussion of fraud by false representation

NB credit should be given for any reference to pre-Fraud Act authorities on deception by conduct to illustrate the meaning of representation by conduct.



- (C) Defence of intoxication. Recognition of voluntary intoxication. Distinction between specific/basic intent crimes (all the above crimes require intent). Is *mens rea* negated? (unlikely on the facts)

## Section B: Tort

### Scenario 3

**Total for this scenario: 50 marks**

- |          |          |  |
|----------|----------|--|
| <b>0</b> | <b>5</b> | Consider the rights and remedies, if any, of Phil, of Amy and of Nina against Eric in connection with the incident involving the photocopier. <span style="float: right;"><i>(25 marks)</i></span> |
|----------|----------|--|

#### Potential content

- (A) In relation to Phil: relevant requirements of the Occupiers' Liability Act 1957. Elements which must be proved to establish the duty, nature of the duty and breach of duty. Damages. Potential alternative in common law negligence. Duty of care, breach of duty. Remoteness. Damages
- (B) In relation to Amy and Nina: possible claim in the tort of negligence for psychiatric injury. Need for recognised psychiatric injury, distinction between primary and secondary victims in terms of test(s) for distinction and in terms of control factors. Application to Amy (primary victim/within the zone of foreseeable physical harm). Application to Nina (secondary victim, consideration of control factors). Reference to remedy of damages

- |          |          |  |
|----------|----------|--|
| <b>0</b> | <b>6</b> | Consider the rights and remedies, if any, of Phil against Jules in connection with the noise and against Whitegoods Ltd in connection with his ruined designer clothes. <span style="float: right;"><i>(25 marks)</i></span> |
|----------|----------|--|

- (A) In relation to Jules: possible liability in the tort of private nuisance in relation to the noise. The need for an unreasonable interference with enjoyment of land and a consideration of possible relevant factors, especially location, duration, malice and sensitivity. The requirement of damage. The remedy of injunction and damages. "Coming to the nuisance." Possible reference to public nuisance and remedies
- (B) In relation to Whitegoods: possible claim in the tort of negligence (duty, breach, damage, remoteness). Possible alternative claim under the Consumer Protection Act 1987 (damage, defective product, producer, strict liability). Damages. Either or both of the above approaches can achieve maximum marks

**Scenario 4****Total for this scenario: 50 marks**

- |          |          |
|----------|----------|
| <b>0</b> | <b>7</b> |
|----------|----------|
- Consider the rights and remedies, if any, of Ben, of Nathan and of Rob against Ali in connection with the harm they suffered at the hotel. *(25 marks)*

**Potential Content**

- (A) Relevant requirements of the Occupiers' Liability Act 1957. Elements which must be proved to establish the duty and nature of the duty. In relation to Ben: special consideration required for children. In relation to Nathan: dangers created by independent contractors, possible contributory negligence of Nathan. Potential alternative in common law negligence. Damages
- (B) In relation to Rob: relevant requirements of the Occupiers' Liability Act 1984. The need for a danger due to the state of the premises (s.1(1)). Requirements for the duty to arise (s.1(3)). Nature of the duty (s.1(4)). Consideration of possible contributory negligence/volenti. Damages

- |          |          |
|----------|----------|
| <b>0</b> | <b>8</b> |
|----------|----------|
- Consider the rights and remedies, if any, of Rob and of Tariq against Dr West and against the hospital. *(25 marks)*

**Potential Content**

- (A) In relation Rob and Dr. West: elements of the tort of negligence. Duty of care. Breach of duty in relation to medical professionals. Is inexperience a possible defence? Causation/remoteness. Remedy of damages
- (B) In relation to Tariq and Dr West: elements of the tort of negligence. Duty of care. Breach of duty and possible relevant factors, eg does the emergency/social utility justify a lower standard of care? Remoteness of damage and the "thin skull" rule
- (C) In relation to Rob/Tariq and the hospital: possible vicarious liability for any tort committed by Dr West. Discussion of "in the course of employment" and employer/employee relationship

### **Maxima for LAW04 Concepts essay questions**

The candidate deals with (A) and (B) as follows:

- Max 30:** two sound
- Max 27:** one sound, one clear
- Max 23:** one sound, one some **or** two clear
- Max 19:** one sound **or** one clear, one some
- Max 15:** one clear **or** two some
- Max 10:** one some
- Max 5:** fragments **or** substantial error or incoherence
- 0:** no relevant information

**Descriptors for Concepts of Law questions (Section C)**

<b>Level</b>	<b>Explanation</b>	<b>Analysis/Evaluation</b>
<b>sound</b>	The answer presents a strong explanatory framework, correctly identifying and accurately and comprehensively explaining, say, relevant rules, procedures, institutions, and theories in the central aspects of the potential content. Where appropriate, the explanations are supported by relevant examples and illustration (which is adequately developed where necessary to further elucidate the explanations). Where there are more marginal aspects of the potential content, there may be some minor omissions or inaccuracies in the explanation and/or in the treatment of the supporting examples and illustration.	Arguments are developed perceptively and coherently, making careful use of framework explanations, examples and illustration, and are directly related to the thrust of the question. Summaries and conclusions are sustainable, and demonstrably emerge from the supporting explanations and arguments.
<b>clear</b>	The answer presents an explanatory framework, correctly identifying and accurately explaining significant parts of, say, relevant rules, procedures, institutions, and theory in the central aspects of the potential content, though there are omissions in the explanations of some parts of the rules, procedures, institutions, and theory or errors or some confusion in the explanation, in those central aspects. There may be a little overemphasis on marginal aspects at the expense of some of the more central aspects. In the higher part of the level, relevant examples 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 relevant examples and illustration or more evident inaccuracies.	Appropriate arguments are introduced but may not be fully developed, or may be restricted in range. Alternatively, the arguments suffer from a little inaccuracy or confusion. The arguments make use of framework explanations (including any relevant examples and illustration) but do not always succeed in incorporating them in a fully coherent way or in demonstrating their full relevance. Summaries and conclusions may be a little tentative and may not fully address the thrust of the question. Though broadly based on the supporting explanations and arguments, summaries and conclusions may not be closely and carefully related to them in the discussion.
<b>some</b>	The answer presents an explanatory framework which correctly identifies and accurately explains a very limited part of, say, relevant rules, procedures, institutions, and theory 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 potential content. Alternatively, the answer attempts explanation across a much broader range of relevant rules, procedures, institutions, and theory 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 examples and illustration. If introduced at all, examples and illustration may be of marginal relevance or their treatment may be highly superficial or subject to significant inaccuracies or not properly used to support the explanation of the relevant rules, procedures, institutions, and theory.	There are relevant arguments but they are undeveloped and may tend to consist of simple assertions or assumptions. Alternatively, arguments may be characterised by evident confusion which significantly impedes coherence. Very limited use is made of framework explanations and any examples and illustration. Summaries and conclusions may be absent. Where present, they may barely address the thrust of the question, and be only imprecisely related to any supporting explanations and arguments.

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**Total for this question: 35 marks**

0	9
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Critically analyse the extent to which judges are able to display creativity in the operation of judicial precedent and in the interpretation of statutory rules.

*(30 marks + 5 marks for AO3)*

**Potential Content**

(A) Critical analysis in relation to the development of common law rules

Explanation of the doctrine of precedent (the judicial hierarchy, the distinction between ratio and obiter, binding and persuasive precedents, etc). Its characteristics of flexibility which provide the potential for legal development eg distinguishing/issue of determining material facts, flexibility available to the HL due to the Practice Statement, flexibility due to the possible vagueness of a ratio, overruling/not following etc

Identification and analysis of relevant examples and case law instances of judicial development in practice, eg the *mens rea* of murder, the duty of care in the tort of negligence, either in general and/or in specific contexts, eg misstatements, psychiatric harm, etc, judicial development of assault/ABH/GBH, aspects of formation of contracts, etc). Critical analysis (evaluation) of the extent to which judges are able to develop the common law, eg HL only use the Practice Direction when it is “right to do so”, judges often prefer to leave policy issue to Parliament, eg Clegg, C v DPP, etc. Candidates could also utilise arguments against judicial law-making, eg the haphazardness of the judicial process/the need for relevant cases and issues to arise, constitutional issues (eg the declaratory theory of judges), inappropriateness of the courts as a forum for law reform (eg lack of research material available to judges), etc

(B) Critical analysis in relation to the interpretation of statutory rules

Explanation of the approaches to statutory interpretation, eg the literal, golden and mischief “rules, and the increasing importance of the purposive approach, etc. Analysis of the flexibility available to judges in statutory interpretation, eg are there binding “rules” of interpretation, the uncertainty of the meaning of language, etc

Identification and analysis of relevant examples and case law. Critical analysis (evaluation) of the extent to which judges are able to display creativity in interpreting statutes eg the greater scope for flexibility in the purposive approach as compared with the literal rule

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**Total for this question: 35 marks**

<b>1</b>	<b>0</b>
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Critically discuss different possible meanings of justice and explore the relationship between law and justice. *(30 marks + 5 marks for AO3)*

**Potential Content**

- (A) Discussion of the different possible meanings of justice, eg justice in terms of basic fairness, equality of treatment, distinction between different aspects of justice, for example, distributive/corrective, substantive/procedural, or formal/concrete justice, etc. There should be at least some treatment of the important philosophical theories of justice eg utilitarianism, Rawls, etc

Possible criticisms of different meanings of justice, eg problems with utilitarianism, the problems with distributive justice (eg what is a “just” distribution of benefits and burdens, what benefits and burdens?, etc), the problems in relation to justice as equality (eg when are cases alike and different?, etc)

- (B) Exploration of the relationship between law and justice – consideration of the extent to which law does or does not, achieve justice. Analysis of relevant rules of the substantive law and/or aspects of the legal system, eg natural justice, treatment of suspects, methods of correcting injustice, and the general problem of access to justice, etc. Consideration of whether and why the law should seek to achieve justice, eg a consideration of natural law theories, the need for a just system to create a cooperative society and the acceptance of differences, and the avoidance of civil disobedience, etc

**Total for this question: 35 marks**

1	1
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Discuss the meaning of fault as a basis for criminal and/or civil liability. Explain and evaluate the imposition of liability without fault. (30 marks + 5 marks)

**Potential Content**

- (A) Discussion of possible definitions of fault in the criminal and/or civil contexts, eg blameworthiness, responsibility, wrongdoing, etc. Identification and analysis of specific areas of law in order to demonstrate how they indicate the presence or absence of fault. Discussion of any relevant area of law will be credited. In the criminal law context, examples include *actus reus* issues, eg voluntariness, causation, omissions, *mens rea* issues, the distinction between intention and recklessness, whether objective recklessness and negligence indicate sufficient fault, etc, the notion of hierarchy of fault, the relevance of blameworthiness to sentencing, etc. In the civil law context, relevant areas include aspects of the criteria of the duty of care and breach of duty, causation and remoteness, and defences to negligence, such as *volenti* and contributory negligence

NB There may be some imbalance in the treatment of the discussion of the chosen area(s), where candidates choose to incorporate both civil and criminal law.

- (B) Explanation of liability without fault should include an explanation of instances of strict liability, eg strict liability in criminal law, vicarious liability, the Consumer Protection Act, no-fault accident compensation schemes as an alternative to tortious liability, etc

Evaluation of liability without fault should contain some discussion of possible arguments purporting to justify fault liability (eg the idea of personal autonomy, the severe consequences of criminal punishment, etc) and liability without fault, eg utilitarian arguments and the “not truly criminal” nature of regulatory offences, problems involved in civil negligence claims, possible benefits of the strict liability of manufacturers, employers, etc



**ASSESSMENT GRID****A Level Law (LAW04)****(One question from *either* Section A or Section B, and one question from Section C)**

<b>UNIT 4</b>	<b>AO1</b>	<b>A02</b>	<b>AO3</b>
<b>Section A</b>			
Question 1 (a)	10	15	
Question 1 (b)	10	15	
Question 2 (a)	10	15	
Question 2 (b)	10	15	
<b>Section B</b>			
Question 3 (a)	10	15	
Question 3 (b)	10	15	
Question 4 (a)	10	15	
Question 4 (b)	10	15	
<b>Section C</b>			
Question 5	15	15	
Question 6	15	15	
Question 7	15	15	
<b>QWC</b>			5
<b>Total marks</b>	35	45	5