



# General Certificate of Education

## Law

**Unit 4 (LAW04) Criminal Law (Offences  
against the Person  
*or* Tort  
AND Concepts of Law**

## Mark Scheme

**Specimen mark scheme for examinations in June 2010 onwards**  
**This mark scheme uses the [new numbering system](#)**

The specimen assessment materials are provided to give centres a reasonable idea of the general shape and character of the planned question papers and mark schemes in advance of the first operational exams.

Further copies of this Mark Scheme are available to download from the AQA Website: [www.aqa.org.uk](http://www.aqa.org.uk)

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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****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 <b>or</b> one sound, two clear
20	one sound, one clear <b>or</b> two clear, one some (explanation and/or application)
18	one sound, one some <b>or</b> two clear <b>or</b> one clear, two some
16	three some
15	one sound <b>or</b> two sound explanation or 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
5	relevant fragments <b>or</b> relevant but incoherent
0	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 <b>or</b> two clear
18	one sound <b>or</b> one clear, one some
15	one clear <b>or</b> two some <b>or</b> two sound explanation
13	one some <b>or</b> one sound explanation <b>or</b> two clear explanation
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
5	relevant fragments <b>or</b> relevant but incoherent
0	completely irrelevant

**Descriptors for Substantive Questions on Crime & Tort (Sections A & B)**

Level	Explanation	Application
<b>sound</b>	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.
<b>clear</b>	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.
<b>some</b>	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 rule(s).

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

### Scenario 1

Total for this scenario: 50 marks

<b>0 1</b> Discuss Wayne's criminal liability for a range of offences arising out of his keeping the ticket and using it to gain entry to the match. <span style="float: right;"><i>(25 marks)</i></span>
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#### Potential Content

- (A) Theft of the ticket – initial and subsequent appropriation, property, dishonesty
- (B) Liability under the Fraud Act – fraud by false representation, obtaining services dishonestly.
- (C) Making off without payment – the spot, payment as required or expected

<b>0 2</b> Discuss Wayne's criminal liability for a range of property offences in connection with the incidents in the football stadium. <span style="float: right;"><i>(25 marks)</i></span>
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#### Potential Content

- (A) Theft of the pies – general requirements of the offence of theft, including appropriation in gifts, dishonesty, and intention permanently to deprive. Note: discussion of making off without payment can be given credit as an alternative or may additionally enhance the treatment of (A)
- (B) Burglary under S9(1)(a) and (b), involving utilisation of theft as discussed above, and also possible infliction of grievous bodily harm in pushing Jerry down the steps and breaking his arm. Issue of entry as a trespasser by virtue of unauthorised use of ticket
- (C) Voluntary intoxication as a possible defence to theft and burglary, distinguishing between specific and basic intent offences

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**Scenario 2**

Total for this scenario: 50 marks

<p><b>0 3</b> Discuss the criminal liability of Billy arising out of the incident with the safety barriers and warning lights, and of Billy and of Charlie in connection with the mountain bike. <span style="float: right;"><i>(25 marks)</i></span></p>
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**Potential Content**

- (A) The safety barriers and lamps – possible basic and aggravated criminal damage (is dismantling damage?) Is it any such damage which creates a risk of danger? Does ‘for a laugh’ imply that no thought has been given to risks? Possible theft of both barriers and lamps, depending on the view of ‘intention to permanently deprive’
- (B) The mountain bike in relation both to Billy and Charlie – theft issues: the meaning of dishonesty under s2(1) in both cases ((c) in the case of Billy, (a) in the case of Charlie); the notion of touching as an appropriation (Charlie); the meaning of ‘belonging to another’ (Charlie – theft from a thief?)

<p><b>0 4</b> Discuss the criminal liability of Billy for any property offence arising out of his treatment of Eddie and, taking account of any possible defence, discuss Eddie’s criminal liability for any property offences arising out of the incidents at the shop. <span style="float: right;"><i>(25 marks)</i></span></p>
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**Potential Content**

- (A) The threat to Eddie by Billy – blackmail, unwarranted demand with menaces
- (B) The robbery issue – (threat of) use of force, purpose, theft of box of chocolates. Consideration of duress as a possible defence – subjective and objective elements, with particular reference to Eddie’s timidity, etc.
- (C) The burglary issue - entry as a trespasser, intention to steal, gbh (theft, utilising explanation above) Consideration of duress as a possible defence as in (B), utilising explanations already given.

NOTE: Duress as a possible defence must be considered in either (B) or (C) in order to achieve a sound treatment of Eddie’s liability.



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**Section B: Tort****Scenario 3**

Total for this scenario: 50 marks

<b>0 5</b> Consider what rights and remedies the owners of the cottages, including Ingrid, may have in connection with the noise and other problems caused by the leisure activities and the oil spillage. (25 marks)
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**Potential Content**

- (A) Rights and remedies of the cottage owners in public nuisance, by whom the action may be brought, special damage entitling the individual to bring an action, availability of damages
- (B) Rights and remedies of the cottage owners in private nuisance (taking account of issues such as noise, location, duration, time, etc), injunctions and damages
- (C) Ingrid's rights and remedy in connection with the spillage of oil – the liability in the tort of *Rylands v Fletcher*, damages

<b>0 6</b> Consider what rights and remedies Jon, Kylie and Rachel may have against Sportlife Developments. (25 marks)
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**Potential Content**

- (A) Kylie's rights and remedy – explanation of the liability of an occupier to visitors under the Occupiers' Liability Act 1957, damages (alternative treatment in general rules on negligence)
- (B) Jon's rights and remedy – explanation of the liability of an occupier to trespassers under the Occupiers' Liability Act 1984, damages and contributory negligence
- (C) Rachel's rights and remedy – explanation of the liability for psychiatric injury (primary/secondary victims, rescuers), damages

**Scenario 4**

Total for this scenario: 50 marks

**0 7** Discuss the rights and remedies, if any, available to Selina against Mark and against *The Literary Record*. (25 marks)

**Potential Content**

- (A) Against Mark – the tort of negligence in relation to misstatements – the distinction between acts and words, consequential and pure economic loss, the special rules involving special relationships and reliance, the remedy of damages if the tort has been committed
- (B) Against *The Literary Record* – the imposition of vicarious liability (relationship of employer/employee, course of employment)

**0 8** Consider whether Zak has any rights and remedies against Mark, and against the doctor, in connection with the injuries that he suffered. (25 marks)

**Potential Content**

- (A) Against Mark: breach of the Occupiers' Liability Act 1957 – the duty imposed and the factors in breach, including the relevance of the contractor's skill and knowledge (possible contributory negligence). Causation and reference to damages. Possible alternative approach in general negligence
- (B) Against the doctor: the tort of negligence in relation to medical cases. Standard expected of medical professional; the Bolam test, Bolitho exception. Causation issues, including *novus actus*. Reference to damages.

## Section C: Concepts of Law

### Section C: Concepts of Law Evaluative Questions

#### Maxima

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

**Max 30:** two sound.

**Max 27:** sound B, clear A

**Max 24:** clear A and B

**Max 20:** sound B **or** sound A, some B

**Max 16:** clear B **or** clear A, some B.

**Max 13:** some B only

**Max 10:** deals with A only

**Max 7:** the answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge

**or**

a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.

**0:** the answer contains no relevant information.

### Descriptors for Concepts of Law Evaluative questions

Level	Explanation	Analysis/Evaluation
<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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<b>0 9</b> Consider the meanings of justice and evaluate the barriers to achieving justice in civil <b>and/or</b> criminal law. <i>(30 marks + 5 marks for AO3)</i>
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**Potential Content**

- (A) Explanation of the different possible meanings of justice – from the simple fairness approach, approaches to distinctions between procedural and substantive justice, perhaps taking to account the views of philosophers. Identification and use of appropriate examples
- (B) Identification and critical evaluation of the barriers in civil and/or criminal law – these could include: access to advice/representation; funding; sentencing/remedies; the body of rules of substantive and procedural law; the legal system – the relevant institutions

<b>1 0</b> Consider the relationship between law and morals and, using a range of examples, discuss why the debate concerning ‘law and morality’ continues to be important in the 21 <sup>st</sup> century. <i>(30 marks + 5 marks for AO3)</i>
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**Potential Content**

- (A) Framework explanation of the relationship between law and morals, considering the meaning of legal and moral rules, the extent to which they are distinct from each other and overlap. Use of appropriate examples and illustrations
- (B) Evaluation of the theoretical debates on Law and Morals such as Hart v. Devlin and modern variations. Importance of their application to the 21<sup>st</sup> century using a range of pertinent examples to support arguments

<b>1 1</b> Establishing liability based on fault is regarded as a fundamental principle of English law. Explore the arguments in support of this view, and critically comment on the exceptions to its application. <i>(30 marks + 5 marks for AO3)</i>
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**Potential Content**

- (A) Explanation of the possible meaning of fault (which, inevitably will take account of the civil and/or criminal context) – explanation should explore possible variations in levels of fault, where appropriate. Range of arguments supporting view may include deterrence, punishment, individual responsibility, blameworthiness. Identification of appropriate area(s) of law and use of examples
- (B) Evaluation of the exceptions to the general principle – focusing on liability in the absence of fault (civil/criminal contexts or both). Identification and use of appropriate areas of law and examples

**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 01	10	15	
Question 02	10	15	
Question 03	10	15	
Question 04	10	15	
<b>Section B</b>			
Question 05	10	15	
Question 06	10	15	
Question 07	10	15	
Question 08	10	15	
<b>Section C</b>			
Question 09	15	15	
Question 10	15	15	
Question 11	15	15	
<b>QWC</b>			5
<b>Total marks</b>	35	45	5