

Mark scheme June 2003

GCE

LAW

Unit LAW4

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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

Criminal Law (Offences against the Person)

1 Total for this question: 75 marks

(a) Discuss Adrian's criminal liability arising out of the incidents with Connie and Bill. (25 marks)

Potential Content

- (A) In relation to Connie, explanation of the offence of assault
- (B) In relation to Bill, explanation of assault occasioning abh (s47), and of unlawful and malicious wounding/infliction of gbh (s20 possible s18). Causation issues
- (C) Explanation of the defence of consent

Mark Bands

- The candidate demonstrates the ability to recognise and soundly explain the rules of law in (A) (C), and to select and analyse the key facts so as to achieve perceptive application on which a sustainable solution can be based. (Sound on 2, clear on 1.)
- The candidate shows clear understanding of the rules of law in (A) (C), but is a little hesitant in developing the application required, or vice versa

or

clearly explains and applies (A) and (B) (max 18) or (B) and (C) (max 18) and indicates some understanding of the third

or

clearly explains and applies (A) and (C) and indicates some understanding of (B).

11 – 15 The candidate shows clear understanding of the appropriate rules of law in (A) – (C) (max 13 for 2), but is unable to extend the analysis to achieve application of the rules to the facts

or

the answer clearly explains and applies any one of (A) - (C) (max 13 for (A) only or (C) only)

or

there is a more balanced approach in which explanation, analysis and application are present across the range but the answer is a little superficial or suffers from some confusion.

6-10 The candidate begins to indicate some capacity for explanation and analysis by introducing consideration of some appropriate rule(s) drawn from (A) – (C) but the explanations are limited and superficial

or

the candidate adopts an approach in which there is concentration on explanation in terms of the facts presented rather than through development of explanation and application of legal rules.

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1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent analysis and explanation can emerge

or

though the candidate attempts to introduce explanation, analysis and application, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.

(b) Discuss Bill's criminal liability for the death of Dan.

(25 marks)

Potential Content

- (A) Explanation of unlawful act manslaughter. Explanation of any of the non-fatal offences (from battery to gbh), to establish the possible unlawful act
- (B) Explanation of gross negligence manslaughter
- (C) Explanation of the defence of insanity as a possible defence to both forms of involuntary manslaughter

Mark Bands

- The candidate demonstrates the ability to recognise and soundly explain the rules of law in (A) (C), and to select and analyse the key facts so as to achieve perceptive application on which a sustainable solution can be based (the answer may tend to concentrate more on (A) than on (B) or vice versa, but some discussion of the other will appear). Discussion of (A)/(C) only or (B)/(C) only merits max 22.
- The candidate shows clear understanding of the rules of law in (A)/(C) or (B)/(C), but is a little hesitant in developing the application required, or vice versa

or

clearly explains and applies (A) and (B) (max 18).

11 – 15 The candidate shows clear understanding of the appropriate rules of law in (A) or (B), and (C), but is unable to extend the analysis to achieve application of the rules to the facts

or

the answer clearly explains and applies one of (A) - (C) (max 11 for (C) only)

or

presents some explanation and application of two of (A) – (C) but where there is some superficiality and confusion in the explanation and/or application.

6-10 The candidate begins to indicate some capacity for explanation and analysis by introducing consideration of some appropriate rule(s) drawn from (A) - (C) but the explanations are limited and superficial

or

the candidate adopts an approach in which there is concentration on explanation in terms of the facts presented rather than through development of explanation and application of legal rules.

1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent analysis and explanation can emerge

or

though the candidate attempts to introduce explanation, analysis and application, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.

- The candidate presents no information relevant to the question.
- **NB** (1) if murder/diminished responsibility only, max is **15 marks**.
 - (2) if murder is combined with involuntary manslaughter, murder enhances the discussion and diminished responsibility, if dealt with, is (C) in its own right or enhances discussion of insanity as (C).

(c) Select any **two** aspects of the law on offences against the person which you believe are unsatisfactory. Explain the reasons for your belief. (You may relate your answer to homicide, or to non-fatal offences, or to both.)

(25 marks)

Potential Content

- (A) Non-fatal offences issues for example, antiquated language, structural issues, defects in the definition, etc of particular offences
- (B) General structural issues in the law of homicide for example, division between murder and manslaughter, mandatory penalties, etc
- (C) Murder issues for example, the difficulties with malice aforethought, deficiencies in the definition and application of provocation and diminished responsibility
- (D) Manslaughter issues for example, the scope of involuntary manslaughter, confusion in the elements of the various forms of involuntary manslaughter

Mark Bands

- The candidate demonstrates the ability to identify and explain the criticisms in any two aspects drawn from any of (A) (D).
- The candidate demonstrates the ability to give a clear explanation of the criticisms in one aspect drawn from any of (A) (D) and to deal more hesitantly with criticisms in the other aspect

or

explains the criticisms in two aspects drawn from (A) - (D) without being comprehensive or being able to advance fully coherent arguments.

The candidate demonstrates the ability to explain criticisms in one aspect drawn from (A) - (D)

or

presents some explanation of criticisms in two aspects drawn from (A) - (D) which suffer from some confusion and superficiality.

- 6-10 The candidate begins to indicate some capacity for explanation by introducing discussion of any aspect of the material in (A) (D) but the explanations are limited and superficial. At the lower end of this band, the answer will contain little more than recognition of possible criticisms.
- 1 5 The candidate merely introduces fragments of information from which no coherent explanation can emerge

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though the candidate attempts to introduce explanation, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.

Total for this question: 75 marks

(a) Discuss Harry's criminal liability resulting from throwing the bottles.

(25 marks)

Potential Content

2

- (A) In relation to Imran, explanation of assault, leading to possible assault occasioning abh (s47) on Jane (by Harry). Causation issues
- (B) In relation to Kamran, explanation of unlawful and malicious infliction of gbh (s20) and assault occasioning abh (s47)
- (C) Explanation of the plea of intoxication

Mark Bands

- The candidate demonstrates the ability to recognise and soundly explain the rules of law in (A) (C), and to select and analyse the key facts so as to achieve perceptive application on which a sustainable solution can be based. (Sound on 2, clear on 1.)
- The candidate shows clear understanding of the rules of law in (A) (C), but is a little hesitant in developing the application required, or vice versa

or

clearly explains and applies any two of (A) - (C) (max 18) and indicates some understanding of the third.

11 – 15 The candidate shows clear understanding of the appropriate rules of law in (A) – (C) (max 13 for 2), but is unable to extend the analysis to achieve application of the rules to the facts

or

the answer clearly explains and applies any one of (A) – (C) (max 13) with some discussion of another

or

there is a more balanced approach in which explanation, analysis and application are present across the range but the answer is a little superficial or suffers from some confusion (max 13 for 2).

6-10 The candidate begins to indicate some capacity for explanation and analysis by introducing consideration of some appropriate rule(s) drawn from (A) – (C) but the explanations are limited and superficial

or

the candidate adopts an approach in which there is concentration on explanation in terms of the facts presented rather than through development of explanation and application of legal rules.

1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent analysis and explanation can emerge

or

though the candidate attempts to introduce explanation, analysis and application, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.

(b) Discuss Eric's criminal liability for the death of Greg.

(25 marks)

Potential Content

- (A) Explanation of the offence of murder, concentrating in particular on malice aforethought. Possible reference to unlawful act manslaughter (which can be (A) in 11 15 mark band)
- (B) Explanation of the defence of self-defence
- (C) Explanation of the defence of provocation

Mark Bands

- The candidate demonstrates the ability to recognise and soundly explain the rules of law in (A) (C), and to select and analyse the key facts so as to achieve perceptive application on which a sustainable solution can be based. (Sound on 2, clear on 1.)
- The candidate shows clear understanding of the rules of law in (A) (C), but is a little hesitant in developing the application required, or vice versa

or

clearly explains and applies (A)/(B) or (A)/(C).

The candidate shows clear understanding of the appropriate rules of law in (A)/(B) or (A)/(C), but is unable to extend the analysis to achieve application of the rules to the facts

or

the answer clearly explains and applies one of (A) - (C) (max 13 if (B) only or (C) only)

or

there is a more balanced approach in which explanation, analysis and application are present in two of (A) - (C), but the answer is a little superficial or suffers from some confusion (**max 13** if (B) and (C)).

6-10 The candidate begins to indicate some capacity for explanation and analysis by introducing consideration of some appropriate rule(s) drawn from (A) – (C) but the explanations are limited and superficial

or

the candidate adopts an approach in which there is concentration on explanation in terms of the facts presented rather than through development of explanation and application of legal rules.

1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent analysis and explanation can emerge

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though the candidate attempts to introduce explanation, analysis and application, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.

The candidate presents no information relevant to the question.

(c) How satisfactory is the current law on murder?

(25 marks)

Potential Content

- (A) General structural issues which include murder but extend to the whole of homicide for example, division between murder and manslaughter, mandatory penalties, etc
- (B) Actus reus issues in murder for example, causation, nature of victim, etc
- (C) *Mens rea* issues in murder for example, the problems with intention, the extension to an intention to cause gbh
- (D) Defence issues for example, the scope and application of provocation and diminished responsibility
- NB Reference to possible reforms is not required but may be given credit where it enhances evaluation

Mark Bands

- The candidate demonstrates the ability to explain and evaluate criticisms in any two of (A) (D). Where more are dealt with, there may be minor deficiencies and explanation and/or evaluation of one or more.
- The candidate demonstrates the ability to explain and evaluate criticisms in at least one of (A) (D) and to present less comprehensive and coherent explanation and evaluation of one other

or

is clear in explanation of at least two of (A) – (D) but he sitant in evaluation

or

adopts a strong evaluative approach to at least two of (A) – (D) within a more hesitant framework of explanation

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attempts explanation and evaluation across the range of (A) - (D) which is relatively coherent but a little superficial.

The candidate demonstrates the ability to explain and evaluate criticisms in any one of (A) - (D)

or

explains criticisms in any two of (A) - (D)

10

develops evaluation of any two of (A) – (D) with little basis in explanation of criticisms or

attempts a balanced approach across the range but in which the answer is superficial or suffers from some confusion.

6-10 The candidate begins to indicate some capacity for explanation and/or evaluation by introducing discussion of any of the material in (A) – (D) but the explanations and evaluation are limited and very superficial.

1 – 5 The candidate merely introduces fragments of information from which no coherent explanation and evaluation can emerge

or

though the candidate attempts to introduce explanation and evaluation, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.



Contract Law

Total for this question: 75 marks

(a) Consider whether Larry has any legal rights and remedies against Mike and Nazia. (25 marks)

Potential Content

- (A) In relation to both alleged deals, explanation of offer and acceptance and consideration (adequacy, sufficiency) issues
- (B) In relation to both alleged deals, explanation of intention to create legal relations
- (C) In relation to both alleged deals, remedy of damages rather than specific performance

Mark Bands

- The candidate demonstrates the ability to recognise and soundly explain the rules of law in (A) (C), and to select and analyse the key facts so as to achieve perceptive application on which a sustainable solution can be based. (Sound on 2, clear on 1.)
- The candidate shows clear understanding of the rules of law in (A) (C), but is a little hesitant in developing the application required, or vice versa or

clearly explains and applies two of (A) - (C) (max 18) and indicates some understanding of the third.

The candidate shows clear understanding of the appropriate rules of law in (A) – (C) (max 13 for 2), but is unable to extend the analysis to achieve application of the rules to the facts

or

the answer clearly explains and applies (A), or (B) (max 13) or (C) (max 13)

or

there is a balanced approach in which explanation, analysis and application are present across the range of (A) – (C) but the answer is a little superficial or suffers from some confusion (max 13 for 2).

6-10 The candidate begins to indicate some capacity for explanation and analysis by introducing consideration of some appropriate rule(s) drawn from (A) – (C) but the explanations are limited and superficial

or

the candidate adopts an approach in which there is concentration on explanation in terms of the facts presented rather than through development of explanation and application of legal rules.

1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent analysis and explanation can emerge

or

though the candidate attempts to introduce explanation, analysis and application, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.



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(b) Taking account of the rules on termination of contracts by frustration and by breach, consider the rights, duties and remedies of Mike and Oz in connection with the work on the garage.

(25 marks)

Potential Content

- (A) Explanation of the rules on frustration, particularly on destruction of the subject matter, and on the significance of fault. Consideration of whether the contract may still be performed. Explanation of breach
- (B) Explanation of the rules if the contract is frustrated application of the Law Reform (Frustrated Contracts) Act 1943
- (C) Explanation of the rules if the contract has been breached including remedies for losses and consequential losses sustained

Mark Bands

- The candidate demonstrates the ability to recognise and soundly explain the rules of law in (A) (C), and to select and analyse the key facts so as to achieve perceptive application on which a sustainable solution can be based. (Sound on 2, clear on 1.)
- The candidate shows clear understanding of the rules of law in (A) (C), but is a little hesitant in developing the application required, or vice versa **or**
 - clearly explains and applies (A) and (B) or (A) and (C).
- The candidate shows clear understanding of the appropriate rules of law in (A)/(B) or (A)/(C), but is unable to extend the analysis to achieve application of the rules to the facts

or

the answer clearly explains and applies one of (A) - (C) (max 13 for (B) only or (C) only)

or

there is a more balanced approach in which explanation, analysis and application are present across the range of (A) - (C) but the answer is a little superficial or suffers from some confusion (max 13 for 2).

6-10 The candidate begins to indicate some capacity for explanation and analysis by introducing consideration of some appropriate rule(s) drawn from (A) – (C) but the explanations are limited and superficial

or

the candidate adopts an approach in which there is concentration on explanation in terms of the facts presented rather than through development of explanation and application of legal rules.

1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent analysis and explanation can emerge

or

though the candidate attempts to introduce explanation, analysis and application, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.



(c) Outline and critically evaluate the rules in any **one** of the three vitiating factors in contract (mistake, misrepresentation, duress/undue influence). (25 marks)

Potential Content

In relation to any one of the three specified factors

- (A) An outline explanation of the relevant rules
- (B) An explanation of appropriate criticisms (including strengths, where appropriate)

Mark Bands

- The candidate demonstrates the ability to outline and critically evaluate the rules in any one of the factors, as indicated in (A) (B).
- 16 20 The candidate presents an answer which is clear in (A) but a little hesitant in (B), so that evaluation is a little weak

or

adopts a strong critical/evaluative approach as in (B) within a more hesitant framework of outline explanation.

11 – 15 The candidate demonstrates the ability to outline the rules as in (A) with little evidence of criticisms

or

develops some criticisms as in (B) with little basis in outline of rules

or

attempts a balanced approach across (A) – (B) but in which the answer is superficial or suffers from some confusion.

- 6-10 The candidate begins to indicate some capacity for outline explanation and/or criticism/evaluation by introducing discussion of any of the material in (A) (B) but the outline explanations and criticisms/evaluation are limited and very superficial.
- 1 5 The candidate merely introduces fragments of information from which no coherent outline explanation and criticisms/evaluation can emerge

or

though the candidate attempts to introduce outline explanation and criticisms/evaluation, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.

4

Total for this question: 75 marks

(a) Consider whether Penny has any rights and remedies in connection with Oldworld's refusal to accept her competition entry. (25 marks)

Potential Content

- (A) Explanation of offer and acceptance issues the advertisement as an offer or an invitation to treat; the structure of the two contracts
- (B) The specific issues of acceptance of the main contract prescribed method of acceptance or acceptance by equally expeditious method, etc
- (C) Remedies if Oldworld in breach damages. **Note** brief discussion of this issue will enhance other treatment (consider higher mark in band or higher band)

Mark Bands

- The candidate demonstrates the ability to recognise and soundly explain the rules of law in (A) (B), and to select and analyse the key facts so as to achieve perceptive application on which a sustainable solution can be based.
- The candidate shows clear understanding of the rules of law in (A) (B), but is a little hesitant in developing the application required, or vice versa

or

clearly explains and applies one of (A) - (B) (max 17) and indicates some understanding of the other.

11 – 15 The candidate shows clear understanding of the appropriate rules of law in (A) – (B) (max 13 for 1), but is unable to extend the analysis to achieve application of the rules to the facts

or

there is a balanced approach in which explanation, analysis and application are present across the range of (A) – (B) but the answer is a little superficial or suffers from some confusion (max 13 for 1).

6-10 The candidate begins to indicate some capacity for explanation and analysis by introducing consideration of some appropriate rule(s) drawn from (A) - (B) but the explanations are limited and superficial (NB discussion of (C) only can be in this band)

or

the candidate adopts an approach in which there is concentration on explanation in terms of the facts presented rather than through development of explanation and application of legal rules.

1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent analysis and explanation can emerge

01

though the candidate attempts to introduce explanation, analysis and application, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.

(b) Taking account of the rules on misrepresentation, consider whether Romana can take any action against Oldworld in connection with the book that she no longer wants. (25 marks)

Potential content

- (A) General explanation of the distinction between terms of a contract and representations which induce the making of the contract, and of the implications for remedies
- (B) Explanation of the rules on misrepresentation, including the kinds of misrepresentation (in particular, here, fraudulent misrepresentation)
- (C) Explanation of the remedies available for an actionable misrepresentation
- **NB** Discussion of (A) enhances other treatment (consider higher mark within band or higher band)

Mark Bands

- The candidate demonstrates the ability to recognise and soundly explain the rules of law in (B) (C), and to select and analyse the key facts so as to achieve perceptive application on which a sustainable solution can be based.
- The candidate shows clear understanding of the rules of law in (B) (C), but is a little hesitant in developing the application required, or vice versa or clearly explains and applies (B) (max 17) and indicates some understanding of (C).
- 11 15 The candidate shows clear understanding of the appropriate rules of law in (B) (C) (max 13 for (B) only), but is unable to extend the analysis to achieve application of the rules to the facts

01

clearly explains and applies (C) (max 13)

or

there is a balanced approach in which explanation, analysis and application are present across the range of (B) – (C) but the answer is a little superficial or suffers from some confusion (max 13 for (B) only).

6-10 The candidate begins to indicate some capacity for explanation and analysis by introducing consideration of some appropriate rule(s) drawn from (B) - (C) but the explanations are limited and superficial. (NB discussion of (A) only may be in this band)

or

the candidate adopts an approach in which there is concentration on explanation in terms of the facts presented rather than through development of explanation and application of legal rules.

1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent analysis and explanation can emerge

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though the candidate attempts to introduce explanation, analysis and application, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.



(c) Outline and critically evaluate the rules in any **one** of the three elements which must be proved to establish a valid contract (offer and acceptance, consideration, intention to create legal relations). (25 marks)

Potential Content

In relation to any one of the three specified elements

- (A) An outline explanation of the relevant rules
- (B) An explanation of appropriate criticisms (including strengths, where appropriate)

Mark Bands

- The candidate demonstrates the ability to outline and critically evaluate the rules in any one of the factors, as indicated in (A) (B).
- The candidate presents an answer which is clear in (A) but a little hesitant in (B) so that evaluation is a little weak

or

adopts a strong critical/evaluative approach as in (B) within a more hesitant framework of outline explanation.

11 – 15 The candidate demonstrates the ability to outline the rules as in (A) with little evidence of criticisms

or

develops some criticisms as in (B) with little basis in outline of rules

or

attempts a balanced approach across (A) - (B) but in which the answer is superficial or suffers from some confusion.

- 6-10 The candidate begins to indicate some capacity for outline explanation and/or criticism/evaluation by introducing discussion of any of the material in (A) (B) but the outline explanations and criticisms/evaluation are limited and very superficial.
- 1 5 The candidate merely introduces fragments of information from which no coherent outline explanation and criticisms/evaluation can emerge

or

though the candidate attempts to introduce outline explanation and criticisms/evaluation, this is so fundamentally undermined by error and confusion that it remains substantially incoherent.

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) Question 1 (b) Question 1 (c)	7 7 7	18 18 18	10
Question 2 (a) Question 2 (b) Question 2 (c)	7 7 7	18 18 18	10
Question 3 (a) Question 3 (b) Question 3 (c)	7 7 7	18 18 18	10
Question 4 (a) Question 4 (b) Question 4 (c)	7 7 7	18 18 18	10
Total marks	21	54	10
% of the A2	7.5	19	3.5
% of the A Level	3.75	9.5	1.75