

A-LEVEL LAW

Unit 4 Criminal Law (Offences against Property) or Tort,
and Concepts of Law
Mark scheme

LAW04
June 2014

Version: 1.0 Final

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts: alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Assessment Writer.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' 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.

Further copies of this Mark Scheme are available from aqa.org.uk

Assessment Objectives One and Two

General Marking Guidance

You should remember that your marking standards should reflect the levels of performance of students, 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 students 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 student'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 student's answer does not deserve credit, then no marks should be given.

Citation of Authority

Students 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 or one sound, two clear
21	two sound or one sound, one clear, one some or three clear
19	one sound, one clear or one sound, two some or two clear, one some
17	one sound, one some or two clear or one clear, two some
14	one sound or one clear, one some or three some
13	two sound explanation only
11	one clear or two some
09	one sound explanation only or two clear explanation only or three some explanation only
07	one some or one clear explanation only or 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 or two clear
17	one sound or one clear, one some
13	one clear or two some or two sound explanation only
11	one sound explanation only or two clear explanation only
08	one some or one clear explanation only or 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	- weak sound
sound/some	- clear
clear/clear	- clear
clear/some	- weak clear
some/some	- some

Descriptors for Substantive Law questions

Level	Description
Sound	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.
Clear	<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>
Some	<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>
Fragments	<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 student 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
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Discuss Harry's possible criminal liability for **property** offences arising out of his dealings with Earl.

[25 marks]

Potential content

(A) **Theft issues in relation to the bicycle:**

Actus reus: appropriation, property, belonging to another **Turner (No 2)**.

Mens rea: intention to permanently deprive, dishonesty (**Ghosh**).

Robbery issues:

The meaning of force. Was force used in order to steal (yes since Harry was about to take the bicycle when Earl came in) and at the time of the theft? Was there a continuing appropriation?

NB Theft only – **MAX CLEAR**

(B) **Burglary issues:**

Building. Trespass (absence of permission to enter the shed). Consideration of s.9(1)(a) Theft Act 1968 on the basis of intention to steal. Consideration of s.9(1)(b) Theft Act 1968 on the basis of actual theft and possible GBH (GBH only required to be considered in outline). Consideration of self-defence in outline (appropriate threat/reasonable force).

NB: s.9(1)(a) only – **MAX WEAK CLEAR**

s.9(1)(b) only – **MAX WEAK SOUND**

(C) **Making off without payment issues:**

Making off, the spot, service done, payment required or expected.

Mens rea issues: intention to permanently avoid payment, knowledge that payment was required or expected, dishonesty.

NB: **SOUND** requires a reasonably accurate knowledge of the terminology of s.3 Theft Act 1978.

NB: In relation to Harry's decision not to pay for the repair, credit a consideration of **fraud by false representation issues** – possible argument based on continuing representation as to payment, since no dishonesty at the time of the agreement.

NB: **SOUND** in relation to fraud by false representation requires a reasonably accurate knowledge of the terminology of the Fraud Act 2006.

Dishonestly obtaining services issues (the repair work) – should conclude that there is no liability because no dishonesty until **after** the agreement between Harry and Earl ie after the services are obtained.

In relation to Potential Content (C):

Making off without payment only – **MAX SOUND**

Fraud by false representation only – **MAX SOUND**

Obtaining services dishonestly only – **MAX SOME**

Give appropriate credit to responses which refer to combinations of the above.

0	2
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Discuss the possible criminal liability of:

- Earl for any **property** offence arising out of his threat to Harry
- Harry for any **property** offences arising out of his email to Paula and arising out of his statement to the official at the football ground and his watching of the football match.

[25 marks]

Potential content

(A) **Blackmail issues:**

Demand, menaces (including the objective test), with a view to gain or with intent to cause loss. The meaning of 'gain' and 'loss'.

Unwarranted demand: consideration of Earl's belief as to reasonable grounds for making the demand and that the use of menaces was a proper means of reinforcing it.

NB : **SOUND** requires, in relation to 'unwarranted', an accurate reference to the terminology of s.21(1) Theft Act 1968, a reasonably accurate explanation of the meaning of the terms 'reasonable grounds' and 'proper means (eg a consideration of **Harvey**)', together with arguable application.

(B) **Fraud by false representation issues in relation to the email:**

Representation and its different versions (express/implied, as to fact/law/state of mind), falsity (statement must be untrue or misleading and the defendant must know that it is or might be). Dishonesty (**Ghosh**), intention to make a gain and/or cause a loss, the meaning of 'gain' and 'loss'.

Answers can refer to relevant explanations used in relation to Question 01 but there must be application to the facts raised in relation to the email.

NB: **SOUND** requires a reasonably accurate knowledge of the terminology of the Fraud Act 2006 and an effective discussion of the issue of Paula's non-receipt of the email. In relation to the non-receipt issue, credit any of the following:-

- there is no requirement for deception of or reliance by the intended victim
- although the representation must be made, there is no requirement that it be communicated
- a consideration of s.2(5) Fraud Act (a representation is made if it is submitted to any system designed to receive communications, with or without human intervention)

- although gain or loss must be intended, there is no requirement of actual gain or loss.

Consideration of the defence of intoxication.

Recognition of voluntary intoxication. Distinction between specific/basic intent crimes, both in relation to the test for distinguishing them and the consequences of the distinction (voluntary intoxication only a defence to crimes of specific intent). Are the mental elements (intention/knowledge of the falsity) negated?

NB: in relation to the test for distinguishing offences of basic and specific intent, any of the various tests recognised by the authorities should be credited eg the view that an offence of specific intent is one which is based on intention only and cannot be committed recklessly, and/or the view in **Heard** that an offence of specific intent is one of ulterior intent in that any part of the mens rea goes beyond the actus reus.

NB: Fraud only/no intoxication – **MAX CLEAR**

(C) In relation to Harry’s watching of the football match:

Obtaining services by a dishonest act:

Obtain, services, made available on the basis of payment, ‘by’ a dishonest act, failure to pay or failure to pay in full.

Mens rea issues: knowledge at the time of obtaining that services are made available on the basis of payment, intention that payment will not be made or will not be made in full.

In relation to Harry’s statement to the official at the football ground : Fraud by false representation.

Answers can rely on explanations used in relation to PC(B) (Question 02) and/or in relation to Question 01, but there must be application to the facts raised in relation to the statement to the official.

NB: Fraud by false representation only – **MAX CLEAR**

Obtaining services only – **MAX SOUND**

BOTH fraud and obtaining services – **MAX SOUND**

Fraud **OR** obtaining services with a brief consideration of the other – **MAX WEAK SOUND**

Scenario 2**Total for this scenario: 50 marks**

0	3
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Discuss the possible criminal liability of:

- Ewan for any **property** offences arising out of his spending of Dev's money
- Alex for any **property** offences arising out of his deliberately driving into Ewan's car.

[25 marks]**Potential content**

(A)

(1) Theft issues:Actus reus: appropriation despite consent (**Gomez**), property, belonging to another.Mens rea: intention to permanently deprive (**Velumyl**), dishonesty (**Ghosh**).

NB Credit an argument that if Ewan intends to pay the £300 to the local supplier out of his possible winnings, he will still have an intention to permanently deprive under the Velumyl principle. Credit also the possible argument that Ewan may not be dishonest in such a case

In relation to 'belonging to another', the answer assumes that Ewan formed dishonest intent at the moment Dev gave him the money so that the money was 'property belonging to another' (Dev) by virtue of s.5(1) Theft Act 1968 ie on the basis of Dev's proprietary right or interest. In this event, the (dishonest) appropriation would be the handing over of the money by Dev to Ewan.

(2) Theft issues:

Explanation and application of actus reus/mens rea issues as in (1), except that the assumption is made that Ewan formed dishonest intent after Dev gave him the money, in which case the money, although now vested in Ewan, would still be deemed to belong to Dev if s.5(3) were applicable.

Consideration of s.5(3). In this event the (dishonest) appropriation would be Ewan's spending of the money and Gomez would be irrelevant.

(3) Fraud by false representation issues:

Representation and its different versions (express/implied, as to fact/law/state of mind), falsity (statement must be untrue or misleading and the defendant must know that it is or might be). Dishonesty (**Ghosh**), intention to make a gain and/or cause a loss, the meaning of 'gain' and 'loss'.

Full credit can be awarded only to a response which explains that liability can arise only if Ewan formed the dishonest intent not to pay the money to the local supplier at the time of the agreement, since a **dishonest** representation must be **made**. Credit a possible argument based on a continuing representation as to payment.

NB THEFT ONLY – MAX SOUND on the basis of an accurate treatment of **EITHER (1) OR (2)**.

THEFT ONLY – MAX CLEAR where the treatment of appropriation and/or s.5 is confused but the treatment of the other issues are accurate

FRAUD ONLY – MAX SOUND

ANY COMBINATION OF THEFT AND FRAUD – give appropriate credit.

(B) **Criminal damage issues:**

Basic criminal damage. The meaning of ‘damage’. Mens rea issues: (obvious intention on the facts).

Possible aggravated criminal damage issues. Intention/recklessness to cause any damage and intention/recklessness to endanger life by such damage and not by the act which causes damage. No requirement that life is in fact endangered.

In relation to PC(B)

SOUND - requires an explanation and application of both basic and aggravated criminal damage. In relation to aggravated criminal damage, there must be an understanding by the candidate that liability will not arise merely from Alex’s intention/recklessness as to endangering life through driving into Ewan’s car but **only if he has intention/recklessness as to causing damage to the car which could endanger life**

CLEAR - requires an explanation and application of both basic and aggravated criminal damage. In relation to aggravated criminal damage, the candidate understands that there must be intention/recklessness as to endangering life but not that this must result from the damage.

MAX WEAK CLEAR - basic criminal damage only

- (C) **Consideration of the defence of duress:** the nature of the threat (death/serious personal injury?). Threat to a person for whom Alex reasonably feels responsible. The scope of the threat (eg did it cover property damage?). The subjective element (did Alex reasonably believe that there was a threat of death or serious injury and that it would be carried out immediately or almost immediately?). The objective element – would a sober person of reasonable firmness, sharing Alex’s characteristics, have been able to resist the threat? Would Alex’s nervous illness be attributed to the person of reasonable firmness (is it mere timidity- in which case it is irrelevant – or a recognised mental illness – in which case it would be attributable)? Did Alex have a reasonable opportunity to enable his mother to avoid the harm? The effect of Alex’s previous voluntary membership of Dev’s violent gang.

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Discuss the possible criminal liability of Ewan for any **property** offences arising out of his dealings with Glenda, **and** in connection with the gold watch.

[25 marks]

Potential content

(A) **Theft of the £50 000:**

Actus reus: appropriation despite consent (**Gomez**) and despite Ewan's acquisition of an absolute title to the money by virtue of an unconditional gift (**Hinks**), property (the chose in action, appropriated by transfer into Ewan's bank account), belonging to another.

Mens rea: intention to permanently deprive, dishonesty (**Ghosh**).

NB **SOUND** requires an explanation of both the **Gomez** and **Hinks** principles and of the intangible nature of money in a bank account.

Theft of the watch: appropriation by temporary possession, property belonging to another, dishonesty, intention to permanently deprive.

NB Theft of the watch or the money only – **MAX CLEAR**.

(B) **Fraud by false representation issues:** Representation and its different versions (express/implied, as to fact/law/state of mind), recognition that the representation in the scenario is as to Ewan's state of mind/his intention to marry Glenda, falsity (statement must be untrue or misleading and D must know that it is or might be). Dishonesty (**Ghosh**), intention to make a gain and/or cause a loss, the meaning of 'gain' and 'loss'.

(C) **Burglary issues:** Building. Trespass (Glenda made it clear to Ewan that he had no right of entry following the break-up). Consideration of s.9(1)(a) Theft Act 1968 on the basis of intent to steal. Consideration of s.9(1)(b) Theft Act 1968 on the basis of theft of the watch.

NB s.9(1)(a) or s.9(1)(b) only – MAX CLEAR

Section B: Tort

Scenario 3

Total for this scenario: 50 marks

0	5
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Consider the rights and remedies, if any, of Jess, **and** of Greg, against Dave in connection with their injuries.

[25 marks]

Potential content

- (A) **Dave's possible liability to Jess:** consideration of the elements of the Occupiers' Liability Act 1957 (occupier, visitor, the common duty of care). Consideration of Jess implied licence. Explanation and application of the elements of s.2(4)(b) – was it reasonable for Dave to entrust the roof work to an independent contractor, did Dave take reasonable steps to see that Tom was competent? Would Dave have been under a duty to see that Tom's work was properly done? Possible defence of volenti, even if s.2(4)(b) inapplicable (did Jess voluntarily consent to the risk?). Possible defence of contributory negligence. Reference to damages.

NB: **SOUND** requires a consideration of s.2(4)(b), volenti and/or contributory negligence.

Consideration of s.2(4)(b) but no volenti/contributory negligence – **MAX WEAK SOUND**

NB: Credit a consideration of the different categories of damages eg loss of future earnings, pain and suffering etc.

Potential alternative liability to Jess in common law negligence. Duty of care, breach of duty. Remoteness. Reference to damages. Consideration of whether Dave fulfilled his duty of care by engaging an apparently competent contractor (Tom) to carry out the roof work, and the defence of volenti and/or contributory negligence.

No volenti/contributory negligence – **MAX WEAK SOUND**

- (B) **In relation to Dave's possible liability to Greg:** 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)] – in particular, did Dave know or have reasonable grounds to believe that a trespasser might come into the vicinity of the danger, and did the fact that Greg had dishonest intent make it unlikely that Dave would reasonably be expected to offer Greg some protection against the danger? The nature of the duty owed by the occupier [s.1(4)] - to take reasonable care to see that the trespasser does not suffer injury by reason of the danger. Consideration of possible contributory negligence/volenti. Reference to damages.

NB: no consideration of the elements of s.1(3) – **MAX CLEAR**

NB: credit a consideration of the different categories of damages eg loss of future earnings, pain and suffering etc.

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Consider the rights and remedies, if any, of:

- Dave against Fastcook
- Maxim **and** of Alice against Steve

[25 marks]

Potential content

- (A) **In relation to Dave and Fastcook:** possible claim under the Consumer Protection Act 1987 (damage, defective product, producer, strict liability, ‘development risks’ defence). Reference to damages.

Alternative claim in the tort of negligence: duty, breach, damage, remoteness. Reference to damages.

NB: Either or both of the above approaches can achieve sound (with an obviously more limited treatment where both elements are considered).

NB in relation to either the statutory or negligence approach, SOUND requires a consideration of possible liability for the destruction of the toaster and Dave’s burns.

- In relation to the CPA, the destruction of the toaster is clearly ‘damage’ caused by the defective oven, as is also (arguably) the burns, as these constitute damage which is ‘caused by’ the defective product/oven since it is reasonable to try to extinguish a fire in these circumstances. Credit the arguments that damages for the destruction of the oven itself are not recoverable under the Act as this constitutes damage to the defective product itself [s.3(2)]
- In relation to negligence, physical damage has to be shown, which covers the destruction of the toaster and the burns. Credit the argument that damages for the destruction of the oven are not recoverable, since this constitutes pure economic loss and not physical damage.

- (B) **In relation to Maxim and Steve:** possible claim in the tort of negligence. Duty of care. Breach of duty – consideration of factors determining the standard of care eg magnitude of risk, emergency situation (*Watt v Hertfordshire*). Causation and remoteness. Possible contributory negligence of Maxim (who was “weaving between cars”).

NB: Credit a consideration of the different categories of damages eg loss of future earnings, pain and suffering etc.

- (C) **In relation to Alice and Steve:** 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 Alice as secondary victim – reasonable foreseeability of psychiatric injury to a person of normal fortitude, caused by a traumatic event, proximity of relationship/ time and space/perception. Reference to damages.

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

- | | |
|----------|----------|
| 0 | 7 |
|----------|----------|
- Consider the rights and remedies, if any, of:
- Robina against Adam
 - Adam **and** of Dee against Robina.

[25 marks]**Potential content**

- (A) **In relation to the smell and the noise of the cockerels:** possible claim by Robina in the tort of private nuisance. The need for an unreasonable interference with enjoyment of land and a consideration of possible relevant factors, especially the location (these types of interference to be expected in the area), night-time interference, and duration. Would the noise be sufficiently substantial to affect a “normal” claimant (no recovery for unduly sensitive claimants). “Coming to the nuisance” not a defence. Remedies of damages and injunction.

In relation to the claim of Adam and Dee against Robina: possible claim by Adam based in particular on the possible malice/intentional interference through the firework parties following Robina’s complaints.

In relation to Dee: the requirement of an interest in land excludes a possible claim in private nuisance.

- (B) **In relation to the damage to Robina’s plants:** possible liability under the Rule in **Rylands v Fletcher**. The need for a “thing liable to do mischief...”, accumulation, non-natural/extraordinary user, escape, damage, remedy of damages. Strict liability (irrelevant that Adam might have taken reasonable steps to prevent any escape). The requirement of reasonable foreseeability of harm.

NB: **SOUND** requires explanation and application of the strict liability aspect.

NB: If no explanation/application of this aspect – **MAX CLEAR**

Possible alternative in negligence: Duty, breach, damage. Is there negligence on the part of Adam? Remoteness. Reference to damages.

0	8
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Consider the rights and remedies, if any, of:

- Fez against Megan
- Fez against Conrad.

[25 marks]

Potential Content

- (A) **In relation to Fez and Megan:** the tort of negligence in relation to misstatements. The need for a special relationship/proximity. The issue of Megan's expertise, whether she should have foreseen reliance by Fez and whether that reliance was reasonable (eg the significance that Fez and Megan are friends). The issue of breach of duty and standard of care in relation to professionals. Reference to damages.
- (B) **In relation to Fez and Conrad:** the possible vicarious liability of Conrad for any tort committed by Megan. Explanation and application of possible tests to determine the existence of the employment relationship (importance of the 'multiple test', control, integral part of the business, payment of wages/tax, mutuality of obligation, provision of equipment etc. Discussion of 'in the course of employment', especially in relation to acts forbidden by the employer.

Maxima for LAW04 Concepts essay questions

The student 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)

Level	Explanation	Analysis/Evaluation
sound	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.
clear	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.
some	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.

Section C: CONCEPTS

0	9	Discuss the meaning of justice. Discuss whether the law achieves justice and whether it should seek to do so.
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[30 marks + 5 marks for AO3]

Potential content

- (A) **Discussion of possible meanings of justice:** for example, justice in terms of basic fairness, equality of treatment, distributive or corrective justice, substantive or procedural justice, etc. A **SOUND** answer should include some treatment of the important philosophical theories of justice, eg utilitarianism, Rawls, etc.

Credit possible criticisms of different meanings of justice: for example problems with utilitarianism and individual liberties and equality, 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.

Credit appropriate illustration of any definition/theory.

- (B) **Discussion of whether the law achieves justice:** in the context of the discussion in (A), by appropriate examples and illustration, whether in terms of relevant rules of the substantive law and/or aspects of the legal system, eg aspects of justice in relation to procedure, evidence, natural justice, treatment of suspects, methods of correcting injustice, etc.

NB: illustrations of justice/injustice should achieve top marks only if they are expressly linked to a particular idea or ideas of justice, but not if they merely state that the law is unsatisfactory. For example, a criticism of particular instances of actual or alleged miscarriage of justice eg the Guildford Four, Sally Clarke etc, will not be fully rewarded merely for arguing that they show injustice but only if they explain the precise nature of the injustice eg a denial of natural justice, an unfair trial, the failure of the legal system to provide adequate corrective justice after the appeal process is exhausted etc.

NB: illustrations should only be treated as falling within PC (B) in the course of a discussion in which the student has made it clear that they relate to the issue whether the law achieves justice.

NB: any illustration of theories/ideas of justice in the context of the discussion of the meaning of justice should be credited in (A).

Should the law seek to achieve justice? Consideration of possible arguments eg the need for law to be respected and the potential for civil unrest where it is not, the utilitarian argument that justice is linked to optimum happiness, the extremist view of natural justice that an unjust law is not law etc. Credit appropriate illustration.

NB: discussion of whether the law **achieves** justice **but not whether it should** – **MAX WEAK SOUND** (but an extensive discussion is not required for **SOUND**).

1	0
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Explain the meaning of law and morality. Discuss whether the law does **and** should seek to uphold moral principles.

[30 marks + 5 marks for AO3]

Potential content

- (A) **Explanation of the meaning of law and morality:** credit any arguable definitions of law (eg Salmond, Austin, Kelsen) and morality (eg customary practices, social manners, rules based on religion, what is ethically good. etc). The respective characteristics of law and morality, eg in terms of sanctions.

Discussion of whether the law does seek to uphold moral principles: use of appropriate case law/examples to illustrate areas of overlap and divergence. Examples from the substantive law (eg offences against the person and property, corruption of public morals, outraging public decency, consent and other defences to criminal liability, marital rape, the “neighbour principle” in the tort of negligence, the duty to honour contracts, the contract rules which seek to protect the weaker party etc). Examples of the way in which public morality may be influenced by law reform (eg in relation to discrimination, drink-driving etc) and vice-versa (eg in relation to the campaign to abolish capital punishment).

Possible examples of divergence between law and morality: for example speeding and parking offences, adultery, swearing etc. Students should consider the difficulty in taking a moral position which the law often faces owing to the existence of conflicting moral views in a pluralistic society and where the law is often based on principles other than morality eg freedom of choice, the prevention of harm etc. Possible examples of the above “difficulty” (eg the Gillick principle, abortion, adult homosexuality, assisted reproduction and embryo research, assisted killing and withholding medical treatment etc).

Credit a consideration of natural law and positivism which seeks to utilise it in terms of the relationship between law and morality rather than in terms of whether the law should seek to uphold morality.

NB **SOUND** requires (i) an explanation of the possible meaning(s) of law and morality, (ii) a discussion of whether the law does seek to uphold moral principles by illustrations of convergence and divergence of law and morality, including a comparison of their respective characteristics and (iii) some developed illustration which displays the ability of the student to explain the precise nature of the moral and other dimensions (eg personal autonomy, the prevention of harm etc) involved.

NB: consideration of the meanings of law and morality only – **MAX SOME**

NB: Illustrations of convergence and divergence but no developed illustration and no consideration of ‘meanings’ – **MAX CLEAR**

- (B) **Discussion of whether the law should seek to uphold moral principles:** reference to relevant academic debates eg Hart-Devlin, Hart-Fuller. The possible arguments in favour of legal moralism eg the importance of common values and the need for a cohesive society, natural law theories. The possible arguments in favour of libertarianism eg the autonomy of the individual, the minimalist approach to criminalisation, the ‘harm principle’ and debates as to its meaning, and the various possible problems with legal moralism (eg pluralism). Credit answers which recognise that even libertarians acknowledge the need for some

morality as the basis of law (eg Hart's 'minimum content of natural law'). Answers should also be given credit for linking the positivism/natural law debate to the relationship between law and morality.

Relevant examples which highlight the significance of the conflict between libertarians and legal moralists, eg issues relating to conception, death etc.

NB: **SOUND** – requires a consideration of relevant arguments for and against legal moralism **and** developed illustrations which both highlight the moral principles involved therein and which seek to link them to those 'relevant arguments'.

NB: Consideration of arguments with no, or limited, illustration – **MAX CLEAR**.

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Explain what is meant by 'balancing conflicting interests'. Discuss whether the law balances conflicting interests **and** why it should seek to do so.

[30 marks + 5 marks for AO3]

- (A) **Explanation of what is meant by 'balancing conflicting interests'**: Explanation of the meaning of 'interest' eg a claim or expectation, the different possible 'interests' (public/private/social etc), and the process of 'balancing' (the distinction between a 'compromise' recognition of both interests – eg the defence of intoxication - and the recognition of one interest to the exclusion of the other – eg the grant/refusal of the injunction in private nuisance claims).

Identification and explanation of relevant area(s) of substantive law/procedure/institutions, etc to explain and illustrate the precise interests which may allegedly be in conflict. Possible areas for discussion include tort (eg the use of judicial discretion in granting/refusing an injunction in relation to private nuisance – *Miller v Jackson*, *Kennaway v Thompson* etc - , duty of care/floodgates/just and reasonableness, breach of duty issues, defamation etc), crime (eg intoxication – *Majewski* - consent etc), criminal process (eg bail, evidence, recognition of the interests of suspects/PACE), national security/terrorism issues – *A v Z*, the GCHQ case etc.

NB: take account of breadth and depth.

NB: **SOUND** requires an explanation of the salient features involved in any selected scenario and the precise nature of the relevant conflicting interests.

- (B) **Discussion of whether the law balances conflicting interests**: students should develop the examples used in PC(A) (to illustrate relevant conflicting interests) by explaining the precise balance of those interests which the law achieves - what is the precise rule/process/doctrine which resolves the conflict, and what is the nature of the balance which it achieves? For example, the rule which resolved the conflict in ***Miller v Jackson*** was the discretion possessed by the court in deciding whether to grant or refuse an injunction to restrain a private nuisance, while the precise balance achieved was to refuse the injunction, thereby favouring the public interest).

Discussion of why the law should seek to achieve this balance: consideration of possible explanations eg balancing of interests needed to achieve maximum happiness, the benefit of social engineering in building an efficient society, balance needed to achieve a just society etc. Credit discussion of "balancing theorists" eg Bentham, Jhering, Pound.

NB: discussion of whether the law succeeds in balancing interests only (no discussion of why it should seek to do so) – **MAX CLEAR**.

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

UNIT 4	AO1	A02	AO3
Section A			
Question 01	10	15	
Question 02	10	15	
Question 03	10	15	
Question 04	10	15	
Section B			
Question 05	10	15	
Question 06	10	15	
Question 07	10	15	
Question 08	10	15	
Section C			
Question 09	15	15	5
Question 10	15	15	5
Question 11	15	15	5
QWC			
Total marks	35	45	5