

# Mark Scheme with Examiners' Report GCE A Level Law (9345)

London Examinations  
June 2004

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Mark Scheme with Examiners' Report

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July 2004

Order Code: UA014316

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# LAW 9345, MARK SCHEME

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## General Marking Bands

The guidance on different types of responses below should be read in conjunction with the detailed marking content for each question.

Marks 25–22 **An excellent answer.** Presents a well-structured response to the question and demonstrates consistently a thorough knowledge and understanding of legal rules and legal institutions and excellent appreciation of the function of law in society. Shows a thorough understanding of legal classification and an excellent approach to problem solving with a particular strength in the use of legal authority together with a demonstrable awareness of matters of legal controversy and law reform. Demonstrates an ability to appraise and criticise the application of legal principles across different branches of law.

The candidate will express complex ideas extremely clearly and fluently. Sentences and paragraphs will follow on from each other smoothly and logically. Arguments will be consistently relevant and well structured. There will be few, if any, errors of grammar, punctuation and spelling.

Marks 21-17 **A very good answer.** Presents a clearly written answer with a detailed knowledge and understanding of legal rules and also the place and role of institutions, as well as demonstrating a very good appreciation of the role and function of law in society. Shows a good understanding of legal classification and demonstrates a clear grasp of analysis of legal problems, with a real ability to apply rules and use authority. Shows a good understanding of different branches of law and gives evidence of a critical awareness of controversial issues in law and law reform. The majority of relevant legal issues raised by the question are included with appropriate supporting material.

The candidates will express complex ideas extremely clearly and fluently. Sentences and paragraphs will follow on from each other smoothly and logically. Arguments will be consistently relevant and well structured. There will be few, if any, errors of grammar, punctuation and spelling.

Marks 16-13 **A good answer.** Demonstrates a sound knowledge and understanding of legal rules, and the role and function of law in society with some evidence of depth and breadth of argument. Is able, where required, to distinguish between civil and criminal liability, and shows a sound approach to problem solving. Quotes some appropriate legal authority. Demonstrates a sound knowledge of some of the relevant issues raised by the question and shows awareness of current controversies and legal reform. Identifies significant points in the marking scheme but with some imbalance in the treatment of issues raised by the question.

The candidate will express moderately complex ideas clearly and reasonably fluently through well linked sentences and paragraphs. Arguments will be generally relevant and well structured. There may be occasional errors of grammar, punctuation and spelling.

Marks 12-8 **A satisfactory answer.** Presents an answer which demonstrates some knowledge and understanding of legal rules and institutions, and awareness of the role and function of law in society. Demonstrates some ability to solve problems, to identify sources, and to quote relevant authority. Shows knowledge of different branches of law, with some understanding shown also of legal classification. Although awareness of current controversies and reform issues is demonstrated, answers are more descriptive than analytical.

The candidate will express straightforward ideas clearly, if not always fluently. Sentences and paragraphs may sometimes not 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 to suggest a weakness in these areas.

Marks 7-4 **A basic answer.** Presents an attempt to deal with the question with a superficial knowledge and understanding of legal rules, institutions and the role and function of law in society. Shows an attempt to deal with legal classification and problem solving and uses legal authority, with a little understanding of appropriate branches of law. Gives evidence of a little awareness of issues of controversy and reform. Answers may be commonsense with simple conclusions and little law.

The candidate will express simple ideas clearly, but may be imprecise and awkward in dealing with complex or subtle concepts. Arguments may be of doubtful relevance or obscurely presented. Errors in grammar, punctuation and spelling may be noticeable and intrusive suggesting weaknesses in these areas.

Marks 3-0 Presents an answer which demonstrates difficulty in understanding the subject. Although struggling, may produce some relevant points. Perhaps produces a social answer with little relevance to law.

## **PAPER 1**

All questions carry 25 marks.

### **PART ONE**

#### **Question 1**

The statement is an affirmation of a core belief of legal positivism, so candidates will be expected to display knowledge of the elements of and justifications for positivism and its opposition to natural law theories. Writers such as Bentham, Hart and Austin can usefully be analysed here. There is scope for candidates to discuss their own chosen examples of rules to illustrate their answers. If any answer is more geared to discussion of the different debate about the enforcement of morals it cannot merit a mark in the higher achievement bands.

#### **Question 2**

Candidates will be expected to identify a number of different functions of law apart from criminalisation and prohibition. There is scope for identifying Summers taxonomy, which includes such different functions as facilitation of private arrangements and public benefit conferral. Again, credit should be given for appropriate use of concrete examples to underpin theoretical exposition.

#### **Question 3**

This question calls for a detailed historical overview that clearly focuses on the concept of flexibility. Information from the origins of equity to the present day is relevant and credit should be given for balanced and well illustrated answers.

#### **Question 4**

Candidates will be expected to define corporate personality and illustrate their exposition with reference to decided cases. The question also calls for evaluation, which could usefully include analysis of the long-standing debate about corporate manslaughter.

#### **Question 5**

This question calls for both accurate knowledge of the various justifications for punishment and for integration of such exposition with actual sentencing practice. Answers which are too descriptive of both elements in separate analytical compartments cannot be rewarded with marks in the higher achievement bands.

### **PART TWO**

#### **Question 6**

The quotation requires both a detailed description of the 'rules' of statutory interpretation and the extent to which such rules actually fetter judicial discretion. To achieve a good mark, candidates must go beyond description to analysis as dictated by the question set.

#### **Question 7**

Candidates will be expected to describe both the position in the Court of Appeal and that governing other courts in the hierarchy. They will be expected to give an account of the

rules and exceptions in *Young v Bristol Aeroplane* and to discuss the merits and drawbacks of flexibility in the Court of Appeal.

### **Question 8**

This question calls for an evaluation of the functions of tribunals in context. Answers which tend towards description at the expense of evaluation cannot reach higher achievement bands.

### **Question 9**

Candidates will be expected to show knowledge of recent legislative proposals to change the functions of the jury, but 'recently' can be fairly generously interpreted to include earlier debates. The putative reasons for its preservation must be stated to gain a mark above the 'satisfactory' range.

### **Question 10**

This question should elicit knowledge of the relationship between EU and domestic law and identification of areas largely untouched. Answers which focus more on the institutions of the EU cannot achieve a mark in the higher achievement bands.

## **PAPER TWO**

All questions carry 25 marks.

### **Question 1**

Pre-contractual negotiations. Offer and acceptance. Time when offers are complete and when acceptances are complete. Validity of promise to keep offer open, whether consideration is required for this. Specified form of acceptance. Postal offer and acceptance. Effect of postal delays. Fax as method of acceptance. Possible remedies – damages, whether specific performance appropriate.

### **Question 2**

Mail-order contracts. "Ticket cases". Terms, representations, exclusion clauses. Validity of terms and exclusion clauses. Effect of delivery notes. Consumer protection legislation. Advertisements, "mere puffs", terms, guarantees. Privity of contract and exceptions. Possible remedies.

### **Question 3**

Brochures. Terms, representations, exaggeration, misrepresentation. Unilateral changes of terms. Effect of agency situation. Possible remedies. Damages. Disappointment. Once in a lifetime events. Mitigation. Possible arbitration through trade associations.

### **Question 4**

Innocent and fraudulent misrepresentations. Effect of misstatement on purchaser's intentions. Credit agreements – legal requirements and formalities. Telephone transactions. Effect of cancellation. Legality of repossession and violent acts of intervention. Possible remedies.

### **Question 5**

Employers' duties to employees. Employees' duties to employers. Work stress – duty of care – standard of care. Work place bullying and harassment. Psychiatric injury. Working Time Directive. Health and safety issues. Possible remedies.

### **Question 6**

Selection for redundancy. Reasonableness. Duties of employers and employees. Unfair dismissal. Role of ACAS. Employment tribunal. Possible remedies.

### **Question 7**

Distinction between employees and independent contractors. Employers' duties. Position of part-time employees and their employment rights. Discrimination in the work place. Liability for injuries in the work place. Restrictive covenants. Possible remedies.

### **Question 8**

Discrimination on grounds of age, sex and disability. Position of people with criminal convictions – whether convictions can be spent. Effect of dismissal on grounds of pregnancy. Possible remedies.

### **Question 9**

Consideration of best interests of the child. Whether parental consent is required for vaccinations – marginally invasive medical procedures. Whether one parent has the right to withhold consent for medical treatment in the event of a dispute about the matter, Role of parents with contact and those with residence orders. Children Act 1989. Role of the Court. Steps to be taken by parents. Cases.

### **Question 10**

Establishing paternity. Legal and practical steps. Parental rights and responsibilities. Role of law when a parent wishes to remove a child from the jurisdiction, either permanently or for a holiday. Consideration of best interests of the children. Children Act. Legal situation when gay couples live together with children of one partner. Whether a person can use the law to prevent someone passing on information to a third party.

### **Question 11**

Care orders. Contact orders. Fostering. How the law deals with children and young people who commit crimes. Role of the law in situations involving false accusations. Emergency protection orders. Guidelines. Whether police and social workers have acted reasonably. Possibility of damages for psychiatric injury.

### **Question 12**

Role of social workers, neighbours and school. Violent and abusive relationships. Legal mechanisms and role of the law. Emergency protection orders. Guidelines. Division of property on separation and divorce. Contact orders. Best interests of the child. Children Act.

### **Question 13**

Theft of fuel. Murder/ manslaughter distinction. Causation. Driving offences (no detail required on these, just basic identification of main issues). Mens rea. Actus reus. Intention. Recklessness. Causation. Proof. Standard of proof. Possible sentences.

### **Question 14**

Theft. Various possible offences. Incitement. Intention. Elements of various forms of theft. Mens rea. Handling stolen property. Significance of ages of the parties involved. Possible sentences.

### **Question 15**

Theft. Crimes of violence. Use of reasonable force in protection of persons and property. Transferred malice. Arson. Murder/ manslaughter distinction. Mens rea. Actus reus. Causation.

### **Question 16**

Fraud. Blackmail. Incitement. Inchoate offences. Threats. Blackmail. Crimes of violence. Mens rea. Actus reus. Reasonable protection of persons and property.

### **Question 17**

Police powers. Rights of suspects on stop and search, arrest and detention. Role of custody officer. Correct dealing with property removed from suspects. Codes of Practice. Right to legal advice and to an interpreter. Human rights issues. Possible remedies in tort. Possible crimes. Role of complaints bodies.

### **Question 18**

Legality of vigilante groups. Conspiracy. Incitement etc. Weapons. Various public order offences. Discussion of police powers.

### **Question 19**

Right to protest lawfully. Rules of law concerning protests and demonstrations. Human rights issues. Role of the police. Public order offences. Defamation. Prevention of harassment. Protection of individuals.

### **Question 20**

Official secrets legislation. Defamation – main elements and possible defences. Breach of confidence. Protection of journalists' sources. Contempt of Court. Role of law.



# **LAW 9345, CHIEF EXAMINER'S REPORT**

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## **General Comments**

The general standard of this year's entry was good. Many candidates achieved a good standard in written English and were able to identify the main requirements of the questions, using legal authorities to support their answers. It was pleasing to note that comments made in the examiners' report for 2003 had been acted upon by many of the centres.

## **PAPER ONE**

The strongest candidates were able not just to display relevant knowledge but also to maintain a clear focus on the terms of the questions set. Several questions demanded analysis in addition to exposition, and there was still a tendency from some centres to produce impressively detailed, descriptive 'stock' answers which were not always directly relevant or related to the precise terms of the question. However, overall there was a pattern of strong answers and awareness of the terms of the questions posed.

### **Part One**

#### **Question 1**

This question was aimed primarily at analysis of the relative merits of positivistic and naturalist approaches to law, and the quotation expresses a positivistic tenet. While a minority of candidates produced extensive focused answers, many interpreted the question as an invitation to write about a different philosophical debate, the Hart/Devlin material on the enforcement of morals.

#### **Question 2**

Although few candidates attempted this question, there were a number of impressive theoretical answers supported by reference to theorists such as Durkheim, Weber and Summers. Weaker answers tended to forsake theory for anecdote or personal narrative.

#### **Question 3**

In many instances detailed knowledge of the history of equity and of substantive remedies was not matched by specific discussion of the concept of flexibility. In wide ranging historical overviews, disappointingly few candidates identified the charges of inflexibility levelled at equity at certain times.

#### **Question 4**

Some candidates mistook this question for one on legal personnel, but the vast majority of answers offered discussion of corporate personality, although natural persons were also frequently described in some detail. The strongest answers included reference to theoretical work on the nature of corporate criminal liability.

#### **Question 5**

The strongest answers offered detailed and critically aware syntheses of theory and practice. There was a tendency among the weaker candidates merely to juxtapose justifications and sentencing outcomes en bloc, with no attempt at integration.

## **Part Two**

### **Question 6**

The heart of this question was the concept of discretion, but there was again a marked tendency to produce impressively detailed descriptions of the various canons of interpretation without ever directly engaging with the concept. The strongest candidates were able to analyse the notion of discretion and illuminate their answers by reference to the innovations in the Human Rights Act 1998.

### **Question 7**

This quotation was designed to elicit both descriptive knowledge of the doctrine of precedent and analysis of the role of the Court of Appeal, and many candidates were stronger on the former than the latter. The stronger candidates discussed the 'one man crusade' of Lord Denning and analysed the institutional justifications for relaxing the rules for the Court of Appeal.

### **Question 8**

Although there were some impressively detailed responses to this question, many candidates offered a general overview of alternative methods of dispute settlement and spent more time on arbitration than on tribunals.

### **Question 9**

The strongest candidates showed detailed knowledge of the Auld proposals and recent legislative measures, whereas the majority lacked topical references in identifying the traditional merits and disadvantages of the jury.

### **Question 10**

There was a marked tendency to produce what could be called a 'blunderbuss' approach to this question, bombarding it with various facts which were sometimes of doubtful relevance. There was a propensity to dwell too much on the institutions of the EU at the expense of detailed legal analysis.

## **PAPER TWO**

This part of the examination makes particular demands on candidates, seeking information on complex legal issues and requiring considerable depth of knowledge. Some candidates produced answers that would have been worthy of law students at university level, demonstrating a sound understanding of the legal issues and good knowledge of the authorities. Candidates who achieved the best marks were able to demonstrate a high order of analytical skills in addition to basic knowledge of the legal issues involved in solving these problem-style questions.

### **Question 1**

Many candidates who attempted this question argued on the basis of the legal rules but did not refer to the relevant cases. This did not allow scope for achieving the best marks. It is vital for candidates to illustrate their answers with cases when dealing with problems involving case-law topics. Those who did present arguments on the basis of case-law did

very well, even if they did not arrive at a definite conclusion, as this type of answer requires a balanced approach.

## **Question 2**

There were several important issues involved in this question, and few candidates were able to identify all that were relevant. Many attempted to answer on the basis of common law alone, making no reference to the relevant statutes. Better candidates identified the majority of the legal points and used statutes and cases to support their conclusions.

## **Question 3**

Many aspects of consumer law were built into this question, and it was pleasing to note that a large number of candidates dealt with some of these issues in depth. Those who did not reach their potential simply identified the legal points raised by the question but did not explore these in sufficient depth. It is simply not enough to write half a side of A4 paper stating what the relevant issues are. It is vital that candidates follow up these ideas with adequate discussion of all possible aspects of the areas of law that are relevant.

## **Question 4**

This question involved misrepresentation, which is a complex topic, and some candidates concentrated on discussion of that subject to the exclusion of the consumer credit matters that were also involved. In general, those candidates who discussed consumer protection were able to produce detailed accounts of the legislative protection afforded to consumers, but there was little emphasis on the responsibilities that consumers have in relation to those with whom they interact.

## **Question 5**

Several central employment law matters arose in the scenario described in this question. Candidates grappled with many of these very well, but it was disappointing that so few were abreast with developments in the law concerning psychiatric illnesses caused by work stress. It was also rather surprising that few candidates were able to cite cases in support of their answers to this question.

## **Question 6**

This question was handled well by the majority of candidates who attempted it, and there was a good general grasp of the various options available to employers who are faced with re-structuring problems and relocation of employees when they are forced to make some of their workforce redundant.

## **Question 7**

This problem scenario gave rise to some complex issues involving different types of employment situations - from part-time employees to independent contractors. The examiners expected candidates to produce in-depth discussion of the differences between employed and self-employed people, together with illustrations from the large body of case law. It was rather disappointing that many candidates did not discuss these matters, but arrived at conclusions about the nature of employment without exploring the issues in full. However, the law concerning restrictive covenants was handled quite well.

### **Question 8**

The various types of discrimination that arose in this question were identified with relative ease, but there were not many candidates who were able to use the statutes and cases effectively to enable them to reach well-reasoned conclusions about the issues raised or the possible remedies.

### **Question 9**

This question, which involved a scenario that has been given detailed coverage by the UK press in the last two years, was tackled quite well, and although the examiners did not expect candidates to be aware of the UK press coverage, the general principles of law that were relevant to the scenario were handled competently. Some candidates were able to cite recent cases on the topic of consent to childhood vaccinations.

### **Question 10**

There were some interesting points raised by this question concerning paternity and related issues, and those candidates who attempted to answer the question were able to produce well reasoned accounts. However, weaker answers dealt with some of the issues by means of common sense rather than law, and candidates are urged to support their views with as many legal authorities as possible.

### **Question 11**

Some important social issues were raised in this question, especially matters concerning the role of social workers. Most of the candidates who attempted it covered the main points very well, and were able to give details of the relevant Children Act orders.

### **Question 12**

Most candidates who answered this question were able to identify the relevant issues, and produced good answers on the law concerning domestic violence and the remedies available to victims of violence. Again, the role of social services was an important component in the answer, and most candidates dealt with this topical matter very competently.

### **Question 13**

As usual, candidates seemed to enjoy the criminal law section of the paper, and it was very pleasing to note that so many were able to give good accounts of the basic concepts of criminal law in their answers. This question was answered well by many candidates and a sound knowledge of case law was displayed.

### **Question 14**

Some difficult concepts in the law of theft were relevant to this scenario, and many candidates were unable to identify the different forms that theft may take. There were fewer references to authorities than expected in some of the answers, but those candidates who knew the subject well produced well balanced accounts of the relevant law.

### **Question 15**

This question covered many aspects of crimes of violence and candidates generally dealt with the issues very well, although there were many who did not identify the problems

surrounding transferred malice. The question of causation was handled very well by many of the better candidates, who were able to explore the various permutations thrown up by the scenario.

### **Question 16**

There were some interesting approaches in the way in which candidates tackled this question. Issues surrounding the crime of blackmail were identified by many, and better candidates gave full consideration to the mens rea involved. This was the question that gave the most scope for discussion of basic criminal law concepts, and it was pleasing to note that a large number of candidates were well prepared on these matters.

### **Question 17**

Many candidates gave full and detailed answers to this question, citing the precise sections of the relevant legislation and supporting their answers with relevant cases. Many were well versed in the details about what should happen at police stations when suspects are arrested and held by the police for questioning. However, it was rather disappointing that even some of the better candidates devoted so little time and attention to the remedies that might have been available against the police.

### **Question 18**

This question raised some rather difficult points on the question of intention and the various interpretations that might be put on the words of one of the parties in terms of incitement. Many candidates made a reasonable attempt to deal with these matters. The public order offences were covered very well, and candidates were able to give details of the precise requirements of each offence.

### **Question 19**

The law relating to demonstrations and harassment was generally known well by candidates who chose to answer this question. It was very encouraging that so many were able to give full details about the legal requirements relating to peaceful demonstrations. Precise sections of the relevant legislation were cited in the best answers.

### **Question 20**

Too many of those who tackled this question simply wrote all they knew about the law of libel without directing their knowledge to the question that was set. This blanket approach seldom achieves many marks and candidates are urged to concentrate on the issues that are raised by the question. Some of the better candidates did deal with the question very well and were able to cite cases and statutory provisions in support of their conclusions.

## LAW 9345, GRADE BOUNDARIES

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Grade	A	B	C	D	E	N
Lowest mark for award of grade	54	49	44	39	34	29

**Note:** Grade boundaries may vary from year to year and from subject to subject, depending on the demands of the question paper.

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