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# A-Level

# Law

LAW04

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

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2160  
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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](http://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.

### **Levels of Response for Essay Marking**

When reading an essay, you must annotate your recognition of the achievement of a response level. This will help the Team Leader follow your thought processes. Levels of response marking relies on recognition of the highest level achieved by the student. When you have finished reading the essay, therefore, think top-down, rather than bottom-up. In other words, has the student's overall answer met the requirements for the top level? If not, the next level?

### **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**

**QUALITY OF WRITTEN COMMUNICATION**

<b>Level 3</b>	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.	<b>4-5 marks</b>
<b>Level 2</b>	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.	<b>2-3 marks</b>
<b>Level 1</b>	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.	<b>1 mark</b>
<b>Level 0</b>	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.	<b>0 marks</b>

### Maxima for Substantive Law questions

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

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

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

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

#### Note:

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

sound/sound	- sound
sound/clear	- weak
sound/some	- clear
clear/clear	- clear
clear/some	- weak clear
some/some	- some

**Descriptors for Substantive Law questions**

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

**Use of case authority**

1. It is usually sufficient to associate a relevant case with an explained/applied rule. Further explanation of cases is required only where necessary to elucidate the rule or its application.

2. An answer in relation to any PC should not be described as 'sound' unless some relevant authority appears, where appropriate. However, where there is appropriate use of authority in relation to the other PC(s) in the mark scheme for the question, an answer in relation to a PC where no authority appears may be given a 'lower' sound (the student will have demonstrated ability to use appropriate authority at some point in the answer to the question, albeit not in the element at issue).

0 1

Discuss the possible criminal liability of:

- Ben for any **property** offences arising out of his first meeting with Anna **and**
- Carlo for any **property** offence arising out of his threat to Ben.

[25 marks]

### Potential Content

- (A) **Discussion of fraud issues** – representation, falsity, dishonesty/Ghosh (possible argument that Ben might feel morally justified in cheating Anna), intention to make a gain and/or cause loss, the meaning of ‘gain’ and ‘loss’.

**Note - SOUND** requires a generally accurate knowledge of the terminology of the **Fraud Act 2006**

- (B) **Discussion of theft issues** – appropriation (appropriation despite consent or acceptance of a gift), property, belonging to another, dishonesty (possible argument that Ben might not be dishonest as he might feel his conduct justified on the basis of s.2(1)(a) Theft Act (legal right) or Ghosh (moral right), intention to permanently deprive.

**Note** – in relation to dishonesty, candidates can rely in PC(B) on a discussion in PC(A) of the Ghosh/moral right issue, but any argument in PC(B) based on s.2(1)(a) must be explained and applied

**Note : theft and burglary** – MAX SOUND - allow for a less detailed coverage of the elements of theft than a response addressing theft only, providing the student suggests that Ben became a trespasser when he entered Anna’s home with intent to steal (conditional intent), thereby knowingly exceeding Anna’s permission to ‘come to her house at any time’. Full credit requires consideration of s.9(1)(a) and (b).

- (C) **Discussion of blackmail issues** –demand, menaces (importance of the objective test), with a view to gain or with intent to cause loss; the meaning of ‘gain’ and ‘loss’, unwarranted demand.

**Note - SOUND** requires, in relation to ‘unwarranted’, a generally accurate reference to the terminology of **s.21(1) Theft Act 1968** and a generally accurate explanation of the meaning of the terms ‘reasonable grounds’ and ‘proper means’, together with arguable application to Carlo.

(AO1 = 10 ; AO2 = 15)

0 2

Discuss the possible criminal liability of Ben:

- for any **property** offences arising out of his activities in Anna's house **and**;
- for any **property** offences arising out of his loosening the bolt on Anna's saddle.

**[25 marks]****Potential Content**

- (A) Discussion of theft issues** - appropriation, property, belonging to another, intention to permanently deprive [**s.6 (1) Theft Act**, dishonesty.

Note – **SOUND** in relation to s.6(1) requires an explanation that, even if D does not intend the victim to permanently lose the thing in question, D will be deemed to possess the intention permanently to deprive if his intention to treat the thing as his own to dispose of regardless of the victim's rights eg if D demands that the victim pays him money to get the property back.

*Note - Answers can rely on any explanations used in theft/question 01 eg in relation to belonging to another, dishonesty etc., but there must be application to the specific theft issues raised in relation to the theft of the photos, and an explanation and application of the 6(1) point above..*

**Robbery issues in relation to Ben pushing Anna** - the meaning of force, was force used in order to steal and did it occur immediately before or at the time of the theft, was there a continuing appropriation?

*Note - Theft and robbery – MAX SOUND*

*Note - Theft only – MAX CLEAR*

- (B) Discussion of burglary issues** – entry, building, trespass (Anna's cancellation of permission), discussion of **s.9(1)(a) Theft Act 1968** on the basis of conditional intention to steal, discussion of **s.9(1)(b) Theft Act 1968** on the basis of actual theft and GBH (GBH to be considered in outline only). Consideration of self-defence in outline (appropriate threat/reasonable force).

*Note - s.9(1)(a)/ s.9(1)(b)/self-defence – MAX SOUND*

*Note - s.9(1)(a)/s.9(1)(b) only (no self-defence) – MAX WEAK SOUND*

*Note - s.9(1)(b) only (no s.9(1)(a)/self-defence) – MAX CLEAR*

*Note - s.9(1)(a) only (no s.9(1)(b)/self-defence) – MAX WEAK CLEAR*

- (C) Discussion of criminal damage issues** - basic criminal damage (the meaning of 'damage' and 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, no requirement that life should be in fact endangered).

**Discussion 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 to cause damage / endanger life) negated?

**Note - Basic and aggravated criminal damage and intoxication – MAX SOUND**

**Note - Basic criminal damage and intoxication (no aggravated criminal damage) – MAX CLEAR**

**Note - Basic and aggravated criminal damage (no intoxication) – MAX WEAK SOUND**

(AO1 = 10 ; AO2 = 15)

0 3

Discuss the possible criminal liability of Dave:

- for any **property** offence in connection with the £10 000 **and**;
- for any **property** offences arising out of his copying of George's credit card details **and** of using these details online.

**[25 marks]**

### Potential Content

- (A) **Discussion of theft issues in relation to the £10 000**– appropriation (please note that the appropriation required for theft is a dishonest one, with the result that Dave's appropriation is handing the money to Errol, and not his acceptance of the money from George as Dave was not dishonest at that point). Property, belonging to another, intention to permanently to deprive, dishonesty [possible argument that Dave might believe that George or Fred would give his consent – **s.2(1)(b) Theft Act**].

In relation to 'belonging to another', discussion of **s.5(3) Theft Act – s.5(1)** seems irrelevant as by the time Dave formed dishonest intent ie **after** George gave him the money, the money would be owned by Dave (by virtue of the transfer of possession and the intention to transfer title). Therefore, the money would 'belong to another' (George or Fred) only if **s.5(3)** is applicable.

**Theft in relation to the copying of the card details** – recognition that information does not constitute 'property' as in **Oxford v Moss**.

**Note - Theft in relation to the £10 000 [based on s.5(3)] + theft of card details – MAX SOUND**

**Note - Theft in relation to the £10 000 [based on s.5(3)] (no theft of card details) – MAX WEAK SOUND**

**Note - Theft in relation to the £10 000 [based on s.5(1)] + theft of card details – MAX CLEAR**

**Note - Theft in relation to the £10 000 [based on s.5(1)] (no theft of card details) – MAX WEAK CLEAR**

**Note - Theft of card details only – MAX SOME**

- (B) **Discussion of duress issues** - the nature of the threat (death/serious personal injury?). Threat to a person for whom Dave reasonably feels responsible. The subjective element (threat of immediate harm/opportunity to avoid the harm.) The objective element. The effect of Dave's voluntary association with criminals.
- (C) **Discussion of fraud by false representation issues** - implied representation (e.g. that he has authority to use the card or that he owns the card), representation can be 'made' to a machine, falsity, dishonesty (possible argument that Dave is not dishonest as he might believe that George would consent), intention to make a gain and/or cause a loss, the meaning of 'gain' and 'loss.' No requirement for the intended fraud to succeed.

**Note - SOUND** requires a generally accurate knowledge of the terminology of the **Fraud Act 2006** and an effective discussion of the issue of the purchase being declined.

(AO1 = 10 ; AO2 = 15)

0 4

Discuss the possible criminal liability of:

- George for any **property** offences arising out of his dealings with Hasan **and**;
- Imran for any **property** offences arising out of his sawing of the tree branch.

[25 marks]

### Potential Content

- (A) **Discussion of theft issues in relation to George's coat** –appropriation (George's wearing of the coat at the point when he decides not to pay), property, belonging to another (**Turner No. 2**), intention to permanently deprive and dishonesty (possible argument that in view of George's belief regarding the poor quality of Hasan's work, credit an argument based on **s.2(1)(a) Theft Act** that he believed he had a legal right to the coat without payment or a moral right to it under Ghosh).

*Note - answers can rely on explanations of theft given in question 03, but must specifically address the issues raised in relation to George's taking of his coat (appropriation, belonging to another and dishonesty).*

*Note –obtaining services dishonestly + theft – **MAX SOUND** for a weaker response on theft where the candidate correctly concludes that the obtaining offence has not been committed on the basis that the services **were not obtained by a dishonest act***

*Obtaining services only – **MAX SOME** (where the candidate arrives at the above conclusion)*

- (B) **Discussion of making off without payment issues** - making off, the spot, service done (is the service 'done' if Hasan's work is poor?), payment required or expected. Mens rea issues: intention to permanently avoid payment, knowledge that payment was required or expected, dishonesty.

*Note - credit an argument that George might not be dishonest under Ghosh as he considers that payment is not justified because of the poor work. In this connection, students can rely, without further explanation, on the discussion of Ghosh on this point in PC(A)*

- (C) **Discussion of criminal damage issues** - basic criminal damage. The meaning of 'damage', mens rea (obvious intention on the facts). Aggravated criminal damage (intention/recklessness to endanger life by the damage, no requirement that life is in fact endangered).

*Note - basic criminal damage only – **MAX WEAK CLEAR***

(AO1 = 10 ; AO2 = 15)

0 5

Discuss the rights and remedies, if any, of:

- Jack against Ken regarding the noise and dust
- The motorists against Ken regarding the obstruction
- Ken against Jack regarding the damage to his office building.

**[25 marks]****Potential Content****(A) Discussion of issues regarding the noise and dust :**

Possible claim by Jack 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 (is it residential or industrial?), duration, and malice. The issue of balancing of interests. Would the noise/dust be sufficiently substantial to affect a person of normal sensitivity? “Coming to the nuisance” not a defence. Reference to damages. Consideration of the discretionary nature of the injunction. The possible utility of Ken’s business (not a defence to liability but may be a defence against the award of an injunction, at the discretion of the court – *Adams v Ursell*).

**(B) Discussion of the issues regarding the damage to Ken’s office:**

Possible claim by Ken under the Rule in **Rylands v Fletcher**. The need for a “thing liable to do mischief....”, accumulation, non-natural/extraordinary user, escape, damage, reference to damages.

Strict liability (irrelevant that Jack stored the chemicals ‘carefully.’ The requirement of reasonable foreseeability of harm.

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

**Discussion of issues regarding the obstruction to the motorists:**

Possible claim by the motorists in public nuisance. The requirements of a substantial inconvenience to a section of the public, ‘special damage’ (unlikely on the facts). Credit a discussion of the possibility of a relator action by the Attorney-General on behalf of the motorists

**Note - Rylands v Fletcher only + strict liability (no public nuisance) – MAX WEAK SOUND**

**Note - Rylands (no strict liability) + public nuisance – MAX WEAK SOUND**

**Note - Public nuisance only (no Rylands)– MAX SOME**

**Note – where negligence is attempted as an alternative to Rylands.- negligence only (no public nuisance)– MAX CLEAR. Negligence + public nuisance – MAX WEAK SOUND**

(AO1 = 10; AO2 = 15)

0	6
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Discuss the rights and remedies, if any, of:

- Jack against Layla regarding the losses on his shares
- Layla against Nodirt regarding the burns on her hands
- Layla against Dr Omar regarding her heart attack.

[25 marks]

### Potential Content

- (A) **Issues regarding Jack's shares:** possible claim for loss caused by a negligent misstatement. The need for a special relationship/proximity. The issue of Layla's expertise, whether she should have foreseen reliance by Jack and whether that reliance was reasonable (e.g. the significance that the advice was given at a social event). The issue of breach of duty and standard of care in relation to professionals. Reference to damages. Credit voluntary assumption of responsibility.

Note – no breach of duty/standard of care – MAX WEAK SOUND

- (B) **Issues regarding Layla's burns:** possible claim under the **Consumer Protection Act 1987**. Damage, defective product (with particular reference to instructions), producer, strict liability. Credit a discussion of the development risks defence. Reference to damages.

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

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

- (C) **Issues regarding Layla's heart attack:** possible claim for medical negligence. Elements of the tort of negligence. Duty of care. Breach of duty issues, general negligence principles and principles having particular reference to medical professionals – the standard of the ordinarily competent medical practitioner, possible relevance of Dr Omar being a specialist, the relevance of 'general and approved practice'. Causation and remoteness. Reference to damages (credit a consideration of the different categories of damages e.g. loss of future earnings, pain and suffering etc).

(AO1 = 10; AO2 = 15)

0 7

Discuss the rights and remedies, if any, of:

- Rodrigo against Patrick regarding his injuries
- Viggo against Theo regarding the damage to his shop and loss of business profits
- Viggo against Steve regarding the damage to his shop and loss of business profits.

[25 marks]

### Potential Content

**(A) In relation to Rodrigo’s injuries:** discussion of a possible claim under the **Occupiers’ Liability Act 1957**.

Consideration of the elements of the **Occupiers’ Liability Act 1957** (occupier, visitor, common duty of care).

Explanation and application of **s.2(4)(b)** (did Patrick act reasonably in entrusting the work to an independent (competent?) contractor and did he check that the work had been properly done?)

Explanation and application of **s.2(3)(b)** (is the risk of a falling ladder on scaffolding ‘ordinarily incident’ to the job of fitting windows?)

Reference to damages (credit a consideration of the different categories of damages e.g. loss of future earnings, pain and suffering etc).

**Note - discussion of BOTH s.2(4)(b) and s.2(3)(b) – MAX SOUND**

**Note - discussion of ONE of s.2(4)(b) and s.2(3)(b) – MAX CLEAR**

**Potential alternative claim in common law negligence.** Duty of care, breach of duty (e.g. did Patrick check whether the scaffolding contractor was competent). Remoteness. Reference to damages (credit a consideration of the different categories of damages e.g. loss of future earnings, pain and suffering etc).

**(B) In relation to Viggo and Theo :** discussion of a possible claim in the tort of negligence. Duty of care. Breach of duty – consideration of factors determining the standard of care e.g. magnitude of risk. Causation and remoteness. Reference to damages.

**In relation to Viggo’s loss of business profits :** discussion of a possible claim for consequential economic loss (**Spartan Steel**).

**Note - discussion of negligence/damage to Viggo’s shop (no discussion of loss of business profits) – MAX WEAK SOUND**

**(C) In relation to Viggo and Steve :** discussion of a possible claim under vicarious liability. Brief reference to distinction between employee/independent contractor. Discussion of “in the course of employment”/frolic of one’s own, especially in relation to disobedience of the employee.

**Note - Credit a discussion of the vicarious liability principles when a tortious act is also criminal.**

(AO3 =10; AO2 = 15)

0 8

Discuss the rights and remedies, if any, of:

- Will against Patrick regarding his injuries
- Anton and Becca against Patrick regarding the trauma that each suffered.

[25 marks]

### Potential Content

**(A) In relation to Will's injuries** : discussion of possible claim under the **Occupiers' Liability Act 1984**.

Relevant requirements. The need for a danger due to the state of the premises [s.1(1)].

Requirements for the duty to arise [s.1 (3)] (Patrick had some warning of the danger, but should he have anticipated trespassers?). The nature of the duty. Discussion of possible breach of duty (is the placing of the notices and fence sufficient? Possible reference to special factors relevant to children, e.g. that they are more likely to come into the vicinity of the danger where is it an attraction. Consideration of possible contributory negligence/*volenti*. Reference to damages (credit a consideration of the different categories of damages e.g. pain and suffering).

**Note - SOUND** requires a generally accurate knowledge of the terminology of the OLA 84

**Note** - No consideration of the elements of s.1(3) – **MAX CLEAR**

**Note** - Discussion of an alternative claim under the OLA 1957 on the basis that the climbing frame might constitute an 'allurement' to a child and render the child a visitor – **MAX WEAK SOUND** (if combined with a detailed explanation and application of the OLA 57).

**Note** - Discussion of both OLA 84 and OLA 57 – **MAX SOUND** (allowing for more limited treatment of either or both).

**(B) In relation to the injuries of Anton and Becca** : discussion of possible claims for psychiatric harm in the tort of negligence.

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 Becca and Anton as secondary victims – reasonable foreseeability of psychiatric injury to a person of normal fortitude, caused by a traumatic event. Proximity of relationship (satisfied in case of Becca, doubtful in Anton's case). Proximity in time and space (satisfied in case of Anton, the aftermath arguable in Becca's case). Proximity in perception (the phone call to Becca). Reference to damages.

(AO3 =10; AO2 = 15)

## Section C Concepts

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

Level	Explanation	Analysis/Evaluation
<b>sound</b>	The answer presents a strong explanatory framework, correctly identifying and accurately and comprehensively explaining, say, relevant rules, procedures, institutions and theories in the central aspects of the potential content. Where appropriate, the explanations are supported by relevant examples and illustration (which is adequately developed where necessary to further elucidate the explanations). Where there are more marginal aspects of the potential content, there may be some minor omissions or inaccuracies in the explanation and/or in the treatment of the supporting examples and illustration.	Arguments are developed perceptively and coherently, making careful use of framework explanations, examples and illustration, and are directly related to the thrust of the question. Summaries and conclusions are sustainable, and demonstrably emerge from the supporting explanations and arguments.
<b>clear</b>	The answer presents an explanatory framework, correctly identifying and accurately explaining significant parts of, say, relevant rules, procedures, institutions, and theory in the central aspects of the potential content, though there are omissions in the explanations of some parts of the rules, procedures, institutions and theory or errors or some confusion in the explanation, in those central aspects. There may be a little overemphasis on marginal aspects at the expense of some of the more central aspects. In the higher part of the level, relevant examples and illustration are used but there may be a little confusion and error in selection and/or explanation or the explanation may be limited. At the lower end of the level, there may be little evidence of relevant examples and illustration or more evident inaccuracies.	Appropriate arguments are introduced but may not be fully developed, or may be restricted in range. Alternatively, the arguments suffer from a little inaccuracy or confusion. The arguments make use of framework explanations (including any relevant examples and illustration) but do not always succeed in incorporating them in a fully coherent way or in demonstrating their full relevance. Summaries and conclusions may be a little tentative and may not fully address the thrust of the question. Though broadly based on the supporting explanations and arguments, summaries and conclusions may not be closely and carefully related to them in the discussion.

<p><b>some</b></p>	<p>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.</p>	<p>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.</p>
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### 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

0	9
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Discuss the different possible meanings of 'justice'. Analyse the relationship between law and justice.

[30 marks + 5 marks for AO3]

**PLEASE REMEMBER TO AWARD A SEPARATE AO3 MARK FOR THIS QUESTION**

### Potential Content

**(A) Discussion of different possible meanings of 'justice'. Credit any of the following**

- justice in terms of equality of treatment/fairness
- categories of justice e.g. distributive/ corrective justice, substantive/procedural justice, concrete/formal justice etc
- utilitarianism
- Rawls
- Marx
- Nozick
- Notions of natural law/positivism

**Note** - Credit any other arguable notion of justice

**Note** - Credit appropriate illustration and/or criticism of any definition/theory.

**Note** – **SOUND** can be achieved through either a discussion of several of the above theories or a discussion of a small number of theories in depth

**(B) Analysis of the relationship between law and justice:** students should:

- refer to appropriate examples from the substantive law (criminal or civil), and/or the legal system/legal process and
- analyse whether justice is or is not achieved in the examples selected.

'Appropriate examples' include

- issues of discrimination/inequality of treatment
- fairness or otherwise in the treatment of suspects
- does the law achieve a fair trial for accused persons?
- Issues relating to natural justice
- sentencing and proportionality
- the jury
- examples of corrective justice e.g. the correcting of miscarriages of justice, appeals and judicial review
- precedent
- access to justice issues e.g. cost/funding in relation to the provision of advice and representation, the problem of lack of understanding of the legal process, problems relating to recent changes to legal aid, etc.

**Note** - Credit any other valid examples.

**Note** - a **SOUND PC(B)** requires students, in relation to **ALL OR A MAJORITY** of the examples which they refer to, to expressly link the examples to a particular notion of justice/injustice. For example, a response discussing factors (e.g. lack of funding) which can lead to access to justice issues should be awarded sound only if the nature of the injustice is explained e.g. like cases not being treated alike, the failure of the legal system to provide a 'level playing field', lack of natural justice, or a mere lack of 'fairness' etc. Similarly, responses discussing examples of 'miscarriage of justice' should refer to the nature of the injustice involved e.g. the failure of the legal system to ensure a fair trial and/or to remedy any miscarriage (in this connection a reference to the reform through the creation of the Criminal Cases Review Commission would be highly creditworthy).

The point here is that a discussion of an example which concludes with a mere assertion, such as, 'is this justice?', fails to fully address the issue as to whether justice is or is not being achieved.

**Note** - A response which demonstrates **some ability** to link an example or examples to a particular notion of justice/injustice but **not in relation to all or a majority of examples selected**– **MAX WEAK SOUND**

**Note** - A response which demonstrates **no ability** to link an example or examples to a particular notion of justice/injustice in relation to all or a majority of examples selected– **MAX CLEAR**

**Note** - Examples should only be treated as falling within PC (B) where the student has made it clear that they relate to the issue whether the law achieves justice.

**Note** - Any illustration of theories/ideas of justice in the context of the discussion of the meaning of justice should be credited in PC(A).

(AO1 = 15; AO2 = 15; AO3 = 5)

1 0

Explain the meaning of 'fault'. Discuss the relationship between law and fault, and discuss the extent to which law should be based on fault.

[30 marks + 5 marks for AO3]

**PLEASE REMEMBER TO AWARD A SEPARATE AO3 MARK FOR THIS QUESTION**

### Potential Content

- (A) **Explanation of the meaning of fault** in the criminal and/or civil contexts (for example, blameworthiness, responsibility, wrongdoing, etc)

**Discussion of the relationship between law and fault** – discussion of specific areas of law in order to demonstrate how they indicate the presence or absence of fault (discussion of any relevant area of law will be credited). Any relevant area of law will be credited, for example

- In the criminal law context, actus reus issues (e.g. voluntariness, causation, omissions), mens rea issues (consideration of the presumption of mens rea, the distinction between intention and recklessness, whether negligence indicates sufficient fault, etc), the notion of hierarchy of fault, the relevance of blameworthiness to sentencing, etc.
- In the tort context, relevant areas include aspects of the criteria of the duty of care (e.g. the importance of foreseeability and the requirement that it must be just and reasonable to impose a duty) and the importance of reasonableness and the 'risk factors' in relation to breach of duty and the standard of care. Issues of causation and remoteness. Defences to negligence, such as volenti and contributory negligence. The importance of unreasonableness in relation to liability in private nuisance.
- In the contract context, areas which arguably indicate the importance of fault include remoteness of damage (**Hadley v Baxendale**), the reduction in damages awarded due to a failure to mitigate losses, the distinction between conditions and warranties (the claimant can terminate the contract for breach of an important, but not a minor, term), the defence of frustration, etc.

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

**Note** - Discussion of relationship between law and fault/ no explanation of meaning of fault – **MAX WEAK SOUND**

**Note** - Explanation of meaning of fault only – **MAX WEAK SOME**

- (B) **Discussion of whether law should be based on fault**

- **Explanation of liability without fault** - discussion of either criminal and/or civil liability will be credited. Examples include
  - In the criminal law context, areas of strict liability in criminal law such as offences relating to food hygiene (e.g. **Smedleys v Breed**), pollution (e.g. **Alphacell v Woodward**), the protection of under-age children (e.g. **Harrow v Shah**), drug-related offences, etc. Situational liability (e.g. **Winzar, Larssonneur**). Use of case-law examples.

- In the tort context, areas of strict liability in the tort context (e.g. vicarious liability, the **Consumer Protection Act, Rylands v Fletcher**, etc), and possible discussion of no-fault accident compensation schemes as an alternative to tortious liability. Use of case-law examples.
- In the contract context, there are several rules which suggest strict liability by appearing to penalise an innocent party, e.g. the position of an offeror where the offeree accepts the offer by post, the liability of a seller/supplier for defective goods, etc, the distinction between impossibility/frustration and 'mere difficulty' in performing a contract. Use of case-law examples.

- **Discussion of arguments which are said to support fault-based liability**

Discussion of arguments in relation to criminal and/or civil law will be credited, for example

- In the criminal context, personal autonomy/freedom to choose, moral blameworthiness, the nature of criminal penalties, etc.
- In the tort context, the deterrent nature of tortious liability and the importance of corrective justice, etc.
- In the contract context, the notion of moral blameworthiness.

- **Discussion of arguments which are said to support liability without fault**

For example

- Utilitarianism/protection of the public from harm
- The 'not truly criminal' nature of regulatory offences
- Procedural problems involved in civil negligence claims (delay, cost, etc)
- Possible benefits of the strict liability of manufacturers, employers (e.g. claimant more likely to obtain damages), etc.
- The protection of consumers (e.g. sale of goods), the importance of contracts being performed (e.g. difficulty in performance not frustration) etc.

**Note - Explanation of liability without fault/ no discussion of 'arguments' – MAX WEAK CLEAR**

**Note - Discussion of 'arguments'/no explanation of liability without fault – MAX CLEAR**

(AO1 = 15; AO2 = 15; AO3 = 5)

1 1

Explain the notion of ‘balancing conflicting interests’. Discuss the extent to which the law succeeds in balancing conflicting interests.

[30 marks + 5 marks for AO3]

**PLEASE REMEMBER TO AWARD A SEPARATE AO3 MARK FOR THIS QUESTION**

### Potential Content

- (A) **Explanation of the notion of ‘balancing conflicting interests’:** Explanation of the meaning of the different possible ‘interests’: (public/private/social etc) and the process of ‘balancing’ (the distinction between a “compromise” recognition of both interests – e.g. the defence of intoxication - and the recognition of one interest to the exclusion of the other – e.g. the grant/refusal of the injunction in private nuisance).

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 (e.g. the use of judicial discretion in granting/refusing an injunction in relation to private nuisance, duty of care / floodgates / just and reasonableness, breach of duty issues, defamation etc), crime (e.g. intoxication, consent), criminal process (e.g. bail, evidence, recognition of the interests of suspects/PACE), national security/terrorism issues, etc.

*Note - Credit discussion of “balancing theorists” e.g. Bentham, Jhering, Pound.*

*Note - take account of breadth and depth*

- (B) **Discussion of the extent to which 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 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 an injunction to restrain a private nuisance, while the precise balance achieved was to refuse the injunction, thereby favouring the public interest).

(AO1 = 15; AO2 = 15; AO3 = 5)

### Assessment Objective coverage

LAW 04	AO1	AO2	AO3
<b>Section A</b>			
Question 01	10	15	
Question 02	10	15	
Question 03	10	15	
Question 04	10	15	
<b>Section B</b>			
Question 05	10	15	
Question 06	10	15	
Question 07	10	15	
Question 08	10	15	
<b>Section C</b>			
Question 09	15	15	5
Question 10	15	15	5
Question 11	15	15	5
<b>Total marks</b>	35	45	5