

# GCE 2004

## *June Series*



# Mark Scheme

## Law

### *(Subject Code LAW3)*

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

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

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*Dr Michael Cresswell Director General*

## Assessment Objectives One and Two

### **General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of candidates, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.*

### **Positive Marking**

*You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as candidates penalise themselves in terms of the time they have spent.*

### **Mark Range**

*You should use the whole mark range available in the mark scheme. Where the candidate's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the candidate's answer does not deserve credit, then no marks should be given.*

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

*When reading an essay it is useful to 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 candidate. When you have finished reading the essay, therefore, think top-down, rather than bottom-up. In other words, has the candidate's overall answer met the requirements for the top level? If not, the next level?*

### **Citation of Authority**

*Candidates will have been urged to use cases 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

The Code of Practice for GCSE, GCSE in vocational subjects, GCE, VCE and GNVQ requires the assessment of candidates' quality of written communication wherever they are required to write in continuous prose. In this unit, this assessment will take place by marking the candidate's script as a whole, by means of the following criteria:

- Level 3** Moderately complex ideas are expressed clearly and reasonably fluently, through well linked sentences and paragraphs. Arguments are generally relevant and well structured. There may be occasional errors of grammar, punctuation and spelling. **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**

**1****Total for this question: 25 marks**

- (a) Criminal liability generally depends on proof of *actus reus* including causation and *mens rea*. Briefly explain and illustrate what is meant by these three terms. (15 marks)

**Potential Content**

- (A) Explanation and illustration of *actus reus*, eg guilty act, omissions, state of affair, voluntary act
- (B) Explanation and illustration of causation, eg factual (but for) and legal causation (significant contribution)
- (C) Explanation and illustration of *mens rea*, intention (direct/oblique), recklessness (subjective)

NB In each of (A)-(C), account should be taken of the balance between breadth and depth

**Mark Bands**

- 12 – 15 The candidate deals with (A)-(C) as follows:  
**max 15:** two sound, one clear  
**max 13:** one sound, two clear  
**max 12:** three clear **or** two sound **or** one sound, one clear, one some
- 8 – 11 The candidate deals with (A)-(C) as follows:  
**max 11:** two clear, one some  
**max 10:** one sound **or** two clear **or** one clear, two some  
**max 9:** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 – 7 The candidate begins to display some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate introduces material across the range it will be superficial.
- 1 – 3 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

(b) Discuss Richard's criminal liability for the incident involving Sally.

(10 marks)

**Potential Content**

(A) Appropriate explanation of assault and of battery and/or abh

(Note that an explanation of abh (s47) requires an explanation of the assault or battery.)

(B) Application to the facts of the problem and conclusion

**Mark Bands**

- 8 – 10            The candidate deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some.
- 5 – 7            The candidate deals with (A) and (B) as follows:  
**max 7:** sound (A) **or** two clear  
**max 6:** one clear, one some  
**max 5:** clear (A) **or** two some.
- 3 – 4            The candidate demonstrates some capacity for explanation and/or application but neither is clear.
- 1 – 2            The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0                The answer contains no relevant information.

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**2****Total for this question: 35 marks**

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- (a) In relation to the law of negligence, discuss whether XS Limited owes a duty of care to Yannick and Zoe. (10 marks)

**Potential Content**

- (A) Explanation of duty of care, eg neighbour principle, Caparo 3-part test
- (B) Application to the facts of the problem and conclusion

**Mark Bands**

- 8 - 10            The candidate deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some
- 5 - 7            The candidate deals with (A) and (B) as follows:  
**max 7:** sound (A) **or** two clear  
**max 6:** one clear, one some  
**max 5:** clear (A) **or** two some.
- 3 - 4            The candidate demonstrates some capacity for explanation and/or application but neither is clear.
- 1 - 2            The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0                The answer contains no relevant information.

- (b) Explain how the law decides whether a loss is too **remote** to be recovered. Apply the rules on **remoteness of damage** to the losses suffered by Yannick and Zoe. (15 marks)

### Potential Content

- (A) Explanation of remoteness of damage, eg Wagon Mound; factors affecting remoteness – foreseeability, type and extent of damage, thin skull. (Explanation of factual causation may be credited.)
- (B) Application of remoteness of damage and conclusion

### Mark Bands

- 12 - 15            The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear  
**max 12:** sound (A), some (B) **or** two clear
- 8 - 11            The candidate deals with (A) and (B) as follows:  
**max 11:** sound (A)  
**max 9:** one clear, one some  
**max 8:** one clear (A) **or** two some.
- 4 - 7            The candidate begins to display some understanding by introducing discussion of any of the material in (A) and (B). Where the candidate introduces material across the range it will be superficial.
- 1 - 3            The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0                The answer contains no relevant information.

- (c) Explain how the court would **calculate** an award of **damages (compensation)** to Yannick.  
(10 marks)

### Potential Content

- (A) Explanation of damages, eg purpose, general and special damages (eg loss of earnings, loss of amenity, expenses occurred), mitigation, structure of awards

NB Account should be taken of the balance between breadth and depth

- (B) Application to the facts and conclusion

### Mark Bands

- 8 - 10 The candidate deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some.
- 5 - 7 The candidate deals with (A) and (B) as follows:  
**max 7:** sound (A) **or** two clear  
**max 6:** one clear, one some  
**max 5:** clear (A) **or** two some.
- 3 - 4 The candidate demonstrates some capacity for explanation and/or application but neither is clear.
- 1 - 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level Law (LAW3)**

<b>UNIT 3</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
Question 1 (a)	8	7	1
Question 1 (b)	4	6	1
Question 2 (a)	4	6	1
Question 2 (b)	8	7	1
Question 2 (c)	4	6	1
AO3 (Quality of written communication for the paper as a whole)			5
<b>Total marks</b>	28	32	5
<b>% of AS</b>	17	20.5	2.5
<b>% of the A Level</b>	8.5	10.25	1.25