

# GCE 2004

## *June Series*



# Mark Scheme

## Law

### *(Subject Code LAW6)*

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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*

**General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of candidates, mainly 18 years old, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.*

**Positive Marking**

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

**Mark Range**

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

**Levels of Response for Essay Marking**

*When reading an 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:

- |                |   |                   |
|----------------|---|-------------------|
| <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>8-10 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>4-7 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>1-3 marks</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>    |

**1****Total for this question: 30 marks**

Write a critical analysis of the role of judges in interpreting and developing **both** the common law **and** statutory rules. *(30 marks)*

**Potential Content**

- (A) Brief explanation of the doctrine of precedent. Consideration of the ways in which, and extent to which, judges can develop the law despite the apparent constraints of the doctrine of precedent (eg, distinguishing, reinterpretation of ratio, overruling, flexibility available to House of Lords because of the Practice Statement)
- (B) Brief explanation of the approach to statutory interpretation. Consideration of the extent of the flexibility available to judges in statutory interpretation (eg, the inherent problems in certainty of language, unforeseen changes or events, choice of different approaches to interpretation)
- (C) Evaluation of the role of the judges (especially in terms of possible creativity) in view of (A)-(B)
- (D) Identification of appropriate area(s) of law and use of relevant examples

**Mark Bands**

- 26 – 30 The candidate presents a sound examination of the issues which incorporates all four elements (A)-(D). There may be some imbalance in treatment across the elements (for example, (A) may be more extensively treated than (B), or vice versa) but this will not undermine the quality of the explanation and evaluation offered.
- 21 - 25 The candidate incorporates (D) and develops sound explanation of (A) or (B) but approaches the other rather more hesitantly whilst still presenting a rounded evaluation in (C)  
**or**  
incorporates (D) and develops a strong emphasis on flexibility and evaluation in (A)-(C) without establishing a sound framework of explanation  
**or**  
deals confidently with (A)-(C) but does not fully succeed in integrating examples in (D) into the explanation and evaluation (again, in all of the above, there may be greater emphasis on common law than on statute). (**Max 23** where the answer deals thoroughly with the issues by reference to precedent/common law or statutory interpretation).
- 16 - 20 The candidate presents a clear explanation of (A) with (D) and some (C) or a clear explanation of (B) with (D) and some (C)  
**or**  
presents sound explanation of (A)-(B) and incorporates (D) but is unable to present the evaluation required in (C)  
**or**  
develops some explanation and evaluation in (A)-(C) with some use of (D).

- 11 - 15      The candidate presents sound discussion of (A) or (B) (accompanied, at the higher end of the band, by some (D))  
**or**  
attempts to develop the evaluative approach in (C) against an inadequate framework of explanation in either (A) or (B)  
**or**  
seeks to develop explanation and evaluation largely by way of (D) but in which aspects of explanation and evaluation do emerge  
**or**  
the candidate attempts to deal with the range of material but explanation and evaluation are not developed and (D) is not properly utilised so that the answer tends to lack coherence.
- 6 – 10      The candidate displays some understanding by introducing discussion of any of the material in (A)-(D). Where the candidate attempts to deal with a range of material from (A)-(D), explanation and evaluation will be superficial and may show significant confusion, whilst examples will be poorly expressed or not well related to the explanations and evaluation.
- 1 – 5      The answer consists of brief, fragmented comments or examples so that no coherent explanation or evaluation emerge  
**or**  
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0            The answer contains no relevant information.

2

**Total for this question: 30 marks**

“It is a principle of fundamental importance in English law that there should be no liability without fault.”

Consider how far fault **is** an essential requirement of liability in English law, and discuss the suggestion that fault **should** be an essential requirement. *(30 marks)*

### Potential Content

- (A) Explanation of the possible meaning of fault, expressed at a general level and adapted as appropriate to a criminal or civil law context (or incorporating both). Consideration of the "is" issue: discussion of the extent of the requirement for fault in the chosen area(s) - both in civil and criminal law, this will involve discussion not only of fault requirements (including variations in the degree of fault) but also some discussion of liability in the absence of fault (strict liability and, perhaps, vicarious liability)
- (B) Consideration of the "should" issue: discussion of the importance of fault and whether (and if so, why) it is acceptable to dispense with it in some or all instances
- (C) Identification of appropriate area(s) of law and use of relevant examples

### Mark Bands

- 26 – 30 The candidate presents a sound examination of the issues which incorporates all three elements (A)-(C), and soundly relates conclusions to reasons. There may be some imbalance in treatment across the elements but this will not undermine the quality of the explanation and analysis offered.
- 21 - 25 The candidate demonstrates sound understanding of any **two** of (A)-(C) with reference to the third  
**or**  
all **three** elements are dealt with but the explanations are not fully developed or not related to each other or to the conclusions in a fully coherent way.
- 16 - 20 The candidate demonstrates sound understanding of **one** of (A)-(C) with reference to another  
**or**  
the candidate demonstrates clear understanding of any **two** of (A)-(C)  
**or**  
there is some discussion of all **three** of (A)-(C).
- 11 - 15 The candidate presents a clear discussion of any **one** of the elements (A)-(C)  
**or**  
the candidate attempts to deal with the range of material but explanation and analysis are not developed and (C) is not properly utilised so that the answer tends to lack coherence.
- 6 – 10 The candidate displays some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate attempts to deal with a range of material from (A)-(C), explanations will be superficial and may show significant confusion, whilst examples will be poorly expressed or not well related to the explanations.

- 1 – 5      The answer consists of brief, fragmented comments or examples so that no coherent explanation or analysis emerge  
**or**  
a more substantial attempt at explanation and analysis is fundamentally undermined by mistakes and confusion.
- 0            The answer contains no relevant information.

3

**Total for this question: 30 marks**

What is meant by “justice”? Consider to what extent law promotes justice.	(30 marks)
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**Potential Content**

- (A) Explanation of the different possible meanings of 'justice' - from the simple 'fairness' approach to distinctions between procedural and substantive justice, perhaps taking account of the views of philosophers
- (B) Evaluation of the extent to which law promotes justice, which carefully relates (A) to (C)
- (C) Analysis of relevant area(s) of law with use of appropriate examples

**Mark Bands**

- 26 – 30 The candidate presents a sound examination of the issues which incorporates all three elements (A)-(C), and soundly relates (A) to (C) in making the evaluation in (B).
- 21 – 25 The candidate presents an examination of all three elements but there is some weakness in one which prevents the account from being fully rounded (for example, there is a little hesitancy in the discussion of (A)  
**or**  
the examples chosen in (C) are not properly integrated into the analysis  
**or**  
the evaluation in (B) does not quite succeed in relating (A) to (C)).
- 16 – 20 The candidate develops sound explanation of (A) or (C) without being able to develop explanation of the other sufficiently to permit a fully coherent evaluation in (B)  
**or**  
develops sound explanation of (A) and (C) but does not attempt the evaluation in (B) (**max 18**)  
**or**  
attempts to deal with all three elements but with some degree of superficiality or confusion.
- 11 – 15 The candidate presents sound explanation of (A) or (C)  
**or**  
there is an attempt to develop the answer largely by way of (B) against an inadequate framework of explanation in (A) and/or (C)  
**or**  
the candidate attempts to deal with all three elements but neither explanation nor evaluation are properly developed or related to each other so that the answer tends to lack coherence.
- 6 – 10 The candidate displays some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate attempts to deal with a range of material from (A)-(C), explanations will be superficial and may show significant confusion, whilst evaluation will be poorly expressed and not well related to the explanations.

- 1 – 5      The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge  
**or**  
a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0            The answer contains no relevant information.

4

**Total for this question: 30 marks**

Write a critical analysis of the relationship between law and morals.
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(30 marks)
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**Potential Content**

- (A) Explanation of the relationship between law and morals: meaning and nature of legal and moral rules; similarities and differences between legal and moral rules; areas of overlap; areas where each is distinct. Appropriate examples and illustration.
- (B) Evaluation of the relationship – theoretical and/or specific analysis (eg Hart/Devlin debate, criticism of particular decisions)

**NB** A good theoretical evaluation may be **sound** even in the absence of examples/illustration.

**Mark Bands**

- 26 – 30    Sound (A) and (B)  
          **or**  
          sound on one, clear on the other (**max 26**).
- 21 – 25    Sound on one, some on the other (**max 23**)  
          **or**  
          clear on both.
- 16 – 20    Sound on one (**max 18** if no (B))  
          **or**  
          clear on one, some on the other.
- 11 – 15    Clear on one  
          **or**  
          some on both (**max 11** for one).
- 6 – 10    Some on one.
- 1 – 5    The answer consists of brief, fragmented comments or examples so that no coherent explanation and evaluation emerge  
          **or**  
          a more substantial attempt at explanation and evaluation is fundamentally undermined by mistakes and confusion.
- 0    The answer contains no relevant information.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Level Law (LAW6)**

<b>UNIT 6</b>	<b>AO1</b> <b>No. of Marks</b>	<b>AO2</b> <b>No. of Marks</b>	<b>AO3</b> <b>No. of Marks</b>
Question 1	20	10	
Question 2	20	10	
Question 3	20	10	
Question 4	20	10	
	(x2 from 4)	(x2 from 4)	
AO3 (Quality of written communication for the paper as a whole)			10
<b>Total marks</b>	40	20	10
<b>% of the A2</b>	23	11	6
<b>% of the A Level</b>	11.5	5.5	3