



General Certificate of Education

Law 5161/6161

*LAW4 Criminal Law (Offences against the Person)
or Contract*

Mark Scheme

2006 examination – June series

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.

Assessment Objectives One and Two

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:

- 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. **8-10 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. **4-7 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. **1-3 marks**
- 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**

NOTE

In the mark scheme which follows, there are two standard mark band descriptors:

- The substantive law question mark bands – question parts (a) and (b);
- The evaluative question mark bands – question part (c).

The substantive and evaluative question mark bands are supplied for both a 3 Potential Content and a 2 Potential Content mark scheme, to be applied as appropriate. These mark bands are set out at the beginning and are to be applied to each relevant question part. They are not repeated for each question part.

Except where otherwise indicated, ‘sound’, ‘clear’ and ‘some’ refer to both explanation and application/evaluation. Where, for any element of potential content, one is achieved at the higher level but the other at a lower level, the overall description for that potential content will tend towards the lower level.

Substantive law question mark bands (3 Potential Content)

- 21 - 25 The candidate *soundly* explains and applies the rules of law in **two** of (A)-(C) (**max 21**), and *clearly* explains and applies the rules of law in the other (**max 23** for *some* explanation and application of rules of law in the other)
or
the candidate *soundly* explains and applies the rules of law in **one** of (A)-(C) and *clearly* explains and applies the rules of law in the other **two** (**max 21**).
- 16 - 20 The candidate *soundly* explains and applies the rules of law in **one** of (A)-(C), and *clearly* explains and applies the rules of law in another
or
the candidate *clearly* explains and applies the rules of law in any two of (A)-(C) (**max 18**) and presents *some* explanation and/or application of the other
or
the candidate presents *some* explanation and application of the rules of law in all three of (A)-(C) (**max 16**).
- 11 - 15 The candidate *soundly* explains and applies the rules of law in **one** of (A)-(C)
or
the candidate *clearly* explains and applies the rules of law in one of (A)-(C) and presents *some* explanation and/or application of the rules of law in any other one of (A)-(C)
or
the candidate presents *some* explanation and application of any two of (A)-(C) (**max 13**)
or
the answer focuses on explanation of rules of law with no significant application (**max 15** if *sound* on two or *clear* on three, **max 13** if *sound* on one or *clear* on two, **max 11** if *clear* on one or *some* on two)
or
the answer focuses on application to the facts with no significant legal framework (**max 12** where the answer displays a *sound* understanding of the elements of the analysis).
- 6 - 10 The candidate presents *some* explanation and/or application of any of the rules of law in (A)-(C).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and application can emerge
or
though the candidate attempts to explain and/or apply rules of law, the explanation and/or application are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

Substantive law question mark bands (3 Potential Content) – list of maximum marks

25	two sound, one clear
23	two sound, one some
21	two sound or one sound, two clear
20	one sound, one clear or two clear, one some (explanation and/or application))
18	one sound, one some or two clear
16	three some
15	one sound or two sound explanation or one clear, one some (explanation and/or application) or three clear explanation
13	one clear or one sound explanation or two clear explanation or two some
12	sound application
11	one clear explanation or two some explanation
10	one some explanation and/or application
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Note: it follows from the above that, however well the law is explained, answers which contain no application can never achieve more than 15 marks.

Substantive law question mark bands (2 Potential Content)

- 21 - 25 The candidate *soundly* explains and applies the rules of law in (A) and (B)
or
the candidate *soundly* explains and applies the rules of law in **one** of (A) and (B) and *clearly* explains and applies the rules of law in the other (**max 23**).
- 16 - 20 The candidate *soundly* explains and applies the rules of law in **one** of (A) and (B) (**max 18**), and presents *some* explanation and application of the other
or
the candidate *clearly* explains and applies the rules of law in both of (A) and (B)
or
the candidate *clearly* explains and applies the rules of law in **one** of (A) and (B) and presents some explanation and application of the other (**max 18**).
- 11 - 15 The candidate *clearly* explains and applies the rules of law in one of (A) and (B)
or
the candidate presents *some* explanation and application of both of (A) and (B) (**max 13** if **one** only)
or
the answer focuses on explanation of rules of law with no significant application (**max 15** if *sound* on two, **max 13** if *sound* on one or *clear* on two, **max 11** if *clear* on one or *some* on two)
or
the answer focuses on application to the facts with no significant legal framework (**max 12** where the answer displays a *sound* understanding of the elements of the analysis).
- 6 - 10 The candidate presents *some* explanation and/or application of any of the rules of law in (A) and (B).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and application can emerge
or
though the candidate attempts to explain and/or apply rules of law, the explanation and/or application are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

Substantive law question mark bands (2 Potential Content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some or two clear
18	one sound or one clear, one some
15	one clear or two some or two sound explanation
13	one some or one sound explanation or two clear explanation
12	sound application
11	one clear explanation or two some explanation
10	one some explanation and/or application
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Note: it follows from the above that, however well the law is explained, answers which contain no application can never achieve more than 15 marks.

Evaluative question mark bands (3 Potential Content)

- 21 - 25 The candidate *soundly* evaluates relevant aspects of the rules of law in **two** of (A)-(C) (*max 21*) and *clearly* evaluates relevant aspects of the rules of law in the other (*max 23* for *some* evaluation of the other)
or
the candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(C) and *clearly* evaluates relevant aspects of the rules of law in the other two (*max 21*).
- 16 - 20 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(C) and *clearly* evaluates relevant aspects of the rules of law in **one** other
or
the candidate *clearly* evaluates relevant aspects of the rules of law in **two** of (A)-(C) (*max 18*) and presents *some* evaluation of the other
or
the candidate presents *some* evaluation of the rules of law in all of (A)-(C) (*max 16*).
- 11 - 15 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(C)
or
the candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A)-(C) (*max 13*) and presents *some* evaluation of relevant aspects of the rules of law in **one** other
or
the candidate presents *some* evaluation of relevant aspects of the rules of law in **two** of (A)-(C) (*max 13*).
- 6 - 10 The candidate presents *some* evaluation of relevant aspects of the rules of law in any of (A)-(C).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and evaluation can emerge
or
though the candidate attempts to explain and/or evaluate relevant rules of law, the explanation and/or evaluation are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

Evaluative question mark bands (3 Potential Content) – list of maximum marks

25	two sound, one clear
23	two sound, one some
21	two sound or one sound, two clear
20	one sound, one clear or two clear, one some
18	one sound, one some or two clear
16	three some
15	one sound or one clear, one some
13	one clear or two some
10	one some
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Evaluative question mark bands (2 Potential Content)

- 21 – 25 The candidate *soundly* evaluates relevant aspects of the rules of law in (A) and (B)
or
the candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A) and (B) and *clearly* evaluates relevant aspects of the rules of law in the other (**max 23**).
- 16 – 20 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A) and (B) (**max 18**) and presents *some* evaluation of the other
or
the candidate *clearly* evaluates relevant aspects of the rules of law in both of (A) and (B)
or
the candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A) and (B) and presents *some* evaluation of the other (**max 18**).
- 11 – 15 The candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A) and (B)
or
the candidate presents *some* evaluation of relevant aspects of the rules of law in both of (A) and (B) (**max 13 for one**).
- 6 – 10 The candidate presents *some* explanation and/or evaluation of relevant aspects of the rules of law in either of (A) and (B).
- 1 – 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation or evaluation can emerge
or
though the candidate attempts to explain and/or evaluate rules of law, the explanation and/or evaluation are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

Evaluative question mark bands (2 Potential Content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some or two clear
18	one sound or one clear, one some
15	one clear or two some
13	one some
10	one some explanation and/or evaluation
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Maxima

Substantive law question mark bands (3 potential content) – list of maximum marks

25	two sound, one clear
23	two sound, one some
21	two sound or one sound, two clear
20	one sound, one clear or two clear, one some (explanation and/or application)
18	one sound, one some or two clear or one clear, two some
16	three some
15	one sound or two sound explanation or one clear, one some (explanation and/or application or three clear explanation
13	one clear or one sound explanation or two clear explanation or two some
12	sound application
11	one clear explanation or two some explanation
10	one some explanation and/or application
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Substantive law question mark bands (2 potential content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some or two clear
18	one sound or one clear, one some
15	one clear or two some or two sound explanation
13	one some or one sound explanation or two clear explanation
12	sound application
11	one clear explanation or two some explanation
10	one some explanation and/or application
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Evaluative question mark bands (3 potential content) – list of maximum marks

25	two sound, one clear
23	two sound, one some
21	two sound or one sound, two clear
20	one sound, one clear or two clear, one some
18	one sound, one some or two clear
16	three some
15	one sound or one clear, one some
13	one clear or two some
10	one some
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Evaluative question mark bands (2 potential content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some or two clear
18	one sound or one clear, one some
15	one clear or two some
13	one some
10	one some explanation and/or evaluation
05	relevant fragments or relevant but incoherent
00	completely irrelevant

Descriptors

Level	Explanation	Application
sound	The answer correctly identifies and accurately explains the relevant rule(s) in the central aspects of the potential content. Where appropriate, the explanations are supported by relevant statutory and/or case authority and illustration (which is adequately developed where necessary to explain the <i>ratio</i> and/or assist in the application to the facts). Where there are more marginal aspects of the rules, there may be some minor omissions or inaccuracies in the explanation of the rule(s) and/or supporting statutory/case authority and illustration.	The answer selects and emphasises the relevant facts from the scenario and makes close reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. Where appropriate, the application explores the effect of different interpretations of the rule(s) and/or of conflicting rules and/or of different interpretations of the facts. The solution suggested is clearly based on the explanation and application of the rules and is sustainable.
clear	The answer correctly identifies and accurately explains significant parts of the rule(s) in the central aspects of the potential content, though there are omissions of some part(s) of the rule(s), or errors in the explanation, in those central aspects. There may be a little overemphasis on marginal aspects of the rules at the expense of some of the more central aspects. In the higher part of the level, statutory and/or case authority 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 statutory and/or case authority and illustration or more evident inaccuracies.	The answer selects and emphasises some of the relevant facts from the scenario and makes reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. The application, though otherwise persuasive, may fail to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts) or there may be a little error or confusion in the application to the facts. The solution suggested is broadly based on the explanation and application of the rules, though there may be some evident weakness.
some	The answer correctly identifies and accurately explains a very limited part of the relevant rule(s) 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 rule(s). Alternatively, the answer explains a more substantial part of the relevant rule(s) 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 case authority and illustration. If introduced at all, statutory and/or case authority and illustration may be of marginal relevance or the explanation may be highly superficial or subject to significant inaccuracies or not properly used to support the explanation of the relevant rule(s).	The answer selects and emphasises one or two relevant facts from the scenario and makes reference to them without being able to suggest a coherent application. More broad-ranging attempts to identify and make reference to relevant facts display confusion or error. Alternatively, the answer tends to make simple assertions or assumptions about the way in which the rule(s) apply to the facts, so that application is general and unspecific, being unrelated to particular facts. The application fails to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts). Little use is made of whatever statutory or case authority and illustration is incorporated in explanations. The solution suggested is only imprecisely related to the explanation of the rule(s).

Criminal Law (Offences against the Person)

1

Total for this question: 75 marks

- | |
|--|
| (a) Discuss the criminal liability of Andy in connection with the incident in the bar and the injury to Dora. (25 marks) |
|--|

Potential Content

- (A) The bar incident – possible offence of assault: words, fear of immediate personal violence, intention or recklessness as to causing such fear. The notion of ‘unlawful’ and the possible defence of self-defence – the threat of force by use of a (non-existent) gun as necessary and proportionate

Note: discussion of assault without ‘unlawfulness’ is max *clear*; discussion of self-defence/prevention of crime without assault is max *some*.

- (B) The injury to Dora – there are possible offences of unlawful and malicious wounding/infliction of gbh (s20 Offences Against the Person Act 1861), of s18 and of assault occasioning actual bodily harm

Note: for a sound treatment, candidates should demonstrate some recognition of the range of possibilities, both by dealing with wounding and with abh or gbh. For highest marks (23-25), there should be some reference to a possible s18 offence.

Credit may be given to discussion of self-defence (though duress of circumstances, which is not included in the specification and should not be credited, is the more likely defence) but the application should conclude that the use of force is probably not necessary. If self-defence has been explained and applied in relation to (A), above, then credit also any application which applies to (B).

- | |
|--|
| (b) Discuss the criminal liability of Colin and of Elaine for the involuntary manslaughter of Freddy. (25 marks) |
|--|

Potential Content

- (A) Colin – possible unlawful act manslaughter, requiring discussion of the elements of unlawful act manslaughter and an analysis of the causation issue

- (B) Elaine – possible gross negligence manslaughter, requiring discussion of the elements of gross negligence manslaughter and, in particular, breach of duty and whether the conduct was ‘so bad in all the circumstances’

Note: treat as max 20 (one sound, one some) discussions of (A) and (B) as gross negligence manslaughter or, equally, though much more awkwardly, discussions of (A) and (B) as unlawful act manslaughter (any unlawful act by Elaine will be a driving offence of negligence, and so not within the range of qualifying unlawful acts).

In (B), credit discussion of ‘mistake’ (pedals), as relevant to breach and/or the requirement for conduct ‘so bad in all the circumstances’. Similarly, credit attempts to categorise Elaine’s conduct as automatism (not sustainable).

(c) Choose **one** of the following:

In relation to murder (including voluntary manslaughter), discuss the suggestion that the current law is satisfactory and is **not** in need of reform. (25 marks)

OR

In relation to involuntary manslaughter, discuss the suggestion that the current law is satisfactory and is **not** in need of reform. (25 marks)

OR

In relation to non-fatal offences against the person, discuss the suggestion that the current law is satisfactory and is **not** in need of reform. (25 marks)

Potential Content

Murder and voluntary manslaughter

- (A) General structural issues – the relationship between murder and manslaughter, the mandatory penalty of life imprisonment, should homicide be more or less structured
- (B) Murder issues – the elements of murder: *actus reus* and *mens rea*
- (C) Partial defence (voluntary manslaughter) issues

Involuntary manslaughter

- (A) Unlawful act issues
- (B) Gross negligence issues
- (C) General overview issues (such as scope of involuntary manslaughter, relationship with rest of homicide – discussion of liability of corporations is not required but will be credited)

Non-fatal offences

- (A) Structural issues (connected, for instance, with sentencing), and language and associated issues
- (B) Specific *actus reus* and *mens rea* issues

Note: In discussing murder and voluntary manslaughter, or involuntary manslaughter, candidates may obtain maximum marks by dealing either with two or with three pc items in any of the above options. Those who deal with three will be expected to introduce less detail than those who deal with two. However, irrespective of the number of pc items dealt with, candidates should be marked on whichever of the schemes gives the greater credit.

2

Total for this question: 75 marks

(a)	Discuss Helen's criminal liability for the injuries to Joanne and Ian.	(25 marks)
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Potential Content

- (A) The injury to Joanne – probable offence of assault (battery) occasioning actual bodily harm. Discussion of causation aspects, as well as prima facie *mens rea*. Possible reference to assault in Joanne's initial fear of a collision. [Some credit for (rather unlikely) s20]
- (B) The injury to Ian – possible offences of wounding or inflicting/causing gbh under s20 and/or s18 (discussion of assault occasioning abh is not required. On its own, it is a lesser alternative meriting no more than description as *some* discussion)
- (C) In relation to both incidents – the defence of (involuntary) intoxication: the elements of the defence and, in particular, the requirement that the intoxication should have prevented formation of *mens rea*

(b)	Discuss George's criminal liability for the murder of Kim.	(25 marks)
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Potential Content

- (A) Murder and the malice aforethought issue – intention to kill or cause serious injury, the meaning of intention (direct and oblique). Note that no particular issue about *actus reus* arises, so that this can be dealt with as a matter of simple definition
- (B) Possible defence of provocation, involving aspects of both the subjective and objective tests – provocative conduct, loss of self-control, time-delay, personality defect as a characteristic attributable or not attributable to the reasonable man
- (C) Possible defence of diminished responsibility – abnormality of mind attributable to personality defect, substantial impairment of responsibility. (Insanity is a possible alternative defence, though the argument should make it clear that it is very unlikely to succeed)

(c) Choose **one** of the following:

In relation to murder (including voluntary manslaughter), discuss the suggestion that the current law is satisfactory and is **not** in need of reform. (25 marks)

OR

In relation to involuntary manslaughter, discuss the suggestion that the current law is satisfactory and is **not** in need of reform. (25 marks)

OR

In relation to non-fatal offences against the person, discuss the suggestion that the current law is satisfactory and is **not** in need of reform. (25 marks)

Potential Content

Murder and voluntary manslaughter

- (A) General structural issues – the relationship between murder and manslaughter, the mandatory penalty of life imprisonment, should homicide be more or less structured
- (B) Murder issues – the elements of murder: *actus reus* and *mens rea*
- (C) Partial defence (voluntary manslaughter) issues

Involuntary manslaughter

- (A) Unlawful act issues
- (B) Gross negligence issues
- (C) General overview issues (such as scope of involuntary manslaughter, relationship with rest of homicide – discussion of liability of corporations is not required but will be credited)

Non-fatal offences

- (A) Structural issues (connected, for instance, with sentencing), and language and associated issues
- (B) Specific *actus reus* and *mens rea* issues

Note: In discussing murder and voluntary manslaughter, or involuntary manslaughter, candidates may obtain maximum marks by dealing either with two or with three pc items in any of the above options. Those who deal with three will be expected to introduce less detail than those who deal with two. However, irrespective of the number of pc items dealt with, candidates should be marked on whichever of the schemes gives the greater credit.

Contract Law

3

Total for this question: 75 marks

- | |
|---|
| (a) Discuss the rights, duties and remedies of Liz, of Mike and of Nigel in connection with the agreement for the re-spraying of Liz's car, and the damage to the seats. <i>(25 marks)</i> |
|---|

Potential Content

- (A) Formation issues in relation to Mike: simple explanation of making of agreement, including whether exclusion clause has been incorporated by agreement; detailed explanation of consideration aspects (performance of existing duty)
- (B) Exercise of rights issues – outline of privity and statutory approach in relation to Liz. Remedies, including an outline of the effect of the exclusion clause on liability

- | |
|--|
| (b) Having regard to the relevant rules on misrepresentation and on breach of contract, consider the rights and remedies which may be available to Peter in connection with his purchase of the car from Liz. <i>(25 marks)</i> |
|--|

Potential Content

- (A) Breach – the question whether the 'service history' is a term of the contract and, if so, the status of the term as condition or otherwise. Remedies for breach
- (B) Misrepresentation – the meaning of an actionable misrepresentation, and the different kinds. Remedies for misrepresentation

(c) Choose **one** of the following:

Relating your answer to the rules on offer and acceptance, what criticisms would you make of the rules on formation of contracts? *(25 marks)*

OR

Relating your answer to the rules on consideration, what criticisms would you make of the rules on formation of contracts? *(25 marks)*

OR

Relating your answer to the rules on intention to create legal relations, what criticisms would you make of the rules on formation of contracts? *(25 marks)*

Potential Content

Offer and acceptance

- (A) Issues concerning offers: for example, problems of distinguishing between offers and invitations to treat, and between counter offers and requests for further information; rules on withdrawal of offers
- (B) Issues concerning acceptance: for example, in different forms of communication, such as face-to-face, electronic and via the postal service; interpretation of prescriptive forms of acceptance

Note: these issues may be approached as part of a consideration of broader problems, such as the ‘battle of the forms’ or the difficulties in adapting the rules to cope with new technology.

Consideration

- (A) Issues concerning adequacy of consideration
- (B) Issues concerning sufficiency (past consideration, existing duties as consideration)

Intention to create legal relations

- (A) General issues concerning the need for intention and the relationship with consideration
- (B) Issues concerning the classification of agreements and the associated presumptions

4

Total for this question: 75 marks

- | |
|--|
| (a) Consider what rights and remedies, if any, are available to Rob and to Sam arising out of the dealings over the Demon Printer and the printer cartridges. <i>(25 marks)</i> |
|--|

Potential Content

- (A) Explanation of the rules concerning offers and invitations to treat – advertisement of unique item likely to be an invitation to treat, that of numerous, replaceable items could be an offer. Rob’s e-mail as a counter offer for the printer – the issue of what is included in his offer (is the delivery a requirement of the offer)
- (B) Explanation of the rules on acceptance – has Sam replied in time and by an appropriate method, does his ‘acceptance’ represent a counter offer in relation to delivery? Has Sam accepted an offer to buy the printer cartridges (taking account of the analysis in (A))? Discussion of the remedy of damages

Note: discussion of damages can be credited in either (A) or (B), where more appropriate to enhance marks.

- | |
|--|
| (b) Having regard to the relevant rules on termination of contracts by breach and by frustration, consider the rights and remedies which may be available to Rob and to the Queen’s Hotel if Rob refuses to stay at the hotel and to make any further payment, and demands the return of his deposit. <i>(25 marks)</i> |
|--|

Potential Content

- (A) Consideration of the rules on termination by breach, including anticipatory breach and the nature and status of the term, and of the remedies available (here, essentially, damages)
- (B) Consideration of the rules on termination by frustration of contract (especially in the context of frustration of the common venture). Consideration of the remedies available for termination by frustration, referring to the statutory requirements under the Law Reform (Frustrated Contracts) Act 1943

(c) Choose **one** of the following:

Relating your answer to the rules on offer and acceptance, what criticisms would you make of the rules on formation of contracts? *(25 marks)*

OR

Relating your answer to the rules on consideration, what criticisms would you make of the rules on formation of contracts? *(25 marks)*

OR

Relating your answer to the rules on intention to create legal relations, what criticisms would you make of the rules on formation of contracts? *(25 marks)*

Potential Content

Offer and acceptance

- (A) Issues concerning offers: for example, problems of distinguishing between offers and invitations to treat, and between counter offers and requests for further information; rules on withdrawal of offers
- (B) Issues concerning acceptance: for example, in different forms of communication, such as face-to-face, electronic and via the postal service; interpretation of prescriptive forms of acceptance

Note: these issues may be approached as part of a consideration of broader problems, such as the ‘battle of the forms’ or the difficulties in adapting the rules to cope with new technology.

Consideration

- (A) Issues concerning adequacy of consideration
- (B) Issues concerning sufficiency (past consideration, existing duties as consideration)

Intention to create legal relations

- (A) General issues concerning the need for intention and the relationship with consideration
- (B) Issues concerning the classification of agreements and the associated presumptions

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

A Level Law (LAW4)**(One question to be answered from 4)**

UNIT 4	AO1	A02	AO3
Question 1 (a)	7	18	10
Question 1 (b)	7	18	
Question 1 (c)	7	18	
Question 2 (a)	7	18	10
Question 2 (b)	7	18	
Question 2 (c)	7	18	
Question 3 (a)	7	18	10
Question 3 (b)	7	18	
Question 3 (c)	7	18	
Question 4 (a)	7	18	10
Question 4 (b)	7	18	
Question 4 (c)	7	18	
Total marks	21	54	10
% of the A2	7.5	19	3.5
% of the A Level	3.75	9.5	1.75