

Edexcel International
London Examinations
GCE Advanced Level

Mark Scheme with Examiners' Report

**London Examinations Advanced Level GCE in
Law (9345)**

June 2002

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Marking Bands and Chief Examiner's Report
June 2002

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Marking Bands

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Grade Boundaries

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A LEVEL LAW 9345, MARK SCHEME

General Marking Bands

What follows is an attempt to identify the different types of responses in each mark band. It is intended that it should be read in conjunction with the indicative marking content for each question.

Marks 25–22 An excellent answer. Presents a well-structured response to the question ; classification and an excellent approach to problem solving with a particular strength in the use of legal authority together with a demonstrable awareness of matters of legal controversy and law reform. Demonstrates an ability to appraise and criticise the application of legal principles across different branches of law.

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

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

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

Marks 16-13 A good answer. Demonstrates a sound knowledge and understanding of problem solving. Quotes some appropriate legal authority. Demonstrates a sound knowledge of some of the relevant issues raised by the question and shows awareness of current controversies and legal reform. Identifies significant points in the marking scheme but with some imbalance in the treatment of issues raised by the question.

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

Marks 12-8 A satisfactory answer. Presents an answer which demonstrates some knowledge of different branches of law, with some understanding shown also of legal classification. Although awareness of current controversies and reform issues is demonstrated, answers are more descriptive than analytical.

The candidate will express straightforward ideas clearly, if not always fluently. Sentences and paragraphs may sometimes not be well connected. Arguments may sometimes stray from the point or be weakly presented. There may be some errors of grammar, punctuation and spelling, but not such to suggest a weakness in these areas.

Marks 7-4 A basic answer. Presents an attempt to deal with the question with a superficial understanding of appropriate branches of law. Gives evidence of a little awareness of issues of controversy and reform. Answers may be common sense with simple conclusions and little law.

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

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

PAPER 1

PART ONE

Question 1

This question requires examination of the debate between natural lawyers and positivists, along with exposition of the degree to which law and morality overlap. Answers which focus primarily or exclusively on the Hart/Devlin debate and the enforcement of morals will not gain marks in the higher achievement bands, especially if there is no attempt to relate the debate to the terms of the question.

Question 2

Candidates will be expected to display knowledge of the different philosophical justifications of punishment, such as retribution, deterrence, reformation. Coupled with this will be the ability to link theory to sentencing practice, and credit will be given for use of relevant examples.

Question 3

This question involves exposition of the range of remedies available in equity, and of the distinctive approach taken. Credit will be given for exposition of the deficiencies of the common law. Although the question is set in the present tense, historical analysis of the role of equity can form part of the answer.

Question 4

The expectation is that candidates will be familiar with recent changes in human rights law such as the Human Rights Act 1998, but the formulation is broad enough to embrace changes in other jurisdictions apart from the UK. So far as the 1998 Act is concerned, credit is to be given for understanding and exposition of the purpose of the Act, and any case law involving the Act.

Question 5

This question is a combination of description of the main elements of legal personality and evaluation of the merits and demerits of the concept. Areas of debate such as the nature of corporate personality in connection with the criminal law should be explored to obtain marks in the higher achievement bands.

PART TWO

Question 6

Candidates will be expected to offer an account of the leeways of interpretation left by the traditional canons of construction, and of more recent developments such as the decision in *Pepper v Hart* and the impact of the Human Rights Act 1998. Answers which are predominantly descriptive, and give an account of the various "rules" without linkage to the terms of the question, will not gain marks in the higher achievement bands.

Question 7

This question requires both exposition of the content of the doctrine of precedent at different levels in the hierarchy and analysis of the extent to which the putative conflict can be resolved. Candidates will be expected to have detailed knowledge of the rules affecting both the House of Lords and the Court of Appeal.

Question 8

This quotation requires exposition of the arguments both for and against the retention of the jury. Answers should include reference to literature and research on the role of the jury, and should contain reference to topical material such as the Auld report.

Question 9

Candidates will be expected to have both a detailed knowledge of the current rules on access to legal aid and assistance and awareness of any supposed deficiencies. Civil legal aid should not figure prominently in the answers, save for purposes of critical comparison.

Question 10

Credit is to be given here for coupling awareness of traditional writing on sovereignty such as Dicey with detailed knowledge of the impact of EU membership on domestic law.

PAPER 2

Section A: The Market

Question 1

Offer and Acceptance. Invitation to treat. Withdrawal of offer. Status of newspaper advertisements. Rules about the timing of offers, counter offers and acceptances. Legal status of telephone answering machines. Ways in which offers may be kept open. Withdrawal of offer. Validity of communications via third parties. Remedies.

Question 2

Status of bookings. Terms of contracts. Variation of terms on a unilateral basis. Exclusion clauses. Notice. Timing of notice. Reliance. Possibility of frustration should be considered. Supply of goods and services. Consumer Protection Act 1987. Foreign bodies in foodstuffs. Damage.

Question 3

Legal status of deposits. Position of K as agent for the L Finance Company. Position of defaulters. Statutory protection, if any available to J. Legality of forced entry and repossession. Practical and legal solutions/remedies.

Question 4

Status of sales items. Misrepresentation. Sale of Goods legislation and possible remedies. Consumer Protection Act 1987. Status of imported goods. Extent of statutory protection and remedies. Procedure.

Section B: The Workplace

Question 5

Written and oral terms. Best evidence rule. Employer duty to respect employees, to pay wages, to provide training and to act reasonably. Whether there are grounds for immediate dismissal without notice in this case. Breach of contract claims as opposed to unfair dismissal. Role of ACAS. Role of employment tribunal. Possible remedies if breach of contract claim succeeds.

Question 6

Employers' duties to employees at common law. Whether duties of employers extend to property belonging to employees. Maternity leave. Sick leave. Duties concerning work stress. Knowledge of previous illness. Criteria in the Walker and Petch cases. Grievance procedures. Quantum.

Question 7

Difference between direct and indirect sex discrimination. Sex Discrimination Act. Relevance of statistics in the case law. Discussion of case law concerning pools for comparison. Whether claims can be brought on grounds of age discrimination. Awareness of DTI code of conduct for Age Discrimination.

Question 8

Redundancy schemes. Possible schemes. Relevance of length of employment. Geographical test. Terms of early retirement packages. Role of ACAS. Unfair dismissal. Reasonableness of employer and employees.

Section C: The Family

Question 9

Status of couples living as separate households in the same establishment. Grounds for divorce. Duties of local authorities where children are reported to be at risk. Legal position of F and G and the duties they have in this situation. Consideration of children's best interests. Children Act.

Question 10

Legal position of J with regard to contract and future residence of the children. Children Act. Best interests of children. Check list. Responsibilities of people looking after someone else's children. Rights of grandparents.

Question 11

Distribution of property on divorce. Position of pension rights. Respective roles and contributions of partners within the marriage. Consideration of children and who is to care for them. Contract and residence orders. Best interests of children on divorce.

Question 12

Parental responsibilities. Permissions required for marriage. Relevance of age in relation to marriage. Consent to medical treatment, relevance of age. Practical steps involved.

Section D: The Criminal Offender

Question 13

Theft. Elements of the crime. Conspiracy. Criminal damage. Arson. Omissions to act when the result could be injury or loss of life. Intention. Mens rea and actus reus. Possible defences. Attempts (on D).

Question 14

Theft. Elements and definitions of possible crimes involved here. Mens rea and actus reus. Criminal damage. Fraud. Possible defences. Sentencing considerations.

Question 15

Duties of people in loco parentis. Offences against the person. Mens rea, actus reus. Failure to act. Possible manslaughter. Elements and definitions of crimes involved. Defences, if any. Sentencing. Relevance of age and nationality

Question 16

Definition and elements of the crimes involved here. Conspiracy. Intention. Offences against the person. Possible interpretations of 'Let him have it'. Criminal damage. Transferred malice. Compensation for criminal injuries. Difficulties relating to attempted theft and conditional intent.

Section E: The Individual, Civil Liberties and Rights under Private Law

Question 17

Public order offences. Definitions and elements of various offences. Special powers relating to sporting events. Powers of arrest and detention. Racist offences. Discussion of relevance of rules and the attempt to achieve a balance.

Question 18

Legal rules in legislation relating to meetings, marches and demonstrations. Public order legislation offences. Incitement. Wearing of uniforms. Common law. Possible highway nuisance and public nuisance. Possible racist behaviour and related offences. Powers of police. Discussion of balance.

Question 19

Powers of the police. Police and Criminal Evidence Act 1984 and Codes of Practice. Drug offences and police powers. Duties of custody officer. Position when there are large numbers of defendants. Possible civil remedies against the police. Police Complaints Authority.

Question 20

Discussion of libel, slander and injurious falsehood. Elements of these torts. Confidentiality. Elements of action for breach of confidence. Whether any defences apply. Malice. Remedies.

A LEVEL LAW JUNE 2002 EXAMINERS' REPORT

General Comments

It was very pleasing to observe that many candidates achieved good marks in this year's examination. Across the range of topics on both examination papers some excellent answers were offered, demonstrating a thorough knowledge and understanding of the legal rules and their application. The majority of candidates made reference to cases and legislation and many were able to give details of proposed reform of the law. Better candidates offered appraisal and criticism of the legal principles. Few centres entered very weak candidates for the examination this year, and there was an improvement in the general standard of work submitted. The questions on both papers were accessible to candidates and all of questions set on this year's paper were attempted, with varying degrees of success. However, all candidates are urged to attempt all **four** questions required of them and to devote equal time and attention to each of their answers. The most successful candidates were those who produced four answers of consistently high quality.

PAPER 1

This paper requires knowledge across a broad spectrum which includes theoretical material on law and morality along with fundamental issues concerned with statutory interpretation and precedent. Generally the answers were gratifyingly full of supporting legal material, coherently argued, and well focused on the precise terms of the question. What did deprive some of the candidates of access to the higher achievement bands was a tendency to description at the expense of analysis required.

PART ONE

Question 1

This question required exposition of the conflicting views of naturalists and positivists, along with exposition of areas of overlap between law and morality. There were some very impressive and lengthy answers to this question, closely argued and well illustrated with topical material. Sometimes candidates focused too strongly on the Hart/Devlin debate without explaining how it could be incorporated into an answer.

Question 2

This question was by and large competently handled, although characteristically candidates did not display the level of knowledge and analytical ability prominent in answers to question 1. While the various philosophical justifications of punishment were competently described, there was sometimes a tendency to sever theory from sentencing practice or offer little illustration of the latter.

Question 3

Generally this question was very well handled, with an impressive range of examples of equity's contribution, backed by historical exposition. The weaker

candidates tended to describe the various equitable remedies very briefly without supporting case illustration, but the strongest answers used a wealth of material, including very topical examples.

Question 4

Few candidates attempted this question, and there was a tendency to offer generalisations which lacked authentication by argument or illustration. Some candidates however showed a detailed knowledge of developments such as the Human Rights Act 1998.

Question 5

The quality of answers to this question was very high, with detailed and sophisticated exposition of the main elements of legal personality and evaluation of advantages and disadvantages. Sadly some candidates, though fewer than usual, persisted in confusing legal personality with legal personnel.

PART TWO

Question 6

Many candidates were able to offer a detailed and focused account of leeways in statutory interpretation, backed by reference to academic opinion and well-chosen judicial quotation. The weaker candidates tended to offer a list of "rules" without explicitly linking their answer to the question set. Some simply wrote everything they knew about the subject.

Question 7

By and large this question was very ably answered, with a combination of detailed exposition of the doctrine of precedent and analysis of the tension between certainty and justice. Some candidates as with the previous question failed to offer analysis to support their adequate descriptive knowledge.

Question 8

Candidates characteristically offered sound answers to this question, with detailed analysis of the various arguments for and against retention of the jury system, frequently including very topical material. Again the weaker candidates tended to dwell on descriptive elements such as the eligibility rules.

Question 9

Very few candidates attempted this question, and when they did it tended to be their weakest answer, frequently containing information about criminal liability and related topics rather than the analysis involved in the question.

Question 10

Answers generally showed both awareness of theoretical writing on sovereignty and detailed knowledge of the impact of EU membership on domestic law. A few candidates concentrated mainly on describing the various institutions of the EU, which is an issue that has figured in previous years.

PAPER 2

This paper, which requires detailed knowledge of substantive law, was tackled very well by many candidates. Those candidates who could identify the issues and apply the law in detail over four consistently good answers achieved the highest marks. The use of cases and statutes by way of illustration produces enhanced quality of answers and candidates should be encouraged to expand the basic points that they make by making full use of relevant authorities. Some competent answers were spoiled simply by the fact that only passing reference was made to the cases, instead of detailed explanations as to why those cases were selected as relevant. As usual, a common error was the tendency of some candidates to write everything they had learned on a particular topic, without directing their answers to the specific points in the questions. Another mistake made by some of the candidates was that of identifying some or all of the relevant points, but not expanding upon these points and explaining their arguments.

SECTION A

Question 1

This question required detailed knowledge and logical application of the rules of law relating to offer and acceptance. Some candidates became very confused about these rules in the course of their answers, and failed to reach a definite conclusion. The timing of the various stages of correspondence is of crucial importance in the question of this kind. The possible remedies were frequently ignored.

Question 2

A wide range of contractual issues arose in this question. Few candidates demonstrated the ability to identify all the points, and the range of marks produced by the candidates was very large. Better answers included reference to the detailed rules of law concerning terms, exclusions clauses and notice. Some candidates appeared to be unaware of the relevance of the Consumer Protection Act 1987, and handled this question as though it concerned only contract and negligence. This is a common mistake in questions of this kind.

Question 3

Many candidates who attempted this question failed to recognise the legal significance of deposits, though most were able to give a good account of the legal protection afforded to those who enter into credit agreements. Some demonstrated a sound knowledge of the law concerning forced entry and repossession of goods.

Question 4

This question provided candidates with the opportunity to display their understanding of the law covering a range of consumer issues. Many answers gave the impression that candidates had a rough idea of the law of misrepresentation and Sale of Goods, but few were able to give detailed answers covering the whole range of statutory protection afforded to the consumer.

SECTION B

Question 5

The answers to this question varied in quality considerably. Better answers revealed a sound knowledge of many of the basic aspects of employment law that the question was designed to test. However, the weaker candidates were unable to identify the main issues and did not recognise the significance of the role of ACAS in the dispute settlement process. The question offered candidates the opportunity to deal with some of the most crucial employment law matters and the topics were discussed with varying degrees of success.

Question 6

This question raised some important points relating to employers' duties to their employees and also gave candidates the chance to demonstrate their knowledge of the state of the law relating to stress at work. In general, the main cases were known to the candidates and a good account of the law was produced by many of those who attempted this question.

Question 7

The law concerning discrimination was generally dealt with very well by many candidates, but the question of age discrimination gave rise to difficulties for some of the candidates. There were few who were aware of the existence of the DTI Code of Guidance on Age Discrimination.

Question 8

Redundancy was the main issue raised by this question, and the matter was dealt with very sensibly by many candidates. However, students should be warned not to attempt a common-sense approach when answering this type of question. What is required is a sound knowledge of the law and ability to analyse the legal issues by reference to cases and codes of practice.

SECTION C

Question 9

Candidates were able to give good accounts of the legal position concerning people living as separate households within the same establishment. The grounds for divorce were accurately described by the majority of candidates who attempted this question, as were the legal duties of local authorities when children are reported as being at risk.

Question 10

Many candidates were able to identify the relevant issues here, and most of those who attempted this question wrote detailed answers dealing with the check-list that is required to be used in cases involving children. Some did not recognise the significance of the role of grandparents in caring for children and of the consideration afforded to them by the law.

Question 11

The issues surrounding distribution of property on divorce gave rise to difficulties for some candidates, especially the question of pension rights. However, many candidates demonstrated a good knowledge and understanding of the way in which the law deals with the respective contributions of partners during the subsistence of marriage, and were clearly familiar with the details of the law concerning contact and residence orders on separation.

Question 12

This was a popular question, but not all of the candidates who selected it were able to give a detailed account of the permissions required for marriage, nor were many aware of the relevance of the age of those who wish to marry. Many aspects of the question concerned the practical steps that would be involved, and these were not always covered in sufficient detail. Although the salient points were recognised by most of the candidates, only those who could provide details of the law achieved marks in the higher bands.

SECTION D

Question 13

This section of the paper was, as ever, very popular with students, and answers throughout revealed that criminal law captures the imagination of candidates, many of whom are well-versed in the detailed legal provisions and case-law. This particular question was handled well in general, as candidates were able to provide details of the elements of the crimes involved – though the crime of arson was known in less detail than that of theft.

Question 14

Many candidates who answered this question explained well the elements of criminal liability and the details of the law concerning theft, fraud and criminal damage. There was a good knowledge of the case law. Some candidates lost marks by ignoring the sentencing provisions.

Question 15

A range of possible crimes was involved in this question, and many candidates identified all of them. However, it was only those answers that gave adequate details of the law and of the cases in particular, who achieved marks in the highest bands. Not all of the candidates recognised the relevance of the age of offenders.

Question 16

The law of conspiracy was handled quite well, though it did present problems for some of the candidates. Disappointingly, there were few who considered the effects of the possible interpretations of the words "Let him have it".

Better answers contained some reference to the rules relating to compensation for criminal injuries.

SECTION E

Question 17

This was a testing question, but candidates who tackled it revealed a good understanding of the use of the law to deal with public order problems. Many were able to deal with the details of the legal rules governing the powers of the police to control behaviour of the crowds attending sporting events, and the better answers gave accounts of the relevance of the rules in attempting to achieve a balance between the rights of the individual and the powers of the police.

Question 18

A good knowledge and understanding of the law governing demonstrations, marches and public meetings was evident in many of the answers to this question. Common law and statutory provisions were discussed and the law directed at controlling racist behaviour was outlined well.

Question 19

This popular question was, in general, answered well. Better candidates were able to identify all the relevant legal issues and to give precise details of the statutory provisions governing the powers of the police in relation to the detention and questioning of suspects. However, there were few candidates who paid as much attention to the possible remedies of those aggrieved by the actions of police in exceeding their powers.

Question 20

It was rather disappointing that so few candidates were familiar with the law of libel, slander and malicious falsehood, which was central to this question. Some ignored entirely the legal rules concerning breaches of confidentiality. The defences were also given scant attention. A general approach with a vague outline of the law is insufficient in a question of this kind.

A LEVEL LAW 9345, GRADING BOUNDARIES

Grade	A	B	C	D	E	N
Lowest mark for award of grade	56	51	46	41	36	31

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

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