



ASSESSMENT and
QUALIFICATIONS
ALLIANCE

Mark scheme

June 2003

GCE

LAW

Unit LAW3

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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**

Criminal Law

1

Total for this question: 25 marks

- (a) Stephen is likely to be prosecuted for the incident involving Marion. At his trial, the prosecution will have to prove *actus reus*, including **causation**, and *mens rea*. Explain what is meant by these **three** terms. (15 marks)

Potential Content

- (A) Explanation of *actus reus*, eg acts/omissions
- (B) Explanation of *actus reus* based on causation
- (C) Explanation of *mens rea*
- (D) Appropriate cases and/or examples

Mark Bands

- | | |
|---------|---|
| 12 – 15 | The candidate demonstrates sound understanding of any three of (A), (B), (C), (D), with a clear understanding of the other element. |
| 8 – 11 | <p>The candidate demonstrates sound understanding of any two of (A), (B), (C) with a reference to (D)</p> <p>or</p> <p>the candidate demonstrates clear understanding of any three of (A), (B), (C), (D)</p> <p>or</p> <p>the candidate demonstrates clear understanding of any two of (A), (B), (C), (D) with reference to one other (max 9)</p> <p>or</p> <p>the candidate demonstrates some understanding of (A), (B), (C), (D) (max 9 for any three).</p> |
| 4 – 7 | <p>The candidate displays some understanding of any two of (A), (B), (C), (D)</p> <p>or</p> <p>the candidate demonstrates sound understanding of any one of (A), (B) or (C) together with reference to one other of (A), (B), (C), (D) (max 6).</p> |
| 1 – 3 | <p>The answer consists of brief, fragmented comments or examples so that no coherent explanation and illustration emerges</p> <p>or</p> <p>mistakes and confusion fundamentally undermine a more substantial attempt at explanation and illustration.</p> |
| 0 | The answer contains no relevant information. |

(b) Discuss the criminal liability of Stephen for the injuries suffered by Marion. (10 marks)

Potential Content

- (A) Appropriate explanation of *actus reus* of inflicting grievous bodily harm under s20 Offences Against the Person Act 1861
- (B) Appropriate explanation of *mens rea* of grievous bodily harm (maliciously) being intention or Cunningham recklessness as to causing some harm
- (C) Appropriate references to Acts, cases/examples
- (D) Application to the facts of the problem and conclusion

Note: appropriate references to assault (Stephen shouting at Marion) and/or battery (pulling Marion's coat) will enhance the marks within a band

Note: answers based on s47 only – **max 6 marks**. (For A and B above, take the appropriate *mens rea* and *actus reus*.)

Note: answers based on assault only or battery only – **max 5 marks**. (For A and B above, take the appropriate *mens rea* and *actus reus*.)

Mark Bands

- 8 – 10 The candidate demonstrates sound understanding of three of (A), (B), (C), (D), with a clear understanding of the fourth element.
- 5 – 7 The candidate demonstrates sound understanding of **any two** of (A), (B), (C), (D) **or** the candidate demonstrates some understanding of (A), (B) (C), (D) (**max 6 for three only**)
- 3 – 4 The candidate demonstrates some capacity for explanation and/or application but neither explanation nor application 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.

Tort

2

Total for this question: 35 marks

- (a) Bella and Carol are considering suing Alan for negligence and their solicitors have mentioned to them the requirements of **duty, breach and damage**.
- (i) Taking these into account, discuss Alan's liability to Bella for negligence. (20 marks)

Potential Content

- (A) Explanation of duty of care
- (B) Explanation of breach of duty of care
- (C) Explanation of damage arising from the breach of duty of care
- (D) Appropriate reference to cases/examples
- (E) Application to the facts of the problem and conclusion

Mark Bands

- 16 – 20 The candidate demonstrates sound understanding of (A), (B) and (C), makes reference to appropriate cases (D), and is able to apply the law to the problem to produce a convincing conclusion (E).
- At the bottom end of this band, there may be some imbalance between (A), (B) and (C), or only limited authority but the conclusion is likely to be appropriate to the facts.
- 12 – 15 The candidate demonstrates sound understanding of **any two** of (A), (B) and (C) with reference to either (D) or (E)
- or**
- the candidate demonstrates clear understanding of (A), (B), and (C), with reference to either (D) or (E)
- or**
- the candidate demonstrates some understanding of (A), (B), (C), (D) and (E) (**max 13**).
- 8 – 11 The candidate demonstrates sound understanding of **any one** of (A), (B) and (C) with reference to either (D) or (E)
- or**
- the candidate demonstrates clear understanding of **any two** of (A), (B) and (C) with reference to either (D) or (E)
- or**
- the candidate demonstrates some understanding of any four of (A), (B), (C), (D), (E) (**max 9 for three only**).

- 4 – 7 The candidate displays some capacity for explanation (**max 6**) or application (**max 4**) or both, but neither explanation nor application is clear.
- 1 – 3 The answer consists of brief, fragmented comments or examples so that no coherent explanation and illustration emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and illustration.
- 0 The answer contains no relevant information.

- (ii) Briefly discuss whether or not Alan owes Carol a **duty of care**. You may refer to the relevant part(s) of your answer to Question 2 (a)(i). (5 marks)

Potential Content

(A) Explanation of the concept duty. The neighbour test

OR (B) *Caparo v Dickman* and three part test

OR (C) Appropriate case/example

(D) Application to the facts of the problem

Note: (A), (B) or (C) can be dealt with by reference to Question 2 (a) (i)

Mark Bands

- 5 The candidate demonstrates sound understanding of **any one** of (A) or (B) or (C) together with (D), though there may be some imbalance between the two elements.
- 3 – 4 The candidate demonstrates some understanding of **any one** of (A) or (B) or (C) together with (D)
or
the candidate demonstrates clear understanding of **any one** of (A) or (B) or (C) though demonstrates limited (D).
- 2 The candidate demonstrates some capacity for explanation and/or application but neither explanation nor application is clear.
- 1 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) Assuming Alan is found liable in negligence to Bella, explain how the court would calculate the **damages** to be awarded to her. *(10 marks)*

Potential Content

- (A) Explanation of the purpose of damages
- (B) General and special damages, eg loss of amenity, loss of earnings, expenses incurred. Mitigation. Structure of Awards
- (C) Application and conclusion

Mark Bands

- 8 – 10 The candidate demonstrates sound understanding of (B) and (C). Reference to (A) will enhance the response.
- 5 – 7 The candidate demonstrates clear understanding of (B), with (A) or (C)
or
the candidate demonstrates some understanding of (A), (B) and (C).
- 3 – 4 The candidate demonstrates some capacity for explanation and/or application but neither explanation nor application 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)

UNIT 3	AO1	AO2	AO3
Question 1	11	14	
Question 2	15	20	
AO3 (Quality of written communication for the paper as a whole)			5
Total marks	26	34	5
% of AS	17	20.5	2.5
% of the A Level	8.5	10.25	1.25