

GCE 2005
January Series



Mark Scheme

Law Specification

LAW3 The Concept of Liability

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.

Further copies of this Mark Scheme are available to download from the AQA Website:
www.aqa.org.uk

Copyright © 2005 AQA and its licensors. All rights reserved.

COPYRIGHT

AQA retains the copyright on all its publications. However, registered centres for AQA are permitted to copy material from this booklet for their own internal use, with the following important exception: AQA cannot give permission to centres to photocopy any material that is acknowledged to a third party even for internal use within the centre.

Set and published by the Assessment and Qualifications Alliance.

The Assessment and Qualifications Alliance (AQA) is a company limited by guarantee, registered in England and Wales 3644723 and a registered Charity 1073334. Registered address AQA, Devas Street, Manchester M15 6EX.

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**

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

- (a) Criminal offences generally require proof of both *actus reus* and *mens rea*.
- (i) Briefly explain the meaning of these two terms. (5 marks)

Potential Content

- (A) Brief explanation of meaning of *actus reus*
- (B) Brief explanation of meaning of *mens rea*

Mark Bands

- 5 The candidate deals with (A) and (B) as follows:
one sound, one clear
- 4 The candidate deals with (A) and (B) as follows
one sound, one some
or
two clear
- 3 The candidate deals with (A) and (B) as follows
one clear, one some
- 2 The candidate deals with (A) and (B) as follows
one clear
or
two some
- 1 The candidate deals with (A) and (B) as follows
one some
- 0 The answer contains no relevant information.

- (ii) Anna might be prosecuted for an offence. Explain what is meant by **causation** and discuss whether Anna's actions were the factual and legal cause of Tara's paralysis.
(10 marks)

Potential Content

- (A) Appropriate explanation of factual causation
- (B) Appropriate explanation of legal causation
- (C) Application to the facts of the problem and conclusion

Mark Bands

- 8 – 10 The candidate deals with (A)-(C) as follows:
max 10: two sound, one clear
max 9: one sound, two clear
max 8: two sound **or** three clear **or** one sound, one clear, one some.
- 5 – 7 The candidate deals with (A)-(C) as follows:
max 7: one sound, one clear **or** two clear, one some.
max 6: one sound **or** two clear **or** one clear, two some.
max 5: one clear, one some **or** three 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) Taking into account your answer to 1(a), discuss Anna’s criminal liability in this incident involving Tara. (10 marks)

Potential Content

- (A) Explanation and application of *actus reus* of an appropriate offence or a range of offences, eg battery, s47 OAPA, s20 OAPA
- (B) Explanation and application of *mens rea* of an appropriate offence or a range of offences, eg battery, s47 OAPA, s20 OAPA

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: one sound **or** two clear
max 6: one clear, one some
max 5: one clear **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.

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

- (a) Two elements of the tort of negligence are **duty of care** and **breach of duty of care**. Briefly explain the meaning of these two terms, and explain why Spokes Ltd owes Seema a duty of care, and discuss whether it has breached its duty of care. *(15 marks)*

Potential Content

- (A) Brief explanation of duty of care
- (B) Brief explanation of breach of duty of care
- (C) Application to the facts of the problem and conclusion

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: two sound **or** three clear **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) Explain the rules of law relating to **remoteness of damage** and consider whether Seema's losses are too remote a consequence for Spokes Limited to be liable to Seema. (10 marks)

Potential Content

- (A) Explanation of the concept of remoteness of damage / causation
- (B) Application to the facts of the problem

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: one sound **or** two clear
max 6: one clear, one some
max 5: one clear **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.

- | |
|---|
| (c) Assuming Spokes Limited were to be found liable to Seema in negligence, explain how the court would calculate the damages to be awarded to her. <i>(10 marks)</i> |
|---|

Potential Content

- (A) Explanation of the purpose of damages. General and special damages, eg loss of amenity, pain and suffering, £6000 medical expenses incurred. Mitigation. Structure of Awards
- (B) Application 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: one sound **or** two clear
max 6: one clear, one some
max 5: one clear **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)

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