

Version 1.0



**General Certificate of Education
June 2010**

Law **LAW03**
Criminal Law (Offences against the Person)
or Contract

Unit 3

Mark Scheme

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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LAW03

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.
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

Mark bands (3 potential content) – list of maximum marks

- 25 two sound, one clear
- 23 two sound, one some **or** one sound, two clear
- 21 two sound **or** one sound, one clear, one some **or** three clear
- 19 one sound, one clear **or** one sound, two some **or** two clear, one some
- 17 one sound, one some **or** two clear **or** one clear, two some
- 14 one sound **or** one clear, one some **or** three some
- 13 two sound explanation only
- 11 one clear **or** two some
- 09 one sound explanation only **or** two clear explanation only **or** three some explanation only
- 07 one some **or** one clear explanation only **or** two some explanation only
- 05 one some explanation only
- 04 fragments or substantial error/incoherence
- 00 completely irrelevant

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
- 17 one sound **or** one clear, one some
- 13 one clear **or** two some **or** two sound explanation only
- 11 one sound explanation only **or** two clear explanation only
- 08 one some **or** one clear explanation only **or** two some explanation only
- 06 one some explanation only
- 05 fragments or substantial error/incoherence
- 00 completely irrelevant

Note:

In *substantive* law questions, the two components are explanation and application. In *evaluative* questions, the two components are explanation and evaluation. The references above to explanation only are to be understood as explanation without application for substantive law questions, and as explanation without evaluation for evaluative questions. The quality of treatment of these two components, in combination, determines whether the treatment overall for that PC element is sound, clear or some. In determining the overall quality of treatment, descriptions of the quality of treatment of the individual components (whether explanation or application/evaluation) should be combined as follows:

- sound/sound - sound
- sound/clear - low sound
- sound/some - clear
- clear/clear - clear
- clear/some - low clear
- some/some - some

LAW03 Descriptors

Level	Description
Sound	Accurate and comprehensive explanation and application, so that the answer reveals strong knowledge and understanding of the correct (or sustainable) analysis, leading to satisfactory conclusions. There may be some omission, error, or confusion but it will be insufficient to undermine the basic characteristics of the answer.
Clear	<p>Broadly accurate and relatively comprehensive explanation and application, though a little superficial in either or both and with some error and/or confusion that begins to affect the quality of the analysis.</p> <p>Or</p> <p>Accurate explanation and application over a narrower area, omitting some significant aspect(s) of the analysis.</p> <p>So that an answer emerges which reveals knowledge and understanding of the broad framework of the analysis, or of some of its detailed aspect(s).</p>
Some	<p>Explanation and/or application in relation to relevant aspects but characterised by significant omissions and/or errors and/or confusion.</p> <p>Or</p> <p>Explanation (including definitions of relevant offences/defences) and/or application which is generally accurate but confined to a limited aspect.</p> <p>So that, at best, a very superficial or partial analysis emerges.</p>
Fragments	<p>Isolated words or phrases, including case names and statutes, which have potential relevance but remain entirely undeveloped.</p> <p>Or</p> <p>Mere identification of relevant offences/defences.</p>

Use of case authority

1. It is usually sufficient to associate a relevant case with an explained/applied rule. Further explanation of cases is required only where necessary to elucidate the rule or its application.
2. An answer in relation to any Pc should not be described as 'sound' unless some relevant authority appears, where appropriate. However, where there is appropriate use of authority in relation to the other Pc('s) in the mark scheme for the question, an answer in relation to a Pc where no authority appears may be given a 'lower' sound (the candidate will have demonstrated ability to use appropriate authority at some point in the answer to the question, albeit not in the element in issue).

Criminal Law (Offences against the Person)

Scenario 1

Total for this scenario: 80 marks

- | | | |
|----------|----------|--|
| 0 | 1 | Discuss the criminal liability of Chris for the injuries to David, and the criminal liability of Benjamin for the injuries to Aaron. (25 marks + 5 marks for AO3) |
|----------|----------|--|

Potential Content

- (A) In relation to Chris and David – the offences of assault occasioning abh and of unlawful and malicious wounding (requiring discussion of both for **sound**, either for **clear**).
- (B) In relation to Chris and David: the defence of consent – the standard rule in relation to consent and personal injury; the exception for rough, undisciplined play; the issue of whether the injuries fell within the scope of any consent, in view of Chris’s annoyance.
- (C) In relation to Benjamin and Aaron: the offence of unlawful and malicious infliction of gbh, with possible unlawful and malicious causing with intent (assault occasioning abh is a lesser alternative).

- | | | |
|----------|----------|---|
| 0 | 2 | Discuss the liability of Fred and of Aaron for the involuntary manslaughter of Eli. (25 marks) |
|----------|----------|---|

Potential Content

- (A) In respect of Fred: the offence of unlawful act manslaughter based on the possible crime of assault - *actus reus* elements of the intermediate crime, and the remaining requirements of ‘dangerousness’ and causation (in this case, the issue is one of foreseeable attempt to escape); *mens rea* of the assault, including the issue of the effect of voluntary intoxication.
- (B) In respect of Aaron: the offence of gross negligence manslaughter. The elements of the offence, including the requirement to prove a breach of duty (related here to the idea of omission and the parental duty), the obvious risk of death (from drowning in the river), causation (ultimately, this may well be impossible to prove because of the acts involved in (A), which might be thought to break any chain of causation between Aaron’s probable breach of duty in failure to supervise and Eli’s death) and the jury’s role in determining whether the conduct was ‘so bad in all the circumstances’.

- | | | |
|----------|----------|--|
| 0 | 3 | Write a critical analysis of the current law on the non-fatal offences against the person. Include in your analysis a discussion of what reforms may be desirable. (25 marks) |
|----------|----------|--|

Potential Content

- (A) Structural issues (connected, for instance, with sentencing). Language and associated issues.
- (B) Specific *actus reus* and *mens rea* issues – balancing the obvious ability of the courts to adapt to changing circumstances (eg psychiatric injury/harassment, transmission of disease) against deficiencies such as lack of correspondence between actus reus and mens rea elements, anomalies such as ‘wound’ etc
- (C) Reform – Law Commission proposals as obvious basis but could include consent issues.

Scenario 2**Total for this scenario: 80 marks**

- | | |
|----------|----------|
| 0 | 4 |
|----------|----------|
- Discuss the criminal liability of George and of Ian arising out of the incidents that occurred in the queue. (25 marks + 5 marks for AO3)

Potential Content

- (A) In relation to the acts by Ian against George – offence of battery in the spitting and possible assault in the raising of the bottle; issue of voluntary intoxication
- (B) In relation to the acts by George against Ian, and the injury suffered by Ian – (battery and assault (battery) occasioning abh (out of the initial acts)) possible unlawful and malicious wounding resulting from the cut (significant issues as to intention or recklessness as to some harm on George’s part) [requiring discussion of both for **sound**, either for **clear**]
- (C) Self-defence issues in relation to George. Was it necessary to use any force? Was the force used proportionate (distinguishing between any outcome intended or foreseen by George and the outcome which actually occurred)?

- | | |
|----------|----------|
| 0 | 5 |
|----------|----------|
- Discuss the liability of John for the murder of Henry. (25 marks)

Potential Content

- (A) The elements of the offence of murder: causation issues (relatively simple); *mens rea* – intention to kill or cause serious injury and the direct and indirect routes by which such intention may be established.
- (B) The defence of provocation – issues both of subjective and objective tests. Nature and context of the provocation, including the previous incidents in which Henry was not the main participant, and John was not the victim/recipient, and the conduct both of John and of Henry at the time. Relevance to the objective test of John’s reactive depression.
- (C) The defence of diminished responsibility – abnormality, origins, substantial impairment of responsibility. Relevance of John’s reactive depression. In this case, *insanity* seems an unlikely defence, the discussion of which may operate to enhance a discussion of diminished responsibility but alone merits **max some**.

- | | |
|----------|----------|
| 0 | 6 |
|----------|----------|
- Write a critical analysis of the current law on the non-fatal offences against the person. Include in your analysis a discussion of what reforms may be desirable. (25 marks)

Potential Content

- (A) Structural issues (connected, for instance, with sentencing). Language and associated issues.
- (B) Specific *actus reus* and *mens rea* issues – balancing the obvious ability of the courts to adapt to changing circumstances (eg psychiatric injury/harassment, transmission of disease) against deficiencies such as lack of correspondence between *actus reus* and *mens rea* elements, anomalies such as ‘wound’ etc
- (C) Reform – Law Commission proposals as obvious basis but could include consent issues.

Contract Law

Scenario 3

Total for this scenario: 80 marks

0	7
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 Discuss the duties, rights and remedies of Andy, of Bilal, of Carl and of Derek arising out of the quoting of prices for the building of the extension, and of the actual work done by Carl. *(25 marks + 5 marks for AO3)*

Potential Content

- (A) In relation to Bilal and Derek – the formation issues: offer or invitation to treat(?); acceptance by fulfilling terms of offer; breach by Bilal and damages (including duty to mitigate); issues in relation to Andy and Derek (eg termination of offer/failure to accept as not original lowest quote)
- (B) In relation to Carl – the consideration issues: sufficiency of consideration in performance of existing duty. The reasonable care and skill issues: requirements of Supply of Goods and Services Act 1982, nature and effect of breach, consequent remedies in repudiation and/or damages.

0	8
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 On the assumption that Andy does not want to proceed with his contract with Ed, and wishes to recover the £5000 already paid, consider the duties, rights and remedies of Andy and of Ed arising out of the contract for the supply of the equipment. *(25 marks)*

Potential Content

- (A) In relation to the statement by Ed about his workforce and servicing capacities – the rules on misrepresentation: the nature of misrepresentation; the kinds of misrepresentation; the remedies for misrepresentation in rescission and/or damages.
- (B) In relation to the impact of the cancellation of the Government contract – the issue of frustration or breach: possible frustration of the common venture; possible alternative interpretation as breach; consequences of frustration (effect of the Law Reform (Frustrated Contracts) Act 1943 in that sums paid recoverable but subject to recompense for expenses incurred and benefit conferred) or of breach (damages for loss incurred).

0	9
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 Write a critical analysis of the approach of the law to the effect of terms which attempt to limit or exclude the liability of one party for a breach of contract. Include in your answer a discussion of any reforms which may be desirable. *(25 marks)*

Potential Content

- (A) Issues concerning the common law approach to the impact of limiting and excluding clauses.
- (B) Issues concerning the statutory approach to the impact of limiting and excluding clauses.
- (C) Possible reform – for example, overlap between statutory provisions (UCTA and UTCCR); scope of the protection afforded; specific issues in relation to statutory implied terms.

Scenario 4

Total for this scenario: 80 marks

1	0
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Discuss the duties, rights and remedies that may apply to Geri, to Helen and to Jamelia, arising out of Geri's attempts to sell the book.

(25 marks +5 marks for AO3)

Potential Content

- (A) Analysis of the formation issues in relation to Geri and Helen: offer and acceptance in advertisements and in relation to acceptance by silence: intention to create legal relations in domestic and commercial agreements.
- (B) Analysis of the formation issues in relation to Geri and Jamelia; offer and acceptance, counter offers, requests for further information; possible breach and damages, depending on analysis of offer and acceptance

1	1
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Discuss Geri's rights and remedies in relation to her contractual dealings with Storeright.

(25 marks)

Potential Content

- (A) Terms implied by the Sale of Goods Act 1979 as to description, satisfactory quality and fitness for purpose.
- (B) Remedies for breach of the above, including rejection, loss of the right to reject, repair, replacement and reduction in price. Effect of terms purporting to limit or exclude liability.

1	2
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Write a critical analysis of the approach of the law to the effect of terms which attempt to limit or exclude the liability of one party for a breach of contract. Include in your answer a discussion of any reforms which may be desirable. *(25 marks)*

Potential Content

- (A) Issues concerning the common law approach to the impact of limiting and excluding clauses.
- (B) Issues concerning the statutory approach to the impact of limiting and excluding clauses.
- (C) Possible reform – for example, overlap between statutory provisions (UCTA and UTCCR); scope of the protection afforded; specific issues in relation to statutory implied terms.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

A Level Law (LAW03)**(One question to be answered from 4)**

UNIT 3	AO1	A02	AO3
Question 01	10	15	5
Question 02	10	15	
Question 03	10	15	
Question 04	10	15	5
Question 05	10	15	
Question 06	10	15	
Question 07	10	15	5
Question 08	10	15	
Question 09	10	15	
Question 10	10	15	5
Question 11	10	15	
Question 12	10	15	
Total marks	30	45	5