

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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LAW02

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.

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

2 marks	<p>The work is characterised by some or all of the following:</p> <ul style="list-style-type: none"> • clear expression of ideas • a good range of specialist terms • few errors in grammar, punctuation and spelling • errors do not detract from the clarity of the material.
1 mark	<p>The work is characterised by:</p> <ul style="list-style-type: none"> • reasonable expression of ideas • the use of some specialist terms • errors of grammar, punctuation and spelling • errors detract from the clarity of the material.
0 marks	<p>The work is characterised by:</p> <ul style="list-style-type: none"> • poor expression of ideas • limited use of specialist terms • errors and poor grammar, punctuation and spelling • errors obscure the clarity of the material.

The level of understanding in AS Law – LAW02

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year old, so the level of understanding required by these criteria will be that of the notional 17-year old.

<p>Sound</p>	<ul style="list-style-type: none"> • The material will be generally accurate and contain relevant material to the Potential Content. • The material will be supported by generally relevant authority and/or examples. • It will generally deal with the Potential Content in a manner required by the question. <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<p>Clear</p>	<ul style="list-style-type: none"> • The material is broadly accurate and relevant to the Potential Content. • The material will be supported by some use of relevant authority and/or examples. • The material will broadly deal with the Potential Content in a manner required by the question. <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.</p>
<p>Some</p>	<ul style="list-style-type: none"> • The material shows some accuracy and relevance to the Potential Content. • The material may occasionally be supported by some relevant authority and/or examples. • The material will deal with some of the Potential Content in a manner required by the question. <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.</p>
<p>Limited</p>	<ul style="list-style-type: none"> • The material is of limited accuracy and relevance to the Potential Content. • The material will be supported by minimal relevant authority and/or examples. • The material will deal superficially with the Potential Content in a manner required by the question. <p>As a consequence, the concepts of the Potential Content will barely be established, as there will be many errors, omissions and/or confusion which almost completely undermine the essential elements of the Potential Content.</p>

Section A Introduction to Criminal Liability

0 1	Explain how there can be criminal liability for an omission.	<i>(7 marks)</i>
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- (A) Explanation of omissions, amounting to an *actus reus*, based on a duty.
For example, contractual duty, public position requiring a person to act, Act of Parliament requiring action, creating dangerous situation, assumption of responsibility, special relationship

Note – any three areas explained can achieve full credit

Possible reference to statutory offences of omission, eg failure to display, stop, etc

Cases and/or examples, eg Stone and Dobinson; Miller; Dytham, etc

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

0 2 What is strict liability? Outline the reasons for having offences of strict liability. (7 marks)

Potential Content

- (A) Brief explanation of the meaning of offences of strict liability, ie offences requiring no *mens rea* with respect to some/all of the *actus reus*. Possible reference to both statutory and common law offences

Outline of the reasons for offences of strict liability, ie regulatory offences designed to protect public interest; easier to prove; saving court time; etc

Cases and/or examples in support, eg *Alphacell v Woodward*; *Smedleys v Breed*; *Harrow LBC v Shah*; *Blake*

Mark Bands

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- 0 The answer contains no relevant information.

0 3 Discuss Alan's criminal liability for his statement to Bhu, "We sort out thieves like you."
(7 marks)

Potential Content

- (A) Discussion and application with respect to the offence of assault. This can include discussion of *actus reus* and *mens rea* of assault, application of the law to show the fear caused by the shouting and *mens rea* of intention or recklessness as to causing some fear
Statutory reference to S.39 Criminal Justice Act 1988
Cases and/or examples in support, eg Logdon; Smith v CC Woking Police

Mark Bands

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- 0 The answer contains no relevant information.

0 4 Discuss the criminal liability of Carol for the eye injury suffered by Bhu. (7marks)

Potential Content

- (A) Discussion and application of an appropriate offence based on the application of force and the (minor) injury caused - discussion of battery and/or discussion of S.47 abh. This can include discussion of *actus reus* and *mens rea* of the chosen offence, and application of the law to show the most appropriate offence is abh.

Note – max 5 for a full discussion of battery only

*Note - If gbh is chosen, max **clear** for a good discussion.*

Cases and/or examples in support, eg Chan Fook, Savage and Parmenter

Mark Bands

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- 0 The answer contains no relevant information.

0 5	Outline the rules on causation, and briefly discuss whether Carol caused Bhu's fractured skull. <i>(7 marks +2 marks for AO3)</i>
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Potential Content

- (A) Outline of the meaning of causation. This can include
 Factual: "but for" test;
 Legal: significant and operative cause, *novus actus interveniens*:
 Cases/examples to illustrate, eg medical negligence, contribution of others, pre-existing medical condition (Smith, Bengel, Hayward), etc; possible action by victim
 Application to the scenario of both 'but for' test and 'operating and significant cause' test
 Conclusion (potentially either way if well argued)

Mark Bands

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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

Assessment Objective Three

2 marks	The work is characterised by some or all of the following: <ul style="list-style-type: none"> • clear expression of ideas • a good range of specialist terms • few errors in grammar, punctuation and spelling • errors do not detract from the clarity of the material.
1 mark	The work is characterised by: <ul style="list-style-type: none"> • reasonable expression of ideas • the use of some specialist terms • errors of grammar, punctuation and spelling • errors detract from the clarity of the material.
0 marks	The work is characterised by: <ul style="list-style-type: none"> • poor expression of ideas • limited use of specialist terms • errors and poor grammar, punctuation and spelling • errors obscure the clarity of the material.

<p>0 6 Outline the procedure that would be followed before Alan's trial if he were charged with a summary offence. <i>(5 marks)</i></p>

Potential Content

- (A) Outline and application of procedure up to trial, eg initial hearing to include bail application, public funding application; plea; pre-trial review if not guilty plea
Later hearing for trial to be at Magistrates Court as summary offence

Mark Bands

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- 0 The answer contains no relevant information.

0 7 Outline the aims of sentencing available to the court, and briefly discuss how these aims might apply if Carol were convicted. <i>(5 marks)</i>
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Potential Content

- (A) Outline of the aims of sentencing: punishment, reduction of crime, reform and rehabilitation of offenders, protection of the public, reparation by offenders, general and individual deterrence, possible reference to s142 of CJA 2003
Application of the aims to Carol's case (dependant on plea, antecedents, etc)
Max 3 if no application

Mark Bands

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one sound.
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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

Section B Introduction to Tort

Total for this question: 45 marks

0 8	Explain the meaning of the term 'duty of care'.	<i>(7 marks + 2 marks for AO3)</i>
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Potential Content

- (A) Explanation with cases and/or examples of the meaning of the term duty of care, eg neighbour test and/or Caparo 3-part test

Cases could include; Caparo v Dickman, Donoghue v Stevenson, Bourhill v young, Kent v Griffiths, Hill v CC of W Yorks, Mitchell v Glasgow City Council

Mark Bands

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- 0 The answer contains no relevant information.

Assessment Objective Three

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1 mark	The work is characterised by: <ul style="list-style-type: none"> • reasonable expression of ideas • the use of some specialist terms • errors of grammar, punctuation and spelling • errors detract from the clarity of the material.
0 marks	The work is characterised by: <ul style="list-style-type: none"> • poor expression of ideas • limited use of specialist terms • errors and poor grammar, punctuation and spelling • errors obscure the clarity of the material.

0 9 Breach of duty requires the claimant to prove that the defendant has fallen below the standard of the reasonable man. That standard is assessed by taking into account one or more of the risk factors. Outline the meaning of the term 'reasonable man' **and** explain **one** of the risk factors. *(7 marks)*

Potential Content

(A) Outline of the reasonable man

Explanation with cases and/or examples of the meaning of one of the factors that can affect the standard of care and the effect that has on the standard of care; this can include special characteristics of the claimant – if known to the defendant to be more vulnerable than higher standard expected; special characteristics of the defendant – the position of professionals and learners; the size of the risk – the reasonable man does not take care against minute risks, but does against big risks; practical precautions – taking reasonable but not excessive precautions; the benefits of taking the risk – emergencies and public utility

Cases and examples, eg Blyth v Birmingham Waterworks, Nettleship v Weston, Roe v Ministry of Health, Paris v Stepney BC, Bolton v Stone, Haley v LEB, Latimer v AEC, Watt v Herts CC, etc

Mark Bands

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- 0 The answer contains no relevant information.

10	Damage involves the rules of causation, including remoteness of damage. Explain the meaning of the term 'remoteness of damage'. <i>(7 marks)</i>
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Potential Content

- (A) Explanation with cases and/or examples of the meaning of remoteness of damage. This can include reasonable foreseeability test; kind of damage being reasonably foreseeable; thin skull rule

Cases could include *The Wagon Mound*, *Doughty v Turner Manufacturing*, *Smith v Leech Brain*, etc

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
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one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

1 1	Assuming that Samantha owed a duty of care to Tom, discuss whether she was in breach of that duty.	(7 marks)
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Potential Content

(A) Application with appropriate conclusion of breach of duty, ie reasonable man test and risk factors, relevance of Sam's level of expertise and Tom using a laptop computer in a café

Cases could include Blyth v B'ham Waterworks, Paris v Stepney BC, Bolton v Stone, etc

Mark Bands

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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

0 The answer contains no relevant information.

1 2 Assuming that Samantha was in breach of her duty of care to Tom, discuss whether the loss of Tom's files was **too remote**. *(5 marks)*

Potential Content

(A) Application of remoteness of damage
This can include reasonable foreseeability test based on the kind of damage suffered.
Understanding that type and extent of damage are not the same thing
Reasoned conclusion, potentially either way

Cases could include The Wagon Mound, Doughty v Turner Manufacturing, etc
Reference to causation can be credited if properly applied

Mark Bands

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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- | | |
|------------|---|
| 1 3 | Outline the three-track system used in the civil courts and briefly explain which track is most likely to be used in any claim that Tom makes against Samantha. (5 marks) |
|------------|---|

Potential Content

- (A) Outline of tracks and brief explanation of application to Tom's claim (small claims track or possible fast track given the irretrievably lost data/extent of the burns). Reference to financial limits
Max 3 if no application

Mark Bands

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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- | |
|---|
| 1 4 Assuming Samantha was found liable in negligence, explain how the court would calculate an award of damages to Tom. (7 marks) |
|---|

Potential Content

- (A) Explanation and application of damages, eg general and special damages applied to: Personal injury (burns), loss of earnings / possible loss of amenity; Damage to property, possible loss of earnings, permanent loss of files, repair expenses incurred); Mitigation, structure of awards

Possible cases/examples, eg *Jefford v Gee*, *Gambione v JMC*, etc (*Chadwick v BR*, *Doyle v Wallace*, *Donnelly v Joyce*)

Mark Bands

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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

Section C Introduction to Contract

Total for this question: 45 marks

1 5 Explain the difference between an offer and an invitation to treat. <i>(7 marks + 2 marks for AO3)</i>
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Potential Content

(A) Explanation of the difference between an offer and an invitation to treat, eg meaning of offer, meaning of invitation to treat, offer can be accepted to form a contract, invitation cannot, invitation is a preliminary to negotiations, offer is part of negotiations.

Cases, eg Fisher v Bell, Pharmaceutical Soc of GB v Boots Cash Chemists, Partridge v Crittenden, etc

Mark Bands

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or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

1 6 Briefly explain the law on acceptance by conduct **and** acceptance using the post.
(7 marks)

Potential Content

(A) Explanation of acceptance by conduct, eg the doing of an act
Cases and/or examples to illustrate, eg reward cases, Carlill v Carbolic Smoke Ball Co
Explanation of acceptance by post, eg postal rule applying to letters of acceptance only,
contract complete on posting, requirements and provisos

Cases and/or examples, eg Household Fire Insurance Co v Grant, Carlill v Carbolic
Smokeball Co, Adams v Lindsell, etc

Mark Bands

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or
mistakes and confusion fundamentally undermine a more substantial attempt at
explanation.
- 0 The answer contains no relevant information.

1 7 Explain the meaning of 'consideration' and of 'past consideration'.	<i>(7 marks)</i>
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Potential Content

- (A) Explanation of consideration, eg consideration is something of value; must move from promisee, can be executed or executory
Explanation of past consideration, eg past consideration is not valid consideration, already done at time of making contract, does not provide some new act or forbearance

Cases and/or examples, eg Chapple v Nestle, Re McArdle, etc

Mark Bands

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mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

- 1 8** Outline the meaning of 'intention to create legal relations'. Briefly discuss whether there was an intention to create legal relations between Rob and Terry **and** between Rob and Uma. *(7 marks)*

Potential Content

- (A) Explanation of intention to create legal relations, eg basic requirement of a valid contract, rebuttable presumptions in relation to commercial situations and social/domestic situations.

Cases and/or examples, eg *Rose & Frank v Crompton Bros*, *Balfour v Balfour* etc

Application to scenario: - Rob and Terry (commercial context, clearly likely to a contract)
- Rob and Uma (family member but commercial nature, could be argued either way)

Mark Bands

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- 0 The answer contains no relevant information.

19 Outline the difference between actual breach and anticipatory breach of contract. Briefly discuss the type of breach that may have occurred between Rob and Terry. (7 marks)

Potential Content

(A) Explanation of actual breach and anticipatory breach showing distinction between breach and anticipatory breach, eg both are forms of breach but anticipatory breach takes place before the date due for performance of the contract, claimant can start action as soon as anticipatory breach occurs – does not have to wait to see if performance takes place

Cases and/or examples, eg *Poussard v Spiers*, *White and Carter Councils v McGregor*, etc

Application to the scenario – Terry’s breach was anticipatory breach on 28th November

Mark Bands

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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

0 The answer contains no relevant information.

2 0 Identify which track Rob's claim against Terry would be allocated to and which court would hear the case. Briefly discuss why it might be better to settle the dispute by negotiation rather than going to court. *(5 marks)*

Potential Content

- (A) Identification of relevant court (County Court) and track (small claims)
Negotiation best way of settling the dispute as cheaper, possibly quicker, retains relationship, etc
Max 3 if no consideration of negotiation

Mark Bands

- 5 The candidate deals with (A) as follows:
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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- | |
|--|
| <p>2 1 Assuming Terry was found liable, outline how the court would calculate an award of damages in contract. Briefly explain how much Rob might be awarded as damages.
<i>(5 marks)</i></p> |
|--|

Potential Content

- (A) Outline of way in which court awards damages, eg the two stage test in Hadley v Baxendale, mitigation
Application to Terry's claim – £2500 being the cost of getting Uma to paint the van, Terry could only claim for £1500 against Rob

Mark Bands

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ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW02)

		AO 1	AO 2	AO 3
Section A:				
Question	0 1	4	3	
Question	0 2	4	3	
Question	0 3	3	4	
Question	0 4	3	4	
Question	0 5	3	4	2
Question	0 6	2	3	
Question	0 7	3	2	
Totals Section A		22	23	2
Section B:				
Question	0 8	4	3	2
Question	0 9	4	3	
Question	1 0	4	3	
Question	1 1	3	4	
Question	1 2	2	3	
Question	1 3	3	2	
Question	1 4	3	4	
Totals Section B		23	22	2
Section C:				
Question	1 5	4	3	2
Question	1 6	4	3	
Question	1 7	3	4	
Question	1 8	3	4	
Question	1 9	3	4	
Question	2 0	3	2	
Question	2 1	3	2	
Totals Section C		23	22	2