

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

QUALITY OF WRITTEN COMMUNICATION (QoWC)

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.

Sound	<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>
Clear	<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>
Some	<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>
Limited	<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

Total for this section: 45 marks + 2 marks for AO3

0 1	Explain the meaning of ' <i>mens rea</i> '.	(7 marks)
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(A) Explanation of the meaning of *mens rea* in general terms (guilty mind).

Recognition that the courts have developed definitions of common states of mind found in criminal liability. These include:

Direct intent (definition + illustration, eg Mohan)

Oblique intent (definition + illustration, eg Woollin)

Recklessness (definition and illustration, eg Cunningham).

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 Briefly explain the meaning of, **and** reasons for, 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.

Cases and/or examples in support, eg *A/G v PYA Quarries*, *Smedleys v Breed*, *Alphacell v Woodward*.

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

Mark Bands

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0 The answer contains no relevant information.

0 3 Discuss the criminal liability of Zoe with respect to the injuries caused to Yasmin.
(7 marks + 2 marks for AO3)

REMEMBER TO AWARD A MARK FOR AO3

Potential Content

(A) Recognition of the crime of battery (assault by beating) or assault occasioning actual bodily harm, s47 Offences Against the Person act 1861.

Reference to s39 Criminal Justice Act 1988.

Discussion and application of *actus reus* of battery or abh. This should include a recognition of the application of unlawful force and the lack of any significant injury.

Discussion and application of the *mens rea* of battery or abh. This should include a recognition that force can be applied intentionally or recklessly.

Cases/examples in support, eg Thomas, Haystead, Venna, Chan Fook, Savage & Parmenter, etc.

Mark Bands

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

AO3

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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 4 Explain the principle of transferred malice and discuss how this principle would apply to Zoe for the injuries suffered by Xin. (7 marks)
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Potential Content

(A) Explanation of the meaning of the principle of transferred malice. This can include:

Meaning - ie *mens rea* directed toward one person is transferred to the victim. An understanding that the rule operates from person to person or object to object, but not object to person or vice versa.

Cases and/or examples in support, eg Latimer and Pembliton.

Application to the scenario (no need to identify which offence, but credit can be given for recognition of a s20 gbh).

NB Max 5 if no application.

Mark Bands

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0 The answer contains no relevant information.

0 5 Outline the rules on causation **and** discuss whether Zoe caused Xin's brain damage.
(7 marks)

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, Benge, Hayward), etc.

Application to the scenario of both 'but for' test and 'operating and significant cause' test.

Conclusion.

NB Max 5 if no application.

Mark Bands

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0 The answer contains no relevant information.

0 6 Outline the procedure that would be followed if Zoe were charged with an indictable only offence. <i>(5 marks)</i>
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Potential Content

- (A) Outline and application of procedure:
eg at Magistrates Court: Initial hearing to include bail application, public funding application, send to Crown Court;
at Crown Court: plea and directions; pre-trial review if not guilty plea; trial before judge and jury.

Mark Bands

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- 0 The answer contains no relevant information.

07 Outline the range of sentences available to the court if Zoe were to be convicted. (5 marks)

Potential Content

- (A) Outline of the range of sentences:
ie custodial (immediate or suspended); community (+requirements); financial (means); discharge (types).
Possible recognition of the 'seriousness' criteria.
Possible reference to relevant legislation.
Possible application to Zoe.

Mark Bands

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- 0 The answer contains no relevant information.

Section B Introduction to Tort

Total for this section: 45 marks + 2 marks for AO3

0 8	Explain how the law decides whether a duty of care is owed in negligence.	<i>(7 marks)</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, Caparo 3-part test.

Cases could include: Caparo v Dickman, Donoghue v Stevenson, Kent v Griffiths, Bourhill v Young, McLoughlin v O'Brien, Hill v Chief Constable of West Yorkshire, Mitchell v Glasgow City Council.

Mark Bands

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- 0 The answer contains no relevant information.

0 9 Breach of duty requires the claimant to prove that the defendant has fallen below the standard of care of the reasonable man. That standard is assessed by taking into account one or more of the risk factors.

Briefly explain **three** risk factors.

(7 marks)

Potential Content

- (A) Brief explanation with cases and/or examples of the meaning of three risk factors and the effect that has on the standard of care. These can include:
- special characteristics of the claimant – if known to the defendant to be more vulnerable then higher standard expected;
 - 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 – eg Paris v Stepney Borough Council, Bolton v Stone, Nettleship v Weston, Watt v Hertfordshire County Council, Jordan v Whitehouse, etc.

Note: credit can be given for special characteristics of the defendant - the position of professionals and learners.

Mark Bands

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- 0 The answer contains no relevant information.

1 0 Briefly explain the principle of *res ipsa loquitur* and how it applies in negligence cases.
(5 marks)

Potential Content

(A) Recognition that proof of breach of duty normally rests with the claimant.
Res ipsa loquitur involves an obvious case of negligence.

Description of test:

- the thing that causes the harm was wholly under the control of the defendant
- the accident would not have happened unless someone had been negligent
- there is no other explanation of the injury caused to the claimant.

Burden of proof shifts to the defendant.

Case/example in support, eg *Byrne v Boadle*, *Pearson v NW Gas Board*,
Mahon v Osborne, *Scott v London and St Katherine's Docks*.

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 1 Discuss whether Robyn owed a duty of care to Elsie. (7 marks + 2 marks for AO3)

REMEMBER TO AWARD A MARK FOR AO3

Potential Content

- (A) Discussion and application with appropriate conclusion of duty owed. This can include application of Caparo 3-part test:
- it is foreseeable that someone in Elsie’s position would suffer loss as a result of Robyn’s actions;
 - they are proximate because of where the work took place (relationship not relevant);
 - there is no reason to exclude liability as there is no public policy reason for this on the grounds of extending categories of liability or protecting public services.

Reference may be made to decided cases and application of those cases

Mark Bands

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- 0 The answer contains no relevant information.

AO3

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.
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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.

1 2 Assuming that Robyn owed a duty of care to Elsie, discuss whether she was in breach of that duty. (7 marks)

Potential Content

(A) Discussion and application with appropriate conclusion of breach of duty:
ie reasonable man test and risk factors; relevance of Robyn's (lack of) expertise;
known higher risk of Elsie (overweight, age) and knowledge of purpose of rail.

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.

- | |
|--|
| <p>1 3 Outline the three-track case management system used in the civil courts and briefly explain which track is most likely to be used in any claim that Elsie could make against Robyn. <i>(5 marks)</i></p> |
|--|

Potential Content

- (A) Outline of tracks (small claims, fast and multi) + financial limits.

Civil Procedure Act 1997.

Brief explanation and application to Elsie's claim (multi track), based on reference to financial limits.

Difference between personal injuries and physical damage.

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 that Robyn were found liable in negligence, explain how the court would calculate an award of damages to Elsie. *(7 marks)*

Potential Content

- (A) Explanation of the calculation of damages. This could include:
 general and special damages;
 heads of damage (damage to property + expenses incurred, loss of future earnings, loss of amenity, pain and suffering, ‘tariff’ award based on the injury itself);
 mitigation;
 structure of awards (lump sum or structured settlement).

Application to Elsie (personal injury + pain and suffering, loss of amenity, additional care needed and minor property damage).

Case/example in support, eg Jefford v Gee, Donnelly v Joyce, etc.

(Account should be taken of depth and breadth, ie a strong application can be balanced by a weaker framework explanation or vice versa.)

NB Max 5 if no application.

Mark Bands

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- 0 The answer contains no relevant information.

Section C Introduction to Contract

Total for this section: 45 marks + 2 marks for AO3

1 5	Explain the differences between an offer and an invitation to treat.	<i>(7 marks)</i>
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Potential Content

- (A) Explanation of the differences between an offer and an invitation to treat could include:
meaning of offer; meaning of invitation to treat;
offers can be accepted to form a contract, invitations cannot;
invitation is a preliminary to negotiations; offer is part of negotiations.

Cases or examples, eg Fisher v Bell, Partridge v Crittenden, Pharmaceutical Society of GB v Boots, Harvey v Facey, etc.

Mark Bands

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- 0 The answer contains no relevant information.

1 6 Briefly explain any three ways in which an offer may come to an end. <i>(7 marks)</i>
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Potential Content

- (A) Brief explanation of three of the ways an offer can come to an end. These can include any three of the following:

Counter offer + explanation;
Rejection + explanation;
Revocation + explanation;
Duration of offer + explanation;
Acceptance + explanation.

Cases/examples in support, eg Hyde v Wrench , Payne v Cave , Ramsgate Victoria Hotel v Montefiore, etc.

Mark Bands

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- 0 The answer contains no relevant information.

17 Outline the law relating to the different ways of communicating acceptance. (5 marks)

Potential Content

- (A) Recognition of acceptance by conduct, orally or in writing; acceptance by post.
Outline explanation recognising the need for actual communication based on a positive act, case eg Felthouse v Bindley.
Outline explanation of the exception relating to unilateral contracts, eg Carlill v Carbolic Smokeball.
Outline explanation of the exception relating to the postal rule, eg Household Fire Insurance Co v Grant.

Mark Bands

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- 0 The answer contains no relevant information.

1 8 Discuss whether there is a contract between Ian and Jay. (7 marks + 2 marks for AO3)

REMEMBER TO AWARD A MARK FOR AO3

Potential Content

(A) Discussion and application of offer and acceptance. This could include:

Initial email is request for information when Ian asks for a price – not an offer; Jay’s reply could be taken as an offer or merely giving information (Harvey v Facey).

Response on using own equipment is uncertain, so not an offer (Gibson v Manchester City Council).

Offer (if made) probably lapsed, so new offer of £2 000 is made (when received this would end old offer anyway) (Harvey v Facey).

Possible reference to intention to create legal relations and consideration.

Credit alternative reasoned application.

A reasoned conclusion (either way) based on discussion and authority.

Mark Bands

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AO3

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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.
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19 Explain what is meant by consideration and how it would apply if the court decided that there was a contract between Ian and Jay. <i>(7 marks)</i>
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Potential Content

- (A) Explanation of consideration, eg the value in a contract which both parties must give/promise to give (executed and executory).
Consideration must move from the promisee (the privity rule).
Explanation of past consideration is not valid consideration.
Consideration already done at time of making contract does not provide some new act or forbearance, etc.
Cases and/or examples, eg Chapple v Nestle, Beswick v Beswick, Re McArdle, etc.
- In this case, consideration is the performance and the fee (both executory).

NB Max 5 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.

2 0 Outline the three-track case management system used in the civil courts **and** briefly explain which track is most likely to be used in any claim that Ian could make against Jay. *(5 marks)*

Potential Content

- (A) Outline of tracks (small claims, fast and multi) + financial limits.
Civil Procedure Act 1997.
Brief explanation and application to Ian's claim (small claims or possibly fast track), based on reference to financial limits.

Mark Bands

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- 0 The answer contains no relevant information.

2 1 If Jay were to be in breach of contract, explain how the court would calculate an award of damages to Ian. <i>(7 marks)</i>

Potential Content

- (A) Explanation of the way in which court calculates an award of damages, ie
- the two stage test in Hadley v Baxendale, mitigation
 - application to Ian's claim – loss of estimated profit; cost of expenses to date;
 - mitigation of loss, for example refunding of price paid for sold tickets or booking suitable alternative act.

NB Max 5 if no application.

Mark Bands

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ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW02)

		AO1	AO2	AO3
Section A:				
Question	0 1	4	3	
Question	0 2	4	3	
Question	0 3	3	4	2
Question	0 4	3	4	
Question	0 5	3	4	
Question	0 6	2	3	
Question	0 7	3	2	
Totals Section A		22	23	2
Section B:				
Question	0 8	4	3	
Question	0 9	4	3	
Question	1 0	3	2	
Question	1 1	3	4	2
Question	1 2	3	4	
Question	1 3	3	2	
Question	1 4	3	4	
Totals Section B		23	22	2
Section C:				
Question	1 5	4	3	
Question	1 6	4	3	
Question	1 7	3	2	
Question	1 8	3	4	2
Question	1 9	3	4	
Question	2 0	3	2	
Question	2 1	3	4	
Totals Section C		23	22	2

Converting Marks into UMS marks

Convert raw marks into marks on the Uniform Mark Scale (UMS) by using the link below.

UMS conversion calculator www.aqa.org.uk/umsconversion