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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 students, 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 students 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 student'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 student's answer does not deserve credit, then no marks should be given.*

#### **Levels of Response for Essay Marking**

*When reading an essay you must 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 student. When you have finished reading the essay, therefore, think top-down, rather than bottom-up. In other words, has the student's overall answer met the requirements for the top level? If not, the next level?*

#### **Citation of Authority**

*Students 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

- 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**

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**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 - weak sound
- sound/some - clear
- clear/clear - clear
- clear/some - weak clear
- some/some - some

**LAW03 Descriptors**

<b>Level</b>	<b>Description</b>
<b>Sound</b>	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.
<b>Clear</b>	<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>
<b>Some</b>	<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>
<b>Fragments</b>	<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 student 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: 75 + 5 marks**

<b>0</b>	<b>1</b>	Discuss the possible criminal liability of Alice arising out of the throwing of the heavy glass vase. <span style="float: right;"><i>(25 marks + 5 marks for AO3)</i></span>
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**Potential Content**

- (A) Analysis of Alice’s liability in relation to Beth/Chris – assault/battery and assault/battery occasioning abh (s47).

*Actus reus* issues: no fear by Beth of immediate violence, nor actual battery suffered by Beth: both fear of violence and battery (indirect) in relation to Chris, if causation not broken by attempt to escape to which drunkenness may contribute; meaning of abh.

*Mens rea* issues: probable intention to cause at least injury, possibly serious injury, in relation to throwing glass at Beth; transferred malice to create *mens rea* for s47 offence against Chris by battery, otherwise problematic *mens rea* of assault (fear of violence) by recklessness in throwing glass in direction of open window.

**Sound** no offence on Beth + s47 (via assault or battery) on Chris  
**Weak sound** as above, but no reference to, or incorrect conclusion on, Beth.

- (B) Analysis of Alice’s liability in relation to Dave – unlawful and malicious infliction of gbh (s20) and unlawful and malicious causing of gbh with intent to cause gbh (s18).

*Actus reus* issues: the meaning of gbh; the relevance of age.

*Mens rea* issues: intention or recklessness as to some injury (s20), and as to serious injury (s18); intention to cause some injury established by transferred malice, **or** by recklessness as to some injury established by throwing glass in direction of open window; intention to cause serious injury (s18) established by transferred malice.

**Sound** s20 **and** s18  
**Clear** s20 **or** s18  
**Some** s47

- (C) Analysis of the insanity/automatism issue: requirements of insanity and automatism, including ‘internal/external’ distinction and required effect; specific application to diabetes (reason for alleged blood sugar irregularity).

**Note** that **weak sound** can be obtained by discussion of **either** insanity **or** automatism but that for **sound** there must be some recognition of the possibility of the other.

**Note:** in answering either of (A) or (B), students may rely on relevant explanation and application introduced in the other.

<b>0</b>	<b>2</b>	Discuss the possible liability of Evan for the involuntary manslaughter of Freddy and of George. <span style="float: right;">(25 marks)</span>
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**Potential Content**

- (A) In relation to the death of Freddy, the offence of gross negligence manslaughter: issues of duty (possible effect on duty of joint criminal activity, creation of a dangerous situation and/or voluntary assumption of responsibility) and breach; causation; ‘grossness’ of the negligence; intoxication.

**Max weak sound** if no intoxication.

- (B) In relation to the death of George, the offence of unlawful act manslaughter: the unlawful act of a dangerous kind as battery, etc; self-defence, raising issues both of necessity and proportion; possible further reference to intoxication.

**Max clear** if no self-defence.

<b>0</b>	<b>3</b>	Critically evaluate any <b>two</b> general defences (insanity, automatism, intoxication, consent, self-defence/prevention of crime). Suggest what reforms may be desirable to <b>one</b> of the defences that you have evaluated. <span style="float: right;">(25 marks)</span>
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**Potential Content**

- (A) Critical evaluation of first defence.
- (B) Critical evaluation of second defence.
- (C) Appropriate suggestions for reform in relation to (A) or (B). These should be related to the criticisms advanced and should, where possible, draw on substantial proposals (such as those made by Law Reform bodies and/or expert commentators).

[NB – credit should be given for any explanatory material on which criticisms are founded]

**Possible areas for critical evaluation:**

*Insanity:* the legal/medical notions of mental incapacity; relationship with diminished responsibility; limited nature of defect of reason; nature of disease of mind, including internal/external distinction and associated anomalies; uncertainty in scope and extent of required consequences (nature and quality/wrong); procedural aspects, including burden and standard of proof.

*Automatism:* definition of involuntariness (distinction between total and partial involuntariness); anomalies in distinguishing between insane and non-insane automatism; fault in becoming an automaton.

*Intoxication:* lack of clear rationale (defence or aggravation of offence); distinction between voluntary and involuntary intoxication; where voluntary intoxication, the specific intent/basic intent as crucial element in the approach; uncertainty in definition of specific intent; relationship with other defences (eg self-defence).



*Consent*: structure (strict basic rule + exceptions); lack of clear rationale for exceptions; true consent; anomalies in specific exceptions; exclusion from the exceptions (eg violence for sexual gratification).

*Self-defence*: general uncertainty in scope of reasonable force (eg mistakes, voluntary submission to danger of harm, carrying weapons and other possible preparation, pre-emptive force); excessive self-defence, especially in homicide (relationship with defence of loss of control); relationship with other defences, especially intoxication.

***Possible suggestions for reform:***

These could include matters such as:

- the re-definition of the defence of *insanity* to achieve closer alignment with medical notions;
- removal of the insane/non-insane *automatism* anomalies in the re-definition of insanity;
- re-definition of the meaning of *voluntary intoxication* and its effect on criminal liability, including its effect on other defences;
- re-structuring of the defence of *consent* and the provision of a clear rationale for the circumstances in which consent should be available (leading to re-consideration of the current inclusions and exclusions);
- clearer proposals on the effect of excessive *self-defence*, avoiding a requirement for loss of self-control (as currently contained in the defence of loss of control); a more rational provision in relation to the effect of intoxication on the defence of self-defence.

**Scenario 2****Total for this scenario: 75 + 5 marks**

<b>0</b>	<b>4</b>	Discuss the possible criminal liability of Jim arising out of the incidents involving Kyle, Liam and Mary.	(25 marks + 5 marks for AO3)
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**Potential Content**

- (A) In relation to Jim and Kyle: the offence of assault (battery) occasioning actual bodily harm; the possible defence of consent on the basis of rough horseplay; reference to intoxication in relation to basic intent offence. **Max weak sound** if no intoxication; **max clear** if no consent, even if intoxication discussed.
- (B) In relation to Jim and Liam: the wounding/gbh offences under s20 and s18; possible intent to cause gbh, as direct or oblique; possible plea of intoxication to the specific intent offence. (**Max weak clear** for s20 only; or s18 only; **max clear** for s20 or s18 and intoxication; **max weak sound** for s20 and s18; **max sound** s20/s18/intoxication.)
- (C) In relation to Jim and Mary: possible offences of assault occasioning actual bodily harm and unlawful and malicious infliction of grievous bodily harm; issues concerning the assault (did Mary ever fear immediate personal injury, did Jim intend or foresee such fear?); issues concerning the infliction of gbh (did Mary suffer gbh, did Jim intend or foresee some injury of that or any kind?); reference to intoxication in relation to basic intent offence. **Max sound** if gbh and intoxication (if abh, too, then a little less detail required on abh and/or gbh); **max weak sound** if gbh (even if with abh) but no intoxication; **max clear** if abh only (even with intoxication).

<b>0</b>	<b>5</b>	Discuss the possible criminal liability of Helen for the murder of Ian.	(25 marks)
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**Potential Content**

- (A) Explanation of the elements of the offence of murder, concentrating in particular on the *mens rea* of murder: intention to kill or cause gbh; direct and oblique intention.
- (B) Explanation of the defence of loss of control: issue of loss of self-control and considered desire for revenge; the fear trigger; the anger trigger (the 'circumstances', including possible sexual infidelity); the ultimate objective test. (**Max sound** for anger trigger only, in context; **max clear** for fear trigger only in context.)
- (C) Explanation of the defence of diminished responsibility: abnormality of mental functioning (substantial impairment of ability to exercise self-control?); recognised medical condition (personality disorder); provides explanation. Discussion of insanity only merits **max weak clear**.

<b>0</b>	<b>6</b>	Critically evaluate any <b>two</b> general defences (insanity, automatism, intoxication, consent, self-defence/prevention of crime). Suggest what reforms may be desirable to <b>one</b> of the defences that you have evaluated.	(25 marks)
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**Potential Content**

- (A) Critical evaluation of first defence.
- (B) Critical evaluation of second defence.

- (C) Appropriate suggestions for reform in relation to (A) or (B). These should be related to the criticisms advanced and should, where possible, draw on substantial proposals (such as those made by Law Reform bodies and/or expert commentators).

[NB – credit should be given for any explanatory material on which criticisms are founded]

**Possible areas for critical evaluation:**

*Insanity*: the legal/medical notions of mental incapacity; relationship with diminished responsibility; limited nature of defect of reason; nature of disease of mind, including internal/external distinction and associated anomalies; uncertainty in scope and extent of required consequences (nature and quality/wrong); procedural aspects, including burden and standard of proof.

*Automatism*: definition of involuntariness (distinction between total and partial involuntariness); anomalies in distinguishing between insane and non-insane automatism; fault in becoming an automaton.

*Intoxication*: lack of clear rationale (defence or aggravation of offence); distinction between voluntary and involuntary intoxication; where voluntary intoxication, the specific intent/basic intent as crucial element in the approach; uncertainty in definition of specific intent; relationship with other defences (eg self-defence).

*Consent*: structure (strict basic rule + exceptions); lack of clear rationale for exceptions; true consent; anomalies in specific exceptions; exclusion from the exceptions (eg violence for sexual gratification).

*Self-defence*: general uncertainty in scope of reasonable force (eg mistakes, voluntary submission to danger of harm, carrying weapons and other possible preparation, pre-emptive force); excessive self-defence, especially in homicide (relationship with defence of loss of control); relationship with other defences, especially intoxication.

**Possible suggestions for reform:**

These could include matters such as:

- the re-definition of the defence of *insanity* to achieve closer alignment with medical notions;
- removal of the insane/non-insane *automatism* anomalies in the re-definition of insanity;
- re-definition of the meaning of *voluntary intoxication* and its effect on criminal liability, including its effect on other defences;
- re-structuring of the defence of *consent* and the provision of a clear rationale for the circumstances in which consent should be available (leading to re-consideration of the current inclusions and exclusions);
- clearer proposals on the effect of excessive *self-defence*, avoiding a requirement for loss of self-control (as currently contained in the defence of loss of control);
- a more rational provision in relation to the effect of intoxication on the defence of self-defence.

**Contract Law****Scenario 3****Total for this scenario: 75 + 5 marks**

<b>0</b>	<b>7</b>	Discuss the rights and remedies that may be available to Baheera and to Aisha, against Diggers and against Choicepets, in connection with the purchase of the rabbit hutches.	<i>(25 marks + 5 marks for AO3)</i>
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**Potential Content**

- (A) In relation to the respective rights of Aisha and Baheera: analysis of the doctrine of privity of contract and the effect of the Contracts (Rights of Third Parties) Act 1999.
- (B) In relation to both hutches: analysis of the implied terms in the Sale of Goods Act 1979, as to description, satisfactory quality and fitness for purpose.
- (C) In relation to both hutches, and the relationships with Diggers and Choicepets: analysis of the remedies available for breach, including rejection and damages, as well as replacement and financial adjustments, including the effect (if any) on the remedies of the exclusion clause (Unfair Contract Terms Act 1977).

<b>0</b>	<b>8</b>	Consider the rights, duties and remedies that may apply to Fergus, to Enderby and to Diggers, arising out of the circumstances in which Fergus came to cancel the rabbit show.	<i>(25 marks)</i>
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**Potential Content**

- (A) Analysis of the events to determine whether the termination was due to frustration (nature of alleged frustrating event, issues of choice/fault, possibility that sufficient remains for contracts to be performed even in absence of rabbits). Consideration of alternative possibility of breach, including the nature of the breach (anticipatory).
- (B) Analysis of consequences of termination by either frustration or breach: distribution of losses on frustration according to Law Reform (Frustrated Contracts) Act 1943; remedies for breach, including, measure of damages, and anticipatory breach and mitigation.

<b>0</b>	<b>9</b>	Consider what criticisms may be made of the remedies currently available for a breach of contract, and suggest any appropriate reforms.	<i>(25 marks)</i>
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**Potential Content**

- (A) Issues concerning (common law/equitable) remedies of damages and specific performance: repudiatory and lesser breach related to remedies of rescission and damages; scope of damages (reliance and expectation loss; mitigation; mitigation in anticipatory breach); specific performance; effect on remedies of terms purporting to exclude or limit liability.
- (B) Issues concerning remedies associated with breach of statutory terms: terms in contracts for sale of goods, and sale and supply of goods and services, bearing particularly on right to reject/terminate, and demand (or be subject to) lesser remedies (eg replacement, repair, financial adjustment); effect on remedies of terms purporting to exclude or limit liability.

- (C) Appropriate suggestions for reform in relation to (A) and (B). These should be related to the criticisms advanced and should, where possible, draw on substantial proposals (such as those made by Law Reform bodies and/or expert commentators).

**Note:** in (A) and (B), discussion solely of the effect of exclusion/limitation clauses on remedies merits **max weak clear**.

**Scenario 4**

**Total for this scenario: 75 + 5 marks**

<b>1</b>	<b>0</b>	Consider the rights, duties and remedies of Greg against WFC, and the rights and remedies of Jack against Harry. <span style="float: right;"><i>(25 marks + 5 marks for A03)</i></span>
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**Potential Content**

- (A) In relation to the rights and remedies of Greg against Wanderers FC: analysis of the rules on offer and acceptance, including invitations to treat, postal acceptance; consideration of alternative outcomes, and consequent remedies/obligations.
- (B) In relation to the rights and remedies of Jack against Harry: analysis of the rules on consideration, including, in particular, the notion of past consideration; analysis of the rules on intention to create legal relations (business and social relationships); damages, including mitigation.

<b>1</b>	<b>1</b>	Consider the rights, duties and remedies of WFC and of Michael if WFC decided to terminate the contract with Michael and engage a replacement contractor. <span style="float: right;"><i>(25 marks)</i></span>
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**Potential Content**

- (A) Analysis of the right of WFC to terminate, by reference to the rules on misrepresentation: the requirements for an actionable misrepresentation; the kinds of misrepresentation; the remedies, especially for a fraudulent misrepresentation.
- (B) Analysis of the right of WFC to terminate, by reference to the implied terms in the Supply of Goods and Services Act 1982: terms as to reasonable care and skill, and as to reasonable time for completion; nature of the terms in relation to breach; effect of limitation clause.
- (C) Analysis of the right of Michael to sue for breach in consequence of termination: discussion of consideration issues in relation to the additional payment agreed; reference to issues in (B) in respect of possible counterclaim by WFC.

<b>1</b>	<b>2</b>	Consider what criticisms may be made of the remedies currently available for a breach of contract, and suggest any appropriate reforms. <span style="float: right;"><i>(25 marks)</i></span>
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**Potential Content**

- (A) Issues concerning (common law/equitable) remedies of damages and specific performance: repudiatory and lesser breach related to remedies of rescission and damages; scope of damages (reliance and expectation loss; mitigation; mitigation in anticipatory breach); specific performance; effect on remedies of terms purporting to exclude or limit liability.
- (B) Issues concerning remedies associated with breach of statutory terms: terms in contracts for sale of goods, and sale and supply of goods and services, bearing particularly on right to reject/terminate and demand (or be subject to) lesser remedies (eg replacement, repair, financial adjustment); effect on remedies of terms purporting to exclude or limit liability.
- (C) Appropriate suggestions for reform in relation to (A) and (B). These should be related to the criticisms advanced and should, where possible, draw on substantial proposals (such as those made by Law Reform bodies and/or expert commentators).

**Note:** in (A) and (B), discussion solely of the effect of exclusion/limitation clauses on remedies merits **max weak clear**.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

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

<b>UNIT 3</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
<b>Scenario 1</b>			
Question 0 1	10	15	5
Question 0 2	10	15	
Question 0 3	10	15	
<b>Scenario 2</b>			
Question 0 4	10	15	5
Question 0 5	10	15	
Question 0 6	10	15	
<b>Scenario 3</b>			
Question 0 7	10	15	5
Question 0 8	10	15	
Question 0 9	10	15	
<b>Scenario 4</b>			
Question 1 0	10	15	5
Question 1 1	10	15	
Question 1 2	10	15	
<b>Total marks</b>	<b>30</b>	<b>45</b>	<b>5</b>