



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 students' 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 students' 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 students' 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 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**

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

25	two sound, one clear
23	two sound, one some <b>or</b> one sound, two clear
21	two sound <b>or</b> one sound, one clear, one some <b>or</b> three clear
19	one sound, one clear <b>or</b> one sound, two some <b>or</b> two clear, one some
17	one sound, one some <b>or</b> two clear <b>or</b> one clear, two some
14	one sound <b>or</b> one clear, one some <b>or</b> three some
13	two sound explanation only
11	one clear <b>or</b> two some
09	one sound explanation only <b>or</b> two clear explanation only <b>or</b> three some explanation only
07	one some <b>or</b> one clear explanation only <b>or</b> 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 <b>or</b> two clear
17	one sound <b>or</b> one clear, one some
13	one clear <b>or</b> two some <b>or</b> two sound explanation only
11	one sound explanation only <b>or</b> two clear explanation only
08	one some <b>or</b> one clear explanation only <b>or</b> 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

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### LAW03 Descriptors

Level	Description
<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>	<p>Discuss the possible criminal liability of Anna for the injuries to Beth and to Charlie. Discuss Anna's possible criminal liability arising out of the note left on the windscreen of Ellie's car, and including Ellie's subsequent crash.</p> <p style="text-align: right;"><i>(25 marks + 5 marks for AO3)</i></p>
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**Potential Content**

(A) In relation to Anna's liability for the injury to Beth: analysis of *actus reus* and *mens rea* of s47 assault (battery) occasioning abh; consent issues in organised sport (framework explanation of general rule and exceptions; specific detail of the organised sport exception).

- sound            s47 + consent
- weak sound    battery + consent
- clear            s47
- weak clear     battery **or** s20 + consent
- some            s20 **or** consent

**Note:** in this, and in other, parts of the mark scheme, a level (sound, clear, etc) identified should be regarded as the maximum level available for appropriate treatment of the specified content.

(B) In relation to Anna's liability for the injury to Charlie: analysis of *actus reus* and *mens rea* of unlawful and malicious wounding and/or infliction of gbh (s20); recklessness and transferred malice issues; reference to applicability of consent (by analogy with transferred malice).

- weak sound    s20 but *mens rea* addressed without discussion of transferred malice
- weak clear    s47 assault (battery) occasioning abh, addressing transferred malice
- some            s47 but *mens rea* addressed without discussion of transferred malice

(C) In relation to Anna's liability for the incidents involving Ellie: analysis of the *actus reus* and *mens rea* of assault, so as to extend the analysis to s47; in particular, the causal connection between any assault and the physical injury (possible analogy with the escape cases and the reasonable foreseeability requirement). In discussing assault and assault occasioning actual bodily harm, reliance may be placed on any explanation of the elements of the offence(s) introduced in (A) and/or (B).

- sound            s47 (which will include assault, as well as causation)
- clear            s47 without specific discussion of causation **or** assault + causation
- weak clear     assault

<b>0</b>	<b>2</b>	Discuss the possible liability of Gill for the involuntary manslaughter of Harry. Discuss the possible criminal liability of Izaak for the death of Harry. <span style="float: right;">(25 marks)</span>
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**Potential Content**

(A) In relation to Gill’s liability for the involuntary manslaughter of Harry: analysis of the offence of unlawful act manslaughter; the unlawful act as any offence such as battery, abh or wounding, with *mens rea* issues of recklessness; dangerousness according to the objective test, including the relevance of Gill’s possession of the glass; causation (including possible effect of subsequent conduct of Izaak). Reference to self-defence may enhance the general quality of analysis.

(B) In relation to Izaak’s liability for the murder of Harry or for the gross negligence manslaughter of Harry: the description of the relevant conduct as either an act (preventing access to treatment) or an omission (failure to summon treatment); if an omission, the associated duty issue (attempt to assist, incident in his own house); breach; causation – in fact and in law; malice aforethought – direct and indirect intention; the grossness of the negligence; the relevance of intoxication.

sound            murder **or** gross negligence manslaughter **or** murder + gross negligence manslaughter (but excluding intoxication)  
clear            murder (excluding intoxication) **or** gross negligence manslaughter (excluding intoxication)

**Note:** discussion of intoxication is regarded as part of the discussion of either murder or gross negligence manslaughter except as indicated above.

<b>0</b>	<b>3</b>	Critically evaluate the current law on non-fatal offences, and suggest any reforms that you consider might improve the law. <span style="float: right;">(25 marks)</span>
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**Potential Content**

(A) Structural, language and antiquity issues: maximum sentences and the hierarchy of offences; antiquated and ambiguous language (for example ‘malicious’, ‘grievous’, ‘actual’, and the problems with the use of the term ‘assault’).

(B) Specific *actus reus* and *mens rea* issues, including issues with a defence of consent: assault/battery as a requirement of liability for non-serious injury; definition of *actus reus* of assault; *mens rea* and the principle of correspondence; the consent framework and the nature of the exceptions.

sound            *actus reus* and *mens rea* issues **or** consent issues

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



**Scenario 2**

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

<b>0</b>	<b>4</b>	Discuss the possible criminal liability of Jon arising out of his conduct towards Lucy and towards Malik. Discuss the possible criminal liability of Kris arising out of the dog bite, and subsequent infection, suffered by Jon.	(25 marks + 5 marks for AO3)
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**Potential Content**

(A) In relation to Jon, and Lucy and Malik: analysis of the offence under s47 of assault occasioning actual bodily harm (Lucy); analysis of the offence of battery (Malik).

sound            s47 (via assault) (Lucy) + battery (Malik)  
 clear             s47 (Lucy) **or** battery (Malik)  
 weak clear      assault only (Lucy)

**Note:** the discussion of involuntary intoxication relevant to this liability is credited in (B).

(B) In relation to Kris and Jon, analysis of the offences of unlawful and malicious wounding/infliction of gbh: the relevant conduct as an **omission**; duty (possible creation of a dangerous situation); breach; causation (would Kris have prevented outcome if he had acted? relevance of Jon's failure to seek treatment?); possible recklessness on Kris's part.

In relation to liability in (A), analysis of the possible defence of involuntary intoxication.

**Note:** in relation to Kris, the basis of the conduct may be argued as the **act** of spiking the drink. This is an improbable basis but is regarded as creditworthy application. A convincing analysis will require significant focus on causation, as well as mens rea.

sound            wound/gbh (omission) + involuntary intoxication  
 clear             wound/gbh (act) + involuntary intoxication **or** wound/gbh (omission)  
 weak clear      wound/gbh (act)  
 some             involuntary intoxication

<b>0</b>	<b>5</b>	Discuss the possible criminal liability of Niccy for the murder of Owen, and the possible criminal liability of Paul for the murder of Steve.	(25 marks)
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**Potential Content**

(A) In relation to Niccy and Paul, analysis of the elements of the offence of murder: recognition that application to Niccy is minimal (actus reus and mens rea - prima facie - clearly evident); in relation to Paul, concentration, in particular, on the *mens rea* of murder; intention to cause gbh; direct and oblique intention.

(B) In relation to Niccy and Owen, analysis of the defence of diminished responsibility: abnormality of mental functioning (substantial impairment of ability to form a rational judgment?); recognised medical condition (delusional – probably schizophrenia, though precise identification unnecessary); provides explanation. Discussion of insanity as an additional or alternative defence: defect of reason; disease of the mind; (probably) does not know that what she is doing is wrong.

- (C) In relation to Paul and Steve, explanation of the defence of loss of control: issue of loss of self-control and considered desire for revenge; the components of the anger trigger (the 'circumstances of an extremely grave character' include both comments about Paul's sister, Niccy, and the possible sexual infidelity involving Paul's wife, Ruth); the ultimate objective test.

<b>6</b>	Critically evaluate the current law on non-fatal offences, and suggest any reforms that you consider might improve the law. <span style="float: right;"><i>(25 marks)</i></span>
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**Potential Content**

- (A) Structural, language and antiquity issues: maximum sentences and the hierarchy of offences; antiquated and ambiguous language (for example 'malicious', 'grievous', 'actual', and the problems with the use of the term 'assault').
- (B) Specific *actus reus* and *mens rea* issues, including issues with a defence of consent: assault/battery as a requirement of liability for non-serious injury; definition of *actus reus* of assault; *mens rea* and the principle of correspondence; the consent framework and the nature of the exceptions.

sound *actus reus* and *mens rea* issues **or** consent issues

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

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## Contract Law

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

<b>0</b>	<b>7</b>	Discuss the rights and remedies, if any, available to Bakri, to Connor, and to Daisy against Acecars, in connection with the car servicing. <span style="float: right;">(25 marks + 5 marks for AO3)</span>
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**Potential Content**

- (A) Analysis of the legal effect of the posters/leaflets in terms of ITT, offer (including distinction between offers and invitations to treat). Analysis of rights and remedies of Bakri: incorporation, including the common law rules and effect of the small print clause; the operation of the *Unfair Terms in Consumer Contracts Regulations 1999*; possible breach and remedy in damages.
- (B) Acceptance and consideration in unilateral/collateral contracts. Analysis of rights and remedies of Connor and Daisy: objective approach to interpretation of the terms of the contract in relation to Connor, in view of probable acceptance by two earlier services; formation of contract in relation to Daisy, by reference to requirements for withdrawal of offer, and for acceptance, in a unilateral contract when one party has begun to perform.

<b>0</b>	<b>8</b>	Consider the rights and remedies, if any, available to Ellis and to Florence against Acecars, arising out of the purchase of the 'satnav'. <span style="float: right;">(25 marks)</span>
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**Potential Content**

- (A) Analysis of the requirements of the *Sale of Goods Act 1979 s14(2)* and *s14(3)*, as to satisfactory quality and fitness for purpose (possible reference to *s13*).
- (B) Analysis of the incidence of the rights as between Ellis and Florence: privity of contract and the *Contract (Rights of Third Parties) Act 1999*.

Analysis of the remedies available consequent upon breach of either or both of *s14(2)* and *s14(3)* (possible reference to *s13*): rejection and the loss of the right to reject; repair, replacement, reduction in price; damages; the operation of the *Unfair Contract Terms Act 1977 s6*, and of the *Unfair Terms in Consumer Contracts Regulations 1999* in relation to the attempt to restrict liability.

<b>0</b>	<b>9</b>	Write a critical evaluation of the law on contractual terms, and suggest any reforms that you consider desirable. You may relate your answer to terms in general, <b>or</b> to terms excluding/limiting liability, <b>or</b> to a combination of both. <span style="float: right;">(25 marks)</span>
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**Potential Content**

- (A) Issues concerning terms in common law: express and implied terms; classification of terms as conditions, warranties, and innominate terms;

**or**

Incorporation and interpretation of terms excluding and limiting liability.

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- (B) Issues concerning statutory terms and the statutory control of terms: terms implied in contracts for sale of goods, and sale and supply of goods and services;

**or**

The control of terms excluding and limiting liability by the *Unfair Contract Terms Act 1977* and the *Unfair Terms in Consumer Contracts Regulations 1999*.

- (C) Appropriate suggestions for reform in relation to (A) and/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).

**Note:** The descriptions above assume that the answer will discuss terms in general **or** terms excluding or limiting liability. Where the answer deals with a combination, the alternatives in (A) and (B) will instead form composite descriptions of each of (A) and (B), discussion of a reasonable part of which will merit sound.

**Scenario 4****Total for this scenario: 75 + 5 marks**

<b>1</b>	<b>0</b>	Consider the rights and remedies, if any, of George against Kenneth, and of George against Lewis.	<i>(25 marks + 5 marks for AO3)</i>
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**Potential Content**

- (A) In relation to the rights and remedies of George against Kenneth: analysis of the formation of the contract to determine whether the authenticity of the signature is a term or merely a (mis)representation; consequences of breach of the term, if any; the rules on misrepresentation, including types and remedies. Credit discussion of Sale of Goods Act 1979 s13 (description) as an additional or alternative approach.,

weak sound    misrepresentation only  
clear            s13 SGA 1979 only

- (B) In relation to the rights and remedies of George against Lewis: analysis of sufficient consideration for the additional £100 (existing duty owed to George?); analysis of the terms implied by the *Supply of Goods and Services Act 1982 s13* and *s14*; analysis of remedy of damages and the effect of the *Unfair Contract Terms Act 1977 s2* on the attempt to limit liability.

sound            consideration + SGSA + damages and UCTA  
clear            consideration + SGSA **or** SGSA + damages and UCTA  
weak clear     any **one** of consideration/SGSA/damages and UCTA

<b>1</b>	<b>1</b>	Consider the rights, duties and remedies of George and Parti-Time, and of Jackie and Parti-Time, in view of George's wish to cancel the celebration.	<i>(25 marks)</i>
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**Potential Content**

- (A) As between George and Parti-time, analysis of consequences of relationship breakdown: frustration or breach; frustrating events - frustration of the common venture; relevance of fault.

clear            frustration without discussion of fault

- (B) As between Parti-time and Jackie, analysis of the legal consequences of Jackie's refusal to perform: issue of anticipatory breach by Jackie; right of Parti-time to treat as repudiatory and claim damages, or to continue to insist on performance; consequence of possible subsequent frustration.

clear            anticipatory breach without discussion of the possible impact of frustration

- (C) Analysis of remedies in relation to (A) and (B): if frustration, operation of *Law Reform (Frustrated Contracts) Act 1943 s1(2)* and *s1(3)*; if breach, damages.

weak sound    effect of LR(FC)A without reference to breach

<b>1</b>	<b>2</b>	Write a critical evaluation of the law on contractual terms, and suggest any reforms that you consider desirable. You may relate your answer to terms in general, <b>or</b> to terms excluding/limiting liability, <b>or</b> to a combination of both. <span style="float: right;">(25 marks)</span>
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**Potential Content**

(A) Issues concerning terms in common law: express and implied terms; classification of terms as conditions, warranties, and innominate terms;

**or**

Incorporation and interpretation of terms excluding and limiting liability.

(B) Issues concerning statutory terms and the statutory control of terms: terms implied in contracts for sale of goods, and sale and supply of goods and services;

**or**

The control of terms excluding and limiting liability by the *Unfair Contract Terms Act 1977* and the *Unfair Terms in Consumer Contracts Regulations 1999*.

(C) Appropriate suggestions for reform in relation to (A) and/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).

**Note:** The descriptions above assume that the answer will discuss terms in general **or** terms excluding or limiting liability. Where the answer deals with a combination, the alternatives in (A) and (B) will instead form composite descriptions of each of (A) and (B), discussion of a reasonable part of which will merit sound.

**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>