

# A-LEVEL LAW

Unit 3 Criminal Law (Offences against the Person) or Contract Law  
Mark scheme

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LAW03  
June 2014

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Version: 1.0 Final

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Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts: alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Assessment Writer.

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.

Further copies of this Mark Scheme are available from [aqa.org.uk](http://aqa.org.uk)

## **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

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**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 Potential Content (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 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)**

**Total for this scenario: 75 marks + 5 marks for AO3**

**Scenario 1**

- |          |          |   |
|----------|----------|---|
| <b>0</b> | <b>1</b> | Discuss the possible criminal liability of Beck arising out of the text message sent to Aakil. Discuss the possible criminal liability of Aakil for the injuries inflicted on Chas. |
|----------|----------|---|

**[25 marks + 5 marks for AO3]**

**Potential Content**

- (A) In relation to Beck’s text: possible offence of assault – actus reus issue of fear of immediate personal violence; mens rea issue of intention or recklessness.

In relation to the possible liability in (B), the defence of self-defence: the requirement for necessity for the use of some force, including mistake and pre-emptive strikes; the requirement for use of proportionate force.

sound	assault + self-defence
weak clear	assault or self-defence

- (B) In relation to Aakil’s liability for the injury to Chas: assault (battery) occasioning abh (s47); unlawful and malicious infliction of gbh/causing of gbh with intent – abh offence clearly made out on the facts, gbh possibly established in relation, at least, to the hearing loss; intent to cause some injury but possible difficulty with intent to cause gbh.

sound	gbh (s20 and/or s18) + abh (emphasis may be more towards gbh or abh)
weak clear	gbh (s20 and/or s18) or abh
some	battery

- |          |          |   |
|----------|----------|---|
| <b>0</b> | <b>2</b> | Discuss the possible criminal liability of Darell for the murder of Eddie. Discuss the possible criminal liability of Beck for the involuntary manslaughter of Eddie. |
|----------|----------|---|

**[25 marks]**

**Potential Content**

- (A) In relation to the possible liability of Darell for the murder of Eddie: the actus reus issue of causation, involving consideration of the significance of Beck’s actions as a possible break in the chain of causation (contributing causes?); the mens rea issues of intention to (cause serious (?)) injury to Beck, and so discussion of transferred malice.

<b>sound</b>	actus reus (causation) + mens rea + transferred malice
<b>clear</b>	actus reus (causation) + mens rea
<b>weak clear</b>	actus reus (causation) or mens rea + transferred malice or causation + transferred malice in unlawful act manslaughter framework
<b>some</b>	basic unlawful act manslaughter



- (B) In relation to the possible liability of Darell for the murder of Eddie: the possible defence of loss of control (Coroners and Justice Act 2009) – grounded in either or both of the fear and the anger triggers; issues of revenge and loss of control; subjective and objective tests in the elements of each trigger; the ultimate test of the reaction of a person of normal degree of tolerance and self-restraint.

**Note:** a sound answer can be based on discussion of either trigger, together with the other elements indicated above. Where both triggers are dealt with, a sound answer will require a little less detail throughout.

- (C) In relation to the possible liability of Beck for the involuntary manslaughter of Eddie: manslaughter by gross negligence – the duty issue based on friendship/voluntary care, or on the creation of a dangerous situation; breach by, for example, failure to get timely help; risk of death; causation, involving degree of contribution; ‘grossness’ of the negligence in the light of the foregoing.

**Note:** an answer which treats Beck as possibly guilty of unlawful act manslaughter only (battery in dragging Eddie away) merits **max weak clear**. Where both forms of manslaughter are discussed, discussion of unlawful act manslaughter should be treated as enhancing the overall quality of the discussion of gross negligence manslaughter.

- |   |   |
|---|---|
| 0 | 3 |
|---|---|
- Write a critical evaluation of **two** of the general defences in criminal law, and suggest what reforms may improve **one** of your chosen defences.

**[25 marks]**

### 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.

**Total for this scenario: 75 marks + 5 marks for AO3**

## Scenario 2

- |          |          |
|----------|----------|
| <b>0</b> | <b>4</b> |
|----------|----------|
- Discuss the possible criminal liability of Hannah arising out of her behaviour on the table.

**[25 marks + 5 marks for AO3]**

### Potential Content

- (A) In relation to Hannah's action in kicking the glasses: possible offence of assault against numerous guests – actus reus issue of fear of immediate personal violence; mens rea issue of intention or recklessness.

In relation both to (A) and to (B), the plea of intoxication: the distinction between voluntary and involuntary intoxication; availability of the plea in involuntary intoxication, in relation to offences of both specific and basic intent.

**sound**            assault + intoxication  
**weak clear**      assault or intoxication

- (B) In relation to Hannah's actions in stepping on George's hand: s20 unlawful and malicious wounding/infliction of gbh – clearly a wound, possibly gbh, with mens rea of recklessness

**Note:** discussion of either wound or gbh is acceptable (s47 abh is a weaker alternative to both).

In relation to the injury suffered by Fran: possible s47 abh raising issues of degree of harm (age of Fran?), presence of an assault (was Fran's faint simply a response to George's injury?)(assault or battery without abh are weaker alternatives)

**sound**            s20 (George) + s47 (Fran)  
**clear**            s47 (George) + s47 (Fran) or s20 (George) + assault/battery (Fran)  
**weak clear**    s20 (George) or s47 (Fran)  
**some**            s47 (George) or assault/battery (Fran)

- |          |          |
|----------|----------|
| <b>0</b> | <b>5</b> |
|----------|----------|
- Discuss the possible criminal liability of James for the involuntary manslaughter of Ivan, and the possible criminal liability of Hannah for the involuntary manslaughter of Kate.

**[25 marks]**

### Potential Content

- (A) In relation to the possible liability of James: the offence of unlawful act manslaughter – the unlawful act as battery, both actus reus and mens rea; inherent dangerousness in obvious risk of injury; issue of causation, involving possible break in the chain but perhaps causes in combination.

**Note:** credit should be given to answers which raise the issue of use of reasonable force on a general, though difficult to sustain, argument about trespass by Ivan.

- (B) In relation to the possible liability of Hannah: the offence of gross negligence manslaughter – duty on those who prepare food for consumption; breach by failure to keep raw and cooked meat separate; risk of death (significance of Kate’s weakened condition?); causation and ‘take your victim’; ‘grossness’ of the negligence.

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 Write a critical evaluation of **two** of the general defences in criminal law, and suggest what reforms may improve **one** of your chosen defences.

**[25 marks]**

### 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

**Total for this scenario: 75 marks + 5 marks for AO3**

### Scenario 3

- |          |          |
|----------|----------|
| <b>0</b> | <b>7</b> |
|----------|----------|
- Discuss the rights and remedies available to Aminah against Readelec and against Backlight in connection with the eBook reader.
- [25 marks + 5 marks for AO3]**

#### Potential Content

- (A) The rights created by a contract for the sale of goods between business and consumer: the issue of privity of contract, excluding Backlight; implied terms under Sale of Goods Act 1979 s14(2) and (3) (satisfactory quality and fitness for purpose).

<b>sound</b>	implied terms + privity
<b>clear</b>	implied terms
<b>some</b>	privity

- (B) The remedies available consequent upon breach of the implied terms: status as conditions; rejection (including loss of the right to reject); repair, replacement (availability of those rights consequent on provision of replacement for initial failure to comply); reduction in price; damages for consequential loss; incorporation of exclusion clause and the operation of the Unfair Contract Terms Act 1977 s6 in relation to the attempt to avoid liability.

<b>sound</b>	remedies (including 'replacement') + exclusion clause issues
<b>clear</b>	remedies
<b>weak clear</b>	exclusion clause issues

- |          |          |
|----------|----------|
| <b>0</b> | <b>8</b> |
|----------|----------|
- Consider the rights, duties and remedies of Aminah and Roshan arising out of the contract to re-decorate the rooms, and of Aminah and Tariq arising out of the contract to paint the outside of the house.

**[25 marks]**

#### Potential Content

- (A) In relation to the rights, duties and remedies of Aminah and Roshan: the issue of sufficient consideration for the additional £150 (existing duty owed to Aminah, absence of any additional consideration?).

In relation to the rights, duties and remedies of Aminah and Roshan: the term implied by the Supply of Goods and Services Act 1982 s13 as to reasonable care and skill; the innominate nature of the term and consequence for nature of any breach (repudiatory/non-repudiatory) and resulting remedies, including damages. Possible counter argument by Roshan that Aminah committed a repudiatory breach in stopping him from doing further work; damages for loss of profit.

<b>sound</b>	consideration + SGSA issues
<b>clear</b>	consideration or SGSA issues

- (B) In relation to the rights, duties and remedies of Aminah and Tariq: the issue of frustration or breach; frustrating events – impossibility of performance due to incapacity; relevance of possible fault; remedies in relation to frustration, operation of Law Reform (Frustrated Contracts) Act 1943 s1(2) and s1(3); remedy of damages if breach.

**sound**           frustration + remedies (some reference to breach)  
**clear**            frustration  
**weak clear**     remedies

- |          |          |
|----------|----------|
| <b>0</b> | <b>9</b> |
|----------|----------|
- Assess the strengths and weaknesses of the current law on agreement (offer and acceptance and associated rules) in contract, and consider what reforms may be proposed to remedy any deficiencies.

**[25 marks]**

### Potential Content

- (A) Issues concerning offer: well-established nature of the rules; established in response to specific cases; pragmatic in application; problems with distinction between offer, invitation to treat, statements of price; problems with adaptation to modern methods of communication; 'battle of the forms'.
- (B) Issues concerning acceptance: strengths as above; problems with distinction between acceptance, requests for further information, counter offer; problems with particular modes of acceptance – postal rule, and modern forms of electronic communication; 'battle of the forms' (as above).
- (C) Suggestions for reform: proposals may concentrate on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications or may seek to develop proposals from a broader perspective, such as adaptation to modern commerce and communication.

**Total for this scenario: 75 marks + 5 marks for AO3**

#### Scenario 4

1	0
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Consider what rights and remedies Dave has against Gary and against Henry in connection with the sale of the rugby shirt.

**[25 marks +5 marks for AO3]**

#### Potential Content

- (A) In relation to the rights and remedies of Dave against Gary: the nature of Dave's statement as offer/invitation to treat/statement of price; the nature of Gary's text message as acceptance (compliance with terms of offer?); the nature of Gary's text message as an offer, involving silence as (non) acceptance; conclusions as to (lack of) remedy.
- (B) In relation to the rights and remedies of Dave against Henry: (utilising the discussion in (A) of the nature of Dave's initial statement) the nature of Henry's actions and statement as a counter offer; the nature of Dave's response as a rejection of the offer or simple non-acceptance; if non-acceptance, whether Henry's offer has lapsed; the nature of Dave's subsequent response as acceptance, or as a further offer; the possibility of a remedy in damages.
- (C) In relation to the rights and remedies of Dave against Gary and against Henry: the issue of intention to create legal relations – domestic/social relationships/occasions contrasted with commercial; incidence and nature of burden of proof.

1	1
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Discuss Joan's rights and remedies against Martin in connection with the work on her roof.

**[25 marks]**

#### Potential Content

- (A) In relation to Martin's description of himself as having 25 years experience in roofing repairs: the issue of misrepresentation – the nature of a misrepresentation; reliance; kinds of misrepresentation, especially fraudulent; remedies, in particular, damages.

**sound** nature + types + remedies  
**clear** nature + types or remedies

- (B) In relation to the rights and remedies arising out of the poor quality work and tiles: recognition of the contract as one for the supply of materials and work; Supply of Goods and Services Act 1982 s4 (implied condition as to quality and fitness for purpose) and s13 (implied innominate term as to reasonable care and skill); remedy of damages, including consequential loss, and application of Unfair Contract Terms Act 1977 to rights under both s4 and s13.

**sound** SGSA terms + remedies + UCTA  
**clear** SGSA terms + remedies or UCTA  
**weak clear** SGSA terms or remedies + UCTA



1	2
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Assess the strengths and weaknesses of the current law on agreement (offer and acceptance and associated rules) in contract, and consider what reforms may be proposed to remedy any deficiencies.

**[25 marks]**

**Potential Content**

- (A) Issues concerning offer: well-established nature of the rules; established in response to specific cases; pragmatic in application; problems with distinction between offer, invitation to treat, statements of price; problems with adaptation to modern methods of communication; 'battle of the forms'.
- (B) Issues concerning acceptance: strengths as above; problems with distinction between acceptance, requests for further information, counter offer; problems with particular modes of acceptance – postal rule, and modern forms of electronic communication; 'battle of the forms' (as above).
- (C) Suggestions for reform: proposals may concentrate on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications or may seek to develop proposals from a broader perspective, such as adaptation to modern commerce and communication.

**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>
Question 01	10	15	5
Question 02	10	15	
Question 03	10	15	
Question 04	10	15	5
Question 05	10	15	
Question 06	10	15	
Question 07	10	15	5
Question 08	10	15	
Question 09	10	15	
Question 10	10	15	5
Question 11	10	15	
Question 12	10	15	
<b>Total marks</b>	30	45	5