



**General Certificate of Education**

**Law 2161**

**Unit 3 (LAW03) Criminal Law (Offences  
against the Person) or  
Contract**

**Mark Scheme**

*2010 examination - January series*

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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## **LAW03**

### **Assessment Objectives One and Two**

#### **General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of candidates, 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 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.*

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

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

#### **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

The Code of Practice for GCSE, GCSE in vocational subjects, GCE, VCE and GNVQ requires the assessment of candidates' quality of written communication wherever they are required to write in continuous prose. In this unit, this assessment will take place by marking the candidate's script as a whole, by means of the following criteria:

- 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**

## Descriptors

Level	Explanation	Application
<b>sound</b>	The answer correctly identifies and accurately explains the relevant rule(s) in the central aspects of the potential content. Where appropriate, the explanations are supported by relevant statutory and/or case authority and illustration (which is adequately developed where necessary to explain the <i>ratio</i> and/or assist in the application to the facts). Where there are more marginal aspects of the rules, there may be some minor omissions or inaccuracies in the explanation of the rule(s) and/or supporting statutory/case authority and illustration.	The answer selects and emphasises the relevant facts from the scenario and makes close reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. Where appropriate, the application explores the effect of different interpretations of the rule(s) and/or of conflicting rules and/or of different interpretations of the facts. The solution suggested is clearly based on the explanation and application of the rules and is sustainable.
<b>clear</b>	The answer correctly identifies and accurately explains significant parts of the rule(s) in the central aspects of the potential content, though there are omissions of some part(s) of the rule(s), or errors in the explanation, in those central aspects. There may be a little over-emphasis on marginal aspects of the rules at the expense of some of the more central aspects. In the higher part of the level, statutory and/or case authority and illustration are used but there may be a little confusion and error in selection and/or explanation or the explanation may be limited. At the lower end of the level, there may be little evidence of statutory and/or case authority and illustration or more evident inaccuracies.	The answer selects and emphasises some of the relevant facts from the scenario and makes reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. The application, though otherwise persuasive, may fail to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts) or there may be a little error or confusion in the application to the facts. The solution suggested is broadly based on the explanation and application of the rules, though there may be some evident weakness.
<b>some</b>	The answer correctly identifies and accurately explains a very limited part of the relevant rule(s) in the central aspects of the potential content. There may be a very evident imbalance between explanation of central and of more marginal aspects of the rule(s). Alternatively, the answer explains a more substantial part of the relevant rule(s) in the central aspects of the potential content but the explanations suffer from significant omission, error or confusion. Explanations may emerge only out of attempts to introduce relevant case authority and illustration. If introduced at all, statutory and/or case authority and illustration may be of marginal relevance or the explanation may be highly superficial or subject to significant inaccuracies or not properly used to support the explanation of the relevant rule(s).	The answer selects and emphasises one or two relevant facts from the scenario and makes reference to them without being able to suggest a coherent application. More broad-ranging attempts to identify and make reference to relevant facts display confusion or error. Alternatively, the answer tends to make simple assertions or assumptions about the way in which the rule(s) apply to the facts, so that application is general and unspecific, being unrelated to particular facts. The application fails to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts). Little use is made of whatever statutory or case authority and illustration is incorporated in explanations. The solution suggested is only imprecisely related to the explanation of the rule(s).

**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	- low sound
sound/some	- clear
clear/clear	- clear
clear/some	- low clear
some/some	- some

**Criminal Law (Offences against the Person)**

**1**

**Total for this question: 75 marks**

(a) Consider the liability of Henry for the injuries to Jack, and the liability of Jack for the injuries to Karim. (25 marks)

**Potential Content**

- (A) In relation to Henry and Jack – the offences of battery and assault (battery) occasioning abh. Battery only – max clear
- (B) In relation to Jack and Karim – offences of unlawful and malicious wounding and unlawful and malicious wounding with intent to cause gbh, including the issue of transferred malice. No transferred malice – max weak sound
- (C) In relation to both Henry and Jack: the defence of consent – the standard rule in relation to consent and personal injury; the exception for rough, undisciplined play; the question of whether Henry’s acts are within, and Jack’s are outside, the scope of any consent given

(b) Consider the liability of Mike for the murder of Pete. (25 marks)

**Potential Content**

- (A) The elements of the offence of murder: in particular, *mens rea* – possible intent to kill sufficiency of intent to do serious injury; meaning of intention as direct or, possibly, oblique; likelihood that Mike intended at least serious injury to Pete
- (B) The defence of provocation – issues both of subjective and objective tests; nature and context of the provocation; possible time lapse indicating no current loss of self-control; (ir)relevance to the objective test of Mike’s mental health problems
- (C) The defence of diminished responsibility – abnormality, origins, substantial impairment of responsibility. Relevance to the specified cause of the abnormality of Mike’s mental health problems. Additionally, or as a completely acceptable alternative, the defence of insanity – defect of reason from disease of the mind; proof of requisite effect may be possible in view of paranoia (mistaken self-defence, where the mistake is induced by the defect of reason). Note that discussion of self-defence alone merits **max weak clear**

- |   |
|---|
| (c) In recent years, there has been much dissatisfaction with the current law of murder and voluntary manslaughter. Explain the reasons for this dissatisfaction and consider what proposals have been made for the reform of the law. (25 marks) |
|---|

**Potential Content**

- (A) Explanation of criticisms of current law of murder – this could include general structural issues (the relationship between murder and manslaughter), the effect of the mandatory penalty of life imprisonment, the failure to distinguish between different kinds of murders; the specific issues to do with *mens rea* (for example, the intention problem, the extension to an intention to do any kind of serious injury)
- (B) Explanation of criticisms of current law on partial defences (voluntary manslaughter) – in provocation, this could include the broad-ranging nature of the provocation test, the difficulties in including battered-woman syndrome, the exclusion of certain characteristics in the objective test; in diminished responsibility, this could include the difficulties in establishing abnormality, especially in intoxication cases, the non-medical definition of the specified cause, and the hybrid ‘moral responsibility’ test
- (C) Consideration of reforms, which will be likely to centre on recent Law Commission proposals and the Government response



**Question 2****Total for this question: 75 marks**

- (a) Discuss the possible liability of Rob arising out of the phone call to Irina and out of the injuries inflicted on Steve. Discuss Steve's possible liability for the injury suffered by Ted. (25 marks)

**Potential Content**

- (A) In relation to Rob and Irina – possible offence of assault (raising issue of fear of *immediate* personal violence, and of relevant *mens rea*)
- (B) In relation to the injuries inflicted by Rob on Steve – unlawful and malicious infliction of gbh and unlawful and malicious infliction of gbh with intent (assault occasioning abh is a lesser alternative – **max clear**)
- (C) In relation to Steve's possible liability for injuries to Ted – assault occasioning abh (infliction of gbh is a possible addition/alternative, in which discussion of (B) may be utilised). Discussion of Steve's mental state can be dealt with as lack of *mens rea*, or as automatism, or as self-defence (raising, *inter alia*, the issue of mistake)

- (b) Discuss the possible liability of Rob for involuntary manslaughter in connection with the death of Vincent. (25 marks)

**Potential Content**

- (A) The offence of unlawful act manslaughter based on the possible crime of assault - *actus reus* and *mens rea* elements of the intermediate crime, and the remaining requirements of 'dangerousness' and causation (these two require a distinction to be made between the objective test in dangerousness and the 'take your victim' rule in causation)
- (B) The offence of gross negligence manslaughter. The elements of the offence, including the requirement to prove a breach of duty (related here to the idea of omission and the creation of a dangerous situation), the obvious risk of death, causation (need to establish that Vincent would not have died/it is highly probable that Vincent would not have died had Rob fulfilled any duty imposed on him) and the jury's role in determining whether the conduct was 'so bad in all the circumstances'
- (C) The issue of intoxication – the effect of voluntary intoxication in relation to offences of specific and basic intent

- |   |
|---|
| (c) In recent years, there has been much dissatisfaction with the current law of murder and voluntary manslaughter. Explain the reasons for this dissatisfaction and consider what proposals have been made for the reform of the law. (25 marks) |
|---|

**Potential Content**

- (A) Explanation of criticisms of current law of murder – this could include general structural issues (the relationship between murder and manslaughter), the effect of the mandatory penalty of life imprisonment, the failure to distinguish between different kinds of murders; the specific issues to do with *mens rea* (for example, the intention problem, the extension to an intention to do any kind of serious injury)
- (B) Explanation of criticisms of current law on partial defences (voluntary manslaughter) – in provocation, this could include the broad-ranging nature of the provocation test, the difficulties in including battered-woman syndrome, the exclusion of certain characteristics in the objective test; in diminished responsibility, this could include the difficulties in establishing abnormality, especially in intoxication cases, the non-medical definition of the specified cause, and the hybrid ‘moral responsibility’ test
- (C) Consideration of reforms, which will be likely to centre on recent Law Commission proposals and the Government response

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**Contract Law**

**Question 3**

**Total for this question: 75 marks**

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|--|
| (a) Having regard to the rules on offer and acceptance in contracts, consider the rights and remedies, if any, of Bavna, of Charlie and of Doug in relation to the tickets for the concert. (25 marks) |
|--|

**Potential Content**

- (A) The general agreement issues – the status of the advertisement as offer or invitation to treat; the method of acceptance required (on the assumption that it is an offer); the question of revocation
- (B) The specific offer and acceptance issues in relation to Bavna, Charlie, and Doug – displacement of the standard rule for acceptance by post; compliance with terms of the offer; the issues in relation to electronic (instantaneous) communications; the role of negligence or default by the offeror. Possible discussion of the agreement with Emma. Remedies

- |   |
|---|
| (b) Having regard to the rules on termination of contracts by breach and by frustration, consider the rights and remedies of Realsounds against Hassan, and of Greg and Realsounds arising out of the damage to the concert building and subsequent cancellation of the concert. (25 marks) |
|---|

**Potential Content**

- (A) In relation to Hassan – the requirements of the Supply of Goods and Services Act 1982 as to reasonable care and skill, related to the core terms of the contract for the provision of security services. Breach and damages
- (B) In relation to Greg – the issue of frustration: the notion of frustration by destruction of something essential to the contract; possible fault on the part of Realsounds; consequences of frustration (effect of the Law Reform (Frustrated Contracts) Act 1943 in that sums paid recoverable but subject to recompense for expenses incurred and benefit conferred)

- |   |
|---|
| (c) Consider whether there are any criticisms that may be made of the rules on offer and acceptance in contract and discuss what reforms might be desirable. (25 marks) |
|---|

**Potential Content**

**Offer and acceptance**

(A) Issues concerning offers: for example, problems of distinguishing between offers and invitations to treat, and between counter offers and requests for further information; rules on withdrawal of offers

(B) Issues concerning acceptance: for example, in different forms of communication, such as face-to-face, electronic and via the postal service; interpretation of prescriptive forms of acceptance

**Note** These issues may be approached as part of a consideration of broader problems, such as the 'battle of the forms' or the difficulties in adapting the rules to cope with new technology.

(C) Simple suggestions for reform – these may concentrate particularly on the need to adapt traditional rules to modern technology

**Question 4**

**Total for this question: 75 marks**

(a) Taking into account **the rules on formation of contract**, consider what rights and remedies, if any, are available to John, arising out of the work done by John on Harold's lighting, for which Harold subsequently promised to pay.

Taking into account **the rules on misrepresentation in contract**, consider whether Harold can avoid going ahead with the contract with Krypton Engineers. *(25 marks)*

**Potential Content**

- (A) The formation issue in relation to intention to create legal relations in domestic and commercial agreements
- (B) The formation issue in relation to consideration in a contract – in particular, the issue of past consideration and the possibility of constructing an implied promise

**Note** John's possible remedy (damages rather than specific performance) should be discussed as appropriate and associated with (A) or (B). Without such discussion, only one of (A) and (B) can be categorised as sound.

- (C) The nature and meaning of misrepresentation – terms and representations; reliance; kinds of misrepresentation; the remedies for misrepresentation in rescission and/or damages related to the kinds of misrepresentation identified and discussed

(b) Consider Harold's rights and remedies in connection with his purchase of the sofa from Lesters. *(25 marks)*

**Potential Content**

- (A) The terms implied by the Sale of Goods Act 1979 (as amended) in relation to description, quality and fitness for purpose
- (B) The common law and statutory approach to exclusion and limitation clauses, including issues of incorporation and the prohibition in the Unfair Contract Terms Act 1977 of terms excluding or limiting certain rights under the Sale of Goods Act 1979
- (C) Remedies – rejection, loss of the right to reject, damages (the status of minor defects and price adjustments), including the effect of (B)

- |   |
|---|
| (c) Consider whether there are any criticisms that may be made of the rules on offer and acceptance in contract and discuss what reforms might be desirable. (25 marks) |
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### Potential Content

#### Offer and acceptance

- (A) Issues concerning offers: for example, problems of distinguishing between offers and invitations to treat, and between counter offers and requests for further information; rules on withdrawal of offers
- (B) Issues concerning acceptance: for example, in different forms of communication, such as face-to-face, electronic and via the postal service; interpretation of prescriptive forms of acceptance

**Note** These issues may be approached as part of a consideration of broader problems, such as the 'battle of the forms' or the difficulties in adapting the rules to cope with new technology.

- (C) Simple suggestions for reform – these may concentrate particularly on the need to adapt traditional rules to modern technology

**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>A02</b>	<b>AO3</b>
Question 1 (a)	10	15	5
Question 1 (b)	10	15	
Question 1 (c)	10	15	
Question 2 (a)	10	15	5
Question 2 (b)	10	15	
Question 2 (c)	10	15	
Question 3 (a)	10	15	5
Question 3 (b)	10	15	
Question 3 (c)	10	15	
Question 4 (a)	10	15	5
Question 4 (b)	10	15	
Question 4 (c)	10	15	
<b>Total marks</b>	30	45	5