



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

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of candidates' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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## **LAW02**

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

#### **General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of candidates, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.*

#### **Positive Marking**

*You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as candidates penalise themselves in terms of the time they have spent.*

#### **Mark Range**

*You should use the whole mark range available in the mark scheme. Where the candidate's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the candidate's answer does not deserve credit, then no marks should be given.*

#### **Citation of Authority**

*Candidates will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.*

**Assessment Objective Three**

**QUALITY OF WRITTEN COMMUNICATION (QoWC)**

<b>2 marks</b>	<p>The work is characterised by some or all of the following:</p> <ul style="list-style-type: none"> <li>• clear expression of ideas</li> <li>• a good range of specialist terms</li> <li>• few errors in grammar, punctuation and spelling</li> <li>• errors do not detract from the clarity of the material.</li> </ul>
<b>1 mark</b>	<p>The work is characterised by:</p> <ul style="list-style-type: none"> <li>• reasonable expression of ideas</li> <li>• the use of some specialist terms</li> <li>• errors of grammar, punctuation and spelling</li> <li>• errors detract from the clarity of the material.</li> </ul>
<b>0 marks</b>	<p>The work is characterised by:</p> <ul style="list-style-type: none"> <li>• poor expression of ideas</li> <li>• limited use of specialist terms</li> <li>• errors and poor grammar, punctuation and spelling</li> <li>• errors obscure the clarity of the material.</li> </ul>

### The level of understanding in AS Law – LAW 02

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year old, so the level of understanding required by these criteria will be that of the notional 17-year old.

<b>Sound</b>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain relevant material to the Potential Content.</li> <li>• The material will be supported by generally relevant authority and/or examples.</li> <li>• It will generally deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<b>Clear</b>	<ul style="list-style-type: none"> <li>• The material is broadly accurate and relevant to the Potential Content.</li> <li>• The material will be supported by some use of relevant authority and/or examples.</li> <li>• The material will broadly deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.</p>
<b>Some</b>	<ul style="list-style-type: none"> <li>• The material shows some accuracy and relevance to the Potential Content.</li> <li>• The material may occasionally be supported by some relevant authority and/or examples.</li> <li>• The material will deal with some of the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.</p>
<b>Limited</b>	<ul style="list-style-type: none"> <li>• The material is of limited accuracy and relevance to the Potential Content.</li> <li>• The material will be supported by minimal relevant authority and/or examples.</li> <li>• The material will deal superficially with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the concepts of the Potential Content will barely be established, as there will be many errors, omissions and/or confusion which almost completely undermine the essential elements of the Potential Content.</p>

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**Section A: Introduction to Criminal Liability**

**Total for this question: 45 marks**

<b>0 1</b> Explain the meaning of the term 'causation'.	<b>(7 marks)</b>
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**Potential Content**

(A) Explanation of the meaning of causation. This can include:

Factual causation – “but for” test and explanation, cases/examples to illustrate, eg White

Legal causation – significant and operative cause, *novus actus interveniens*: cases/examples to illustrate, eg medical negligence, eg Smith, contribution of others, eg Benge, pre-existing medical condition, eg Hayward, etc

**Mark Bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation

0 The answer contains no relevant information.

<b>0 2</b> Explain the meaning of the term ' <i>mens rea</i> '.	<b>(7 marks)</b>
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**Potential Content**

(A) Explanation of the meaning of *mens rea* in general terms (guilty mind).

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

Direct intent (definition + illustration, eg Mohan),

Oblique intent (definition + illustration, eg Woollin) and,

Recklessness (definition and illustration, eg Cunningham)

NB Marginal credit may be given to explanation of transferred malice – **Max 1**

**Mark Bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation

0 The answer contains no relevant information.

<b>0 3</b> Explain the meaning of 'transferred malice'.	<b>(5 marks)</b>
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**Potential Content**

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

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

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

**Mark bands**

- 5 The candidate deals with (A) as follows:  
**one** sound.
- 4 The candidate deals with (A) as follows:  
**one** clear.
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 - 1 The candidate demonstrates limited capacity for explanation
- 0 The answer contains no relevant information.

<b>0 4</b> Discuss the criminal liability of Dan for pushing Carl.	<i>(7 marks)</i>
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**Potential Content**

- (A) Recognition of the crime of battery (assault by beating)  
S. 39 Criminal Justice Act 1988

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

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

Cases/examples in support

**Mark bands**

- 7 - 6 The candidate deals with (A) as follows:  
**one** sound
- 5 - 4 The candidate deals with (A) as follows:  
**one** clear
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

<b>0 5</b> Discuss the criminal liability of Dan for the injuries suffered by Enid. <span style="float: right;"><i>(7 marks)</i></span>
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**Potential Content**

(A) Discussion and application of gbh s20 (definition + application)

Recognition and application of the transferred malice rule.

Cases/examples in support of either version of gbh

NB Possible argument for abh s47, based on lack of appropriate *mens rea* for s20, can gain full marks

**Mark bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

<b>0 6</b> Outline the procedure that would be followed if Dan was charged with a summary offence. <span style="float: right;"><i>(5 marks)</i></span>
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**Potential Content**

(A) Outline and application of procedure. This could include:

First appearance at Magistrates Court;  
Plea;  
Legal representation/Duty Solicitor  
Bail;  
Pre trial review;  
Trial to be at Magistrates Court.

**Mark bands**

- 5 The candidate deals with (A) as follows:  
**one** sound.
- 4 The candidate deals with (A) as follows:  
**one** clear.
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

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<b>0 7</b>	Outline the range of sentences available to the court <b>and</b> the factors the court would consider if Dan was convicted of an offence in respect of Enid's injuries. <i>(7 marks + 2 marks for AO3)</i>
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**Potential Content**

- (A) Outline of the range of sentences. These are:  
Custodial;  
Community;  
Fine or Discharge.  
Application to scenario, eg first time offender who, if given a community sentence might be expected to undertake an anger management course.

Outline of aggravating and mitigating factors  
Application to scenario – aggravating factors include, eg unprovoked attack, vulnerable victim; mitigating factors include transferred malice, no previous convictions, remorse and help of victim.

- NB Credit aims under factors, where the two are linked. Balance of depth and breadth between sentences and factors should be taken into account.  
Only one aspect dealt with - max 5.

**Mark bands**

- 7 - 6 The candidate deals with (A) as follows:  
**one** sound
- 5 - 4 The candidate deals with (A) as follows:  
**one** clear
- 3 The candidate deals with (A) as follows:  
**one** some
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear
- 0 The answer contains no relevant information

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**Section B: Introduction to Tort**

**Total for this question: 45 marks**

<b>0 8</b> Explain the meaning of the term 'breach of duty'. <i>(7 marks + 2 marks for AO3)</i>
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**Potential Content**

(A) Explanation of the meaning of the term. This could include:

The standard of reasonable man.

Case/example, eg Blyth v Birmingham Waterworks

Identification and explanation of the risk factors.

Case/example in support, eg Paris v Stepney BC, Bolton v Stone, etc

**Max 5** for no reference to reasonable man

**Mark bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation

0 The answer contains no relevant information.

<b>0 9</b> Damage involves the rules of <b>causation</b> and <b>remoteness of damage</b> . Outline the meaning of these rules. <span style="float: right;"><i>(7 marks)</i></span>
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**Potential Content**

(A) Explanation of factual causation  
Case/example, eg Barnett v Chelsea & Kensington Hospital

Explanation of the meaning of remoteness of damage. This can include:

Reasonable foreseeability test

Kind of damage

Thin skull rule

Case/example, eg The Wagon Mound, Doughty v Turner Manufacturing, Smith v Leech  
Brain, etc

**Mark bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation

0 The answer contains no relevant information.

<b>1 0</b> Assume that Richard owed a duty of care to Gordon <b>and</b> to Janet. Discuss whether Richard was in breach of these duties. <span style="float: right;"><i>(7 marks)</i></span>
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**Potential Content**

(A) Discussion and application of the rules relating to breach of duty

Reasonable man test and risk factors

Relevance, for example, of Richard's possible lack of expertise, degree of risk, seriousness of harm and the position of someone acting in an emergency (public utility), etc

Case/example in support, eg *Nettleship v Weston*, *Paris v Stepney BC*, *Marshall v Osmond*, *Bolton v Stone*, etc

A conclusion based on the above discussion and authority

**Mark Bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

<b>1 1</b>	Assuming that Richard was in breach of his duty of care to Janet, discuss whether Janet's blindness was too remote. <span style="float: right;"><i>(7 marks)</i></span>
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**Potential Content**

(A) Application of remoteness tests. This can include:

Forseeability

Take your victim as you find her

Type of injury, but not exact form or extent.

Intervening act by doctor

Case/example in support, eg Barnett v Chelsea & Kensington Hospital, The Wagon

Mound, Smith v Leech Brain, etc

NB A brief reference to the factual causation rules as part of an explanation as to the limitations on recoverable damage can be credited.

A conclusion based on the above discussion and authority

**Mark bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

- |  |
|--|
| <b>1 2</b> Assume that Janet and Gordon decide to claim against Richard in negligence. Outline which track(s) these two cases would be allocated to <b>and</b> identify which court(s) would hear these two negligence claims. <span style="float: right;"><i>(5 marks)</i></span> |
|--|

**Potential Content**

(A) Outline of tracks and financial limits

Application to Janet's claim (multi track) and Gordon's claim (fast track)

Identification of relevant courts (Janet – County or High), (Gordon – County)

**Mark bands**

- 5 The candidate deals with (A) as follows:  
**one** sound.
- 4 The candidate deals with (A) as follows:  
**one** clear.
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

<b>1 3</b> Outline the burden of proof in negligence cases <b>and</b> how the principle of <i>res ipsa loquitur</i> may affect this. (5 marks)
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**Potential Content**

(A) Burden of proof is on claimant to show the defendant has been negligent

*Res Ipsa Loquitur* involves an obvious case of negligence

Burden of proof shifts to the defendant

Case/example in support, eg Byrne v Boadle, Pearson v NW Gas Board

**Mark bands**

5 The candidate deals with (A) as follows:  
**one** sound.

4 The candidate deals with (A) as follows:  
**one** clear.

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

- |            |  |
|------------|--|
| <b>1 4</b> | Assuming that Richard was found to have been negligent, explain how the court(s) would calculate an award of damages to Janet <b>and</b> to Gordon (7 marks) |
|------------|--|

**Potential Content**

- (A) Outline explanation of the calculation damages. This could include:  
General and special damages  
Heads of damage (damage to property, loss of earnings, loss of amenity, expenses incurred)  
Mitigation  
Structure of awards.  
Application to Janet (personal injury, loss of earnings/loss of amenity) and Gordon (property damage).

Case/example in support, eg Jefford v Gee

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

**Mark bands**

- 7 - 6            The candidate deals with (A) as follows:  
**one** sound
- 5 - 4            The candidate deals with (A) as follows:  
**one** clear
- 3                The candidate deals with (A) as follows:  
**one** some.
- 2 - 1            The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0                The answer contains no relevant information.

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**Section C: Introduction to Contract**

**Total for this question: 45 marks**

<b>1 5</b> Explain the ways in which an offer can come to an end. <span style="float: right;"><i>(7 marks)</i></span>
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**Potential Content**

(A) Explanation of the ways an offer can come to an end. This can include some or all of the following:

Counter offer + explanation  
Rejection + explanation  
Revocation + explanation  
Lapse of time + explanation  
Acceptance + explanation

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

*Note – at least three ways must be explained to achieve a sound response.*

**Mark bands**

- 7 - 6 The candidate deals with (A) as follows:  
**one** sound
- 5 - 4 The candidate deals with (A) as follows:  
**one** clear
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 - 1 The candidate demonstrates limited capacity for explanation
- 0 The answer contains no relevant information.

<b>1 6</b> Explain the meaning of 'intention to create legal relations'.	<i>(7 marks)</i>
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**Potential Content**

(A) Explanation of intention to create legal relations. This can include:

Commercial situations, and the presumption in favour of a contract  
Social and domestic situations, and the presumption against a contract  
The rebuttable nature of these presumptions

Identification of areas where this issue is sometimes raised, eg husband and wife, other family and domestic arrangements, football pools entries, etc

Cases/examples in support, eg Balfour v Balfour, Merritt v Merritt, Simpkins v Pays, Jones v Vernons Pools, etc

**Mark bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation

0 The answer contains no relevant information.

<b>1 7</b> Explain the meaning of the term 'breach of contract'. <i>(7 marks + 2 marks for AO3)</i>
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**Potential Content**

(A) Explanation of the meaning of breach of contract in general terms

Actual breach + explanation to include, for example types of breach (condition and warranty) and the implications in terms of remedy.

Anticipatory breach + explanation to include, for example, the choices available to the injured party at the point when the breach is notified prior to the date performance is due.

Cases/examples in support, eg *Poussard v Spiers & Pond*, *Bettini v Gye*, *White & Carter v McGregor*, etc.

**Mark bands**

- 7 - 6 The candidate deals with (A) as follows:  
**one** sound
- 5 - 4 The candidate deals with (A) as follows:  
**one** clear
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 - 1 The candidate demonstrates limited capacity for explanation
- 0 The answer contains no relevant information.

<b>1 8</b>	Discuss whether there has been offer and acceptance in the dealings between Juan and PD. <p style="text-align: right;"><i>(7 marks)</i></p>
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**Potential Content**

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

Advertisement is an invitation to treat; request for information when Juan asks for a price – not an offer; offer made by PD in the answer phone message which is not an acceptance (no offer to accept); Juan does not receive offer (no communication until received), or

The view could be taken that Juan made an offer then answer phone message is an uncommunicated, and so ineffective, acceptance.

Cases/examples in support, eg Partridge v Crittenden, Stevenson v McLean, Taylor v Laird, Felthouse v Bindley, etc

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

**Mark bands**

7 - 6 The candidate deals with (A) as follows:  
**one** sound

5 - 4 The candidate deals with (A) as follows:  
**one** clear

3 The candidate deals with (A) as follows:  
**one** some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

- |   |
|---|
| <b>1 9</b> Explain the meaning of the term 'consideration' <b>and</b> identify the consideration in the contract between Juan and AB. <span style="float: right;"><i>(7 marks)</i></span> |
|---|

**Potential Content**

(A) Explanation of the meaning of consideration. This could include:

Definition of consideration in general terms  
Types of consideration (executed, executory and past)  
Possible reference to other rules of consideration

Reference to cases/examples, eg Chappell v Nestle, Re McArdle, etc

Brief explanation and identification of consideration in the contract – computer and £345  
(possible reference to payment and delivery)

**Mark bands**

- 7 - 6 The candidate deals with (A) as follows:  
**one** sound
- 5 - 4 The candidate deals with (A) as follows:  
**one** clear
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

- 2 0** Assuming that Juan has decided to sue AB for breach of contract, identify which court would hear Juan's claim **and** track to which the case would be allocated. Outline the opportunities there would be for settlement of the dispute without going to court. *(5 marks)*

**Potential Content**

- (A) Identification of relevant court (County Court) and track (small claims).  
Possible reference to financial limits

Outline of opportunities for settlement without going to court. This can include any one or more from:

Negotiation, mediation and possible trade arbitration

**Mark bands**

- 5 The candidate deals with (A) as follows:  
**one** sound.
- 4 The candidate deals with (A) as follows:  
**one** clear.
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

<b>2 1</b>	If Juan were successful in his claim against AB, outline how the court would calculate an award of damages.	<i>(5 marks)</i>
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**Potential Content**

(A) Outline of basis of calculation of damages in contract. Issues such as:

Reasonable expectation under the contract  
Mitigation of loss.

Brief explanation of calculation in this case - Richard having to pay £50 more for his computer

Possible reference to incidental costs

NB **Either** credit for assumption that he has had a refund of £345 from AB **or** that his claim is for a refund + £50

**Mark bands**

- 5 The candidate deals with (A) as follows:  
**one** sound.
- 4 The candidate deals with (A) as follows:  
**one** clear.
- 3 The candidate deals with (A) as follows:  
**one** some.
- 2 -1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

**ASSESSMENT GRID**  
(To show the allocation of marks to Assessment Objectives)  
**A Level Law (LAW02)**

		AO 1	AO 2	AO 3
<b>Section A:</b>				
Question	0   1	4	3	
Question	0   2	4	3	
Question	0   3	3	2	
Question	0   4	3	4	
Question	0   5	3	4	
Question	0   6	1	4	
Question	0   7	4	3	2
Totals Section A		22	23	2
<b>Section B:</b>				
Question	0   8	4	3	2
Question	0   9	4	3	
Question	1   0	4	3	
Question	1   1	3	4	
Question	1   2	2	3	
Question	1   3	2	3	
Question	1   4	4	3	
Totals Section B		23	22	2
<b>Section C:</b>				
Question	1   5	4	3	
Question	1   6	4	3	
Question	1   7	4	3	2
Question	1   8	3	4	
Question	1   9	3	4	
Question	2   0	2	3	
Question	2   1	3	2	
Totals Section C		23	22	2