



**General Certificate of Education
January 2011**

Law LAW03

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

Unit 3

Mark Scheme

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

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

25	two sound, one clear
23	two sound, one some or one sound, two clear
21	two sound or one sound, one clear, one some or three clear
19	one sound, one clear or one sound, two some or two clear, one some
17	one sound, one some or two clear or one clear, two some
14	one sound or one clear, one some or three some
13	two sound explanation only
11	one clear or two some
09	one sound explanation only or two clear explanation only or three some explanation only
07	one some or one clear explanation only or two some explanation only
05	one some explanation only
04	fragments or substantial error/incoherence
00	completely irrelevant

Mark bands (2 potential content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some or two clear
17	one sound or one clear, one some
13	one clear or two some or two sound explanation only
11	one sound explanation only or two clear explanation only
08	one some or one clear explanation only or two some explanation only
06	one some explanation only
05	fragments or substantial error/incoherence
00	completely irrelevant

Note:

In *substantive* law questions, the two components are explanation and application. In *evaluative* questions, the two components are explanation and evaluation. The references above to explanation only are to be understood as explanation without application for substantive law questions, and as explanation without evaluation for evaluative questions. The quality of treatment of these two components, in combination, determines whether the treatment overall for that PC element is sound, clear or some. In determining the overall quality of treatment, descriptions of the quality of treatment of the individual components (whether explanation or application/evaluation) should be combined as follows:

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

LAW03 Descriptors

Level	Description
Sound	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.
Clear	<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>
Some	<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>
Fragments	<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 candidate 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: 80 marks**

0	1	Consider the possible criminal liability of Andy arising out of the incidents in the bar. <i>(25 marks + 5 marks for AO3)</i>
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Potential Content

- (A) In relation to Chris - analysis of the offence of assault, requiring, in particular, V's fear/awareness of imminent possible infliction of personal violence. Possible fear of such violence subsequent to the breaking of the bottle. Possible application also to Edward
- (B) In relation to Edward - analysis of the wounding and inflicting/causing gbh offences under s20 and s18. Issues of causation and of transferred malice
- (C) The effect, if any, on the criminal liability in (A) and (B) of the evidence of voluntary intoxication, distinguishing between the specific and basic intent offences

0	2	Consider the liability of Gary in connection with Henry's death. <i>(25 marks)</i>
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Potential Content

- (A) Analysis of the *mens rea* of murder (malice aforethought)
- (B) Analysis of the defence under the Coroners and Justice Act 2009 of loss of self-control (or of provocation) **OR** of unlawful act manslaughter (where both are dealt with, a lesser treatment suffices). A possible alternative is in gross negligence manslaughter (omission to seek help)
- (C) Analysis of the defence of self-defence applied to murder or unlawful act manslaughter

0	3	Write a critical analysis of any two of the general defences (insanity, automatism, intoxication, consent, self-defence/prevention of crime). Include in your answer a consideration of any proposals for reform of one of your chosen defences. <i>(25 marks)</i>
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Potential Content

- (A) Critical analysis of the first defence chosen
- (B) Critical analysis of the second defence chosen
- (C) Possible reform in either of the above

Scenario 2**Total for this scenario: 80 marks**

0	4	Discuss the possible criminal liability of Leon arising out of the incidents in the park. <i>(25 marks + 5 marks for AO3)</i>
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Potential Content

- (A) In relation to Leon and Michael, analysis of the wounding and inflicting/causing gbh offences under s20 and s18. Possible lesser alternative in assault occasioning actual bodily harm. (Assault only max **some**; assault occasioning abh max **clear**)
- (B) In relation to Leon and Pat, analysis of the offence of assault, requiring, in particular, V's fear/awareness of imminent possible infliction of personal violence. Analysis of the offence of assault occasioning abh, with reference to psychiatric injury. Causation issues
- (C) The effect, if any, on the criminal liability in (A) and (B) of the evidence of paranoia – possible defence of insanity (as an alternative, an argument about automatism or, possibly, intoxication)

0	5	Discuss the possible liability of Leon and of Sally for the involuntary manslaughter of Phil. <i>(25 marks)</i>
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Potential Content

- (A) Analysis of the causation issue to determine whether Sally's conduct breaks the chain of causation between Leon's acts and Phil's death and/or creates a causal chain between Sally's conduct and the death
- (B) Analysis of Leon's possible liability for the offence of unlawful act manslaughter, taking account of the causation discussion in (A), and including the possible relevance of consent in the determination of whether Leon was committing a "crime" for the purposes of "unlawful act" manslaughter
- (C) Analysis of Sally's possible liability for gross negligence manslaughter, taking account of the causation discussion in (A), and of the duty, breach, and 'conduct so bad' issues

0	6	Write a critical analysis of any two of the general defences (insanity, automatism, intoxication, consent, self-defence/prevention of crime). Include in your answer a consideration of any proposals for reform of one of your chosen defences. <i>(25 marks)</i>
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Potential Content

- (A) Critical analysis of the first defence chosen
- (B) Critical analysis of the second defence chosen
- (C) Possible reform in either of the above

Contract Law
Scenario 3**Total for this scenario: 80 marks**

0	7	Having regard to the rules on offer and acceptance in contracts, consider the rights and remedies, if any, of Ben against AES in connection with the purchase of the television set.	<i>(25 marks + 5 marks for AO3)</i>
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Potential Content

- (A) The analysis of the advertisement as offer or invitation to treat, and consequent analysis of possible offer of a unilateral contract, including mode of acceptance
- (B) The analysis consequent on determination that the advertisement is an offer – purported revocation by AES, including conditions to be satisfied and issue of whether revocation is possible once performance has begun (notion of collateral contracts). Conclusions as to remedies

NB: Whilst the analysis in (A) and (B) should consider alternative possibilities (eg invitation to treat – not offer, revocation valid), candidates need not consider what consequences would arise from such alternative possibilities, though material should be credited if they do so.

0	8	Consider the rights and remedies, if any, of Catherine and of David against AES in connection with the games console.	<i>(25 marks)</i>
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Potential Content

- (A) The issue of privity of contract at common law and by statute (making it unlikely that David will have any rights against AES)
- (B) The rights available to Catherine against AES by virtue of the Sale of Goods Act 1979 in relation to description, satisfactory quality, and fitness for purpose
- (C) The remedies available for breach of the rights above, including damages, the right to reject (and circumstances in which the right is lost), and to rescind, or to require repair, replacement, or reduction in price. The statutory control of exclusion clauses

0	9	Choosing any aspect of formation of contract, consider how satisfactory the law is in that area and discuss any appropriate proposals for reform.	<i>(25 marks)</i>
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Note: candidates may choose to discuss agreement or consideration or intention to create legal relations, or may combine aspects of all three.

Potential Content

- (A) Issues concerning offer/adequacy of consideration (for example)/presumptions in domestic agreements (for example)
- (B) Issues concerning acceptance/sufficiency of consideration (for example)/presumptions in social or commercial agreements (for example)
- (C) Possible reform in any of the above
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Scenario 4**Total for this scenario: 80 marks**

1	0	Consider what rights and remedies, if any, are available to SCC arising out of the refusal by Farukh to do the work for expenses only, which he had agreed with SCC. <i>(25 marks + 5 marks for AO3)</i>
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Potential Content

- (A) Analysis of the formation issues in relation to Farukh and the SCC – basic requirements of agreement and consideration but also, in particular, the requirement for an intention to create legal relations – social or commercial?
- (B) Analysis of the misrepresentation issue in relation to the statement made by SCC – the rules on misrepresentation: the nature of misrepresentation; the kinds of misrepresentation
- (C) The possible remedies depending on the view taken of whether or not a contract exists; if it does, then possible breach by Farukh, leading to a claim for damages; alternatively, no contract exists for lack of intention or the remedies for misrepresentation permit rescission

1	1	Consider the rights and remedies of SCC against Mark in connection with the work done on the showers. <i>(25 marks)</i>
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Potential Content

- (A) Terms implied by the Supply of Goods and Services Act 1982 as to description and satisfactory quality of goods, and as to reasonable care and skill and as to performance within a reasonable time
- (B) Classification of the above terms, leading to analysis of the remedies for breach; the statutory control of the effect of the term purporting to limit liability, distinguishing between the different terms

1	2	Choosing any aspect of formation of contract, consider how satisfactory the law is in that area and discuss any appropriate proposals for reform. <i>(25 marks)</i>
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Potential Content

- (A) Issues concerning offer/adequacy of consideration (for example)/presumptions in domestic agreements (for example)
- (B) Issues concerning acceptance/sufficiency of consideration (for example)/presumptions in social or commercial agreements (for example)
- (C) Possible reform in any of the above

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

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

UNIT 3	AO1	A02	A03
Scenario 1			
Question 0 1	10	15	5
Question 0 2	10	15	
Question 0 3	10	15	
Scenario 2			
Question 0 4	10	15	5
Question 0 5	10	15	
Question 0 6	10	15	
Scenario 3			
Question 0 7	10	15	5
Question 0 8	10	15	
Question 0 9	10	15	
Scenario 4			
Question 1 0	10	15	5
Question 1 1	10	15	
Question 1 2	10	15	
Total marks	30	45	5