

# A-LEVEL

## **Law**

LAW03/Unit 3 Criminal Law (Offences against the Person)

Mark scheme

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2160  
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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)

## **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 marks**
- Level 0** Ideas are expressed poorly and sentences and paragraphs are not connected. There are errors of grammar, punctuation and spelling, such as to severely impair communication of meaning.  
**0 marks**

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

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

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

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

**Note:**

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

sound/sound	- sound
sound/clear	- weak sound
sound/some	- clear
clear/clear	- clear
clear/some	- weak clear
some/some	- some

**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, 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, 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 at issue).

## Criminal Law (Offences against the Person)

### Scenario 1

**0 1** Discuss Alvin’s liability for criminal offences in relation to Bela and to Claire.  
**[25 marks + 5 marks for AO3]**

### REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

#### Potential Content

(A) Alvin’s liability in relation to Bela:

- possible offence of assault – actus reus issue of fear of immediate personal violence; mens rea issue of intention or recklessness. Relevance of her timid and anxious personality
- extension to the offence of assault occasioning actual bodily harm, in the form of psychiatric injury
- issue of effect of intoxication on liability for basic intent offence.

**Note:**

<b>sound</b>	assault + abh + intoxication
<b>clear</b>	assault + abh
<b>weak clear</b>	assault + intoxication

(B) Alvin’s liability in relation to Claire:

- the offences of unlawful and malicious infliction of gbh/causing of gbh with intent – gbh probably established taking into account Claire’s susceptibility (‘thin skull rule’)
- prima facie proof of intent/recklessness as to some injury but possible difficulty with intent to cause gbh (permissible to eliminate s18 after mens rea discussion)
- effect of intoxication: reliance on explanation of intoxication as in (A), additional consideration of specific intent offence not necessary if earlier discussion eliminates s18. Credit any discussion of automatism.

**Note:**

<b>sound</b>	gbh + gbh with intent + intoxication
<b>clear</b>	gbh with intent + intoxication
<b>weak clear</b>	gbh + gbh with intent <u>or</u> gbh + intoxication
<b>some</b>	abh

[AO1: 10, AO2: 15, AO3: 5]

**0 2** Discuss Deepak's criminal liability for the murder of Erik.

**[25 marks]**

**Potential Content**

(A) The prima facie case of murder

- the actus reus issue of causation, involving consideration of the significance of the driving as a possible break in the chain of causation (contributing causes?)
- the mens rea issue of intention to kill or to cause serious injury to Erik, whether as direct or oblique intention.

**Note:**     **sound**            actus reus + mens rea issues  
               **weak clear**     actus reus or mens rea issues

(B) The possible defence of loss of control

- the anger trigger; issues of revenge and loss of control (no longer required to be sudden, but there must still be a loss of control)
- subjective and objective tests in the elements of the trigger, including the relevance of Erik's apparent complicity in the sexual infidelity of Deepak's wife
- the ultimate test of the reaction of a person of normal degree of tolerance and self-restraint, including the significance of Deepak's mental state.

(C) The possible defence of diminished responsibility

- the elements of abnormality of mental functioning
- the effect of the abnormality (here, probably argued as substantial impairment of ability to form rational judgment or exercise self-control)
- recognised medical condition (probably clinical depression)
- causal connection.

**Note:**     Insanity is a possible lesser alternative (**max** weak clear), since the requirement for proof of the relevant effect is unlikely to be satisfied.

[AO1: 10, AO2: 15]



- 0 3** Write a critical analysis of the law on murder and voluntary manslaughter.  
Discuss any reforms that may be desirable.

**[25 marks]**

**Potential Content**

(A) Criticisms of the structure and the elements of the law of murder

- no distinctions for motive - eg mercy v serial killer
- no distinction between intent to kill and intent to cause gbh of any kind
- no distinction between pre-meditated and spontaneous
- implications of mandatory life sentence for partial defences structure
- joint enterprise issues
- actus reus issues – unborn child
- actus reus issues – establishing death
- mens rea issues – meaning of intention (direct/oblique)
- excessive self-defence
- exclusion of the defence of duress
- any other valid criticism

**Note:**     **sound**           any **three** developed criticisms

(B) Criticisms of the partial defences

- loss of control: general structure (revenge/loss of control, self-induced/loss of control; fear/loss of control); subjective and objective tests in the fear and anger triggers; the sexual infidelity exclusion; the comparison with a person of normal degree of tolerance and self-restraint
- diminished responsibility: scope of coverage; causal requirement; burden of proof; effect of intoxication; relationship with insanity.

**Note:**     **sound**           any **three** developed criticisms (from either or both)

(C) Suggestions for reform in the light of the criticisms presented in (A) and (B)

- abandonment of mandatory sentence or adoption of tiers/degrees of homicide
- restriction of the scope of intention to cause serious injury as mens rea for murder
- clarification of the meaning of intention
- further changes to defence of self-defence
- reconsideration of duress as a defence
- amendment of the loss of control defence to eliminate confusion about revenge/fear and loss of control, or about the meaning and scope of 'sexual infidelity'
- amendment of burden/standard of proof in diminished responsibility
- greater clarity in relationships between the defence and intoxication/insanity
- any other valid proposal

**Note:**     **sound**           **three** developed proposals, at least one relating to (A), and one to (B)

**Note:** in all of the above, take account of breadth v depth, so that additional points of criticism or proposals for reform may compensate for more limited detail in discussion

[AO1: 10, AO2: 15]

**Scenario 2**

**0 4** Discuss Francesca’s liability for criminal offences in relation to Haley and to Isaac.  
**[25 marks + 5 marks for AO3]**

**REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY**

**Potential Content**

(A) Francesca’s liability in relation to Haley

- the offence of battery (not assault as Haley has turned her back, though credit a discussion which rejects assault), raising the actus reus issue of infliction of unlawful personal violence (is contact with the coat sleeve sufficient?) and the mens rea issue of intention or recklessness
- the offence of assault arising from thrusting the glass at Haley’s face
- the possible effect of intoxication on liability for both

**Note:**     **sound**           battery + assault + intoxication  
               **clear**           battery + intoxication or battery + assault  
               **weak clear**    assault + intoxication

**Note:**     credit any discussion of consent to the assault in the answer to (B) below.

(B) Francesca’s liability in relation to Isaac

- the offences of wounding and wounding with intent
- transferred malice
- the possible effect on liability of intoxication.

**Note:**     **sound**           wounding s20 + s18 + transferred malice + intoxication  
               **clear**           any three of the above  
               **weak clear**    either wounding offence (or abh) + transferred malice or intoxication

**Note:**     credit any discussion of the effect of consent to fight

[AO1: 10, AO2: 15, AO3: 5]

- 0 5** Discuss the criminal liability of Francesca and of Kwame for the involuntary manslaughter of Jordan.

**[25 marks]**

**Potential Content**

(A) In relation to the possible liability of Francesca

- the offence of unlawful act manslaughter – the unlawful act as battery, or battery occasioning abh or unlawful and malicious infliction of gbh, both actus reus and mens rea; inherent dangerousness in obvious risk of injury; causation issue in respect of possible effect of Kwame’s intervention
- possible effect on liability of a claim of self-defence

**Note:**     **sound**           elements of the offence + self-defence  
              **clear**           elements of the offence

**Note:**     credit any further discussion of intoxication.

(B) In relation to the possible liability of Kwame

- the offence of gross negligence manslaughter – possible duty by voluntary assumption of responsibility; breach by failure to take sufficient care over accuracy of location (or to reveal his unfamiliarity with the area); risk of death; causation (would Jordan have died anyway?); ‘grossness’ of the negligence.

**Note:**     treatment of the duty issue via **Caparo** rather than through the relevant crime authorities is creditworthy but requires development and specific application, particularly in respect of the ‘fair, just and reasonable’ element.

[AO1: 10, AO2: 15]

- 0 6** Write a critical analysis of the law on murder and voluntary manslaughter.  
Discuss any reforms that may be desirable.

**[25 marks]**

**Potential Content**

(A) Criticisms of the structure and the elements of the law of murder

- no distinctions for motive - eg mercy v serial killer
- no distinction between intent to kill and intent to cause gbh of any kind
- no distinction between pre-meditated and spontaneous
- implications of mandatory life sentence for partial defences structure
- joint enterprise issues
- actus reus issues – unborn child
- actus reus issues – establishing death
- mens rea issues – meaning of intention (direct/oblique)
- excessive self-defence
- exclusion of the defence of duress
- any other valid criticism

**Note:**     **sound**           any **three** developed criticisms

(B) Criticisms of the partial defences

- loss of control: general structure (revenge/loss of control, self-induced/loss of control; fear/loss of control); subjective and objective tests in the fear and anger triggers; the sexual infidelity exclusion; the comparison with a person of normal degree of tolerance and self-restraint
- diminished responsibility: scope of coverage; causal requirement; burden of proof; effect of intoxication; relationship with insanity.

**Note:**     **sound**           any **three** developed criticisms (from either or both)

(C) Suggestions for reform in the light of the criticisms presented in (A) and (B)

- abandonment of mandatory sentence or adoption of tiers/degrees of homicide
- restriction of the scope of intention to cause serious injury as mens rea for murder
- clarification of the meaning of intention
- further changes to defence of self-defence
- reconsideration of duress as a defence
- amendment of the loss of control defence to eliminate confusion about revenge/fear and loss of control, or about the meaning and scope of 'sexual infidelity'
- amendment of burden/standard of proof in diminished responsibility
- greater clarity in relationships between the defence and intoxication/insanity
- any other valid proposal

**Note:**     **sound**           **three** developed proposals, at least one relating to (A), and one to (B)

**Note:** in all of the above, take account of breadth v depth, so that additional points of criticism or proposals for reform may compensate for more limited detail in discussion

## Contract Law

### Scenario 3

**0 7** Discuss the rights and remedies available to Maya and to Nirmala against Lightbloc in connection with the supply and fitting of the window blinds.

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

### REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

#### Potential Content

(A) Analysis of the doctrine of privity of contract in relation to Nirmala's possible rights

- the basic doctrine
- the effect of the Contracts (Rights of Third Parties) Act 1999.

**Note:**

<b>sound</b>	privity + 1999 Act
<b>clear</b>	1999 Act only
<b>some</b>	privity only

(B) Analysis of the implied terms in the Supply of Goods and Services Act 1982 (or the Sale of Goods Act 1979, in relation to description, satisfactory quality and fitness for purpose in supply)

- description, satisfactory quality and fitness for purpose in supply
- the requirement for reasonable care and skill in performance.

**Note:**

<b>sound</b>	supply of goods + supply of services
<b>clear</b>	supply of goods
<b>weak clear</b>	supply of services

(C) Analysis of the possible remedies

- rights to repair, replacement and refund
- the possible effect on any remedies of the clause purporting to limit liability (common law and statutory approach in the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999).

**Note:**

<b>sound</b>	remedies in relation to supply of goods + to supply of services
<b>clear</b>	remedies in relation to supply of goods
<b>weak clear</b>	remedies in relation to supply of services

**Note:** Though the facts are better interpreted as disclosing a contract for the supply of goods and services within the 1982 Act, the rights and remedies available under the Sale of Goods Act 1979 in respect of description, quality, and fitness for purpose are entirely equivalent and would apply equally to the supply/sale of the blinds. However, in (B) and (C), there must be reference to the 1982 Act (or some equivalent notion – not the 1979 Act) in respect of the **fitting** of the blinds.

- 0 8** Discuss the rights, duties and remedies available to Lightbloc and to Oliver arising out of the circumstances in which Lightbloc was unable to supply and fit the hardwood window frames. **[25 marks]**

**Potential Content**

(A) Analysis of the doctrine of frustration of contract

- possible nature of the frustrating event (illegality)
- possible effect of prior knowledge
- possible effect of fault in allocation of existing stocks.

**Note:**

<b>sound</b>	frustration + prior knowledge + allocation
<b>clear</b>	frustration + prior knowledge or allocation
<b>weak clear</b>	frustration

(B) Analysis of the legal consequences of frustration

- provisions of the Law Reform (Frustrated Contracts) Act 1943 – sums of money paid and payable; recouping of expenses from such sums; payment for benefit conferred.

(C) Analysis of possible breach and remedies

- actual and anticipatory breach
- repudiatory breach; damages.

[AO1: 10, AO2: 15]

- 0 9** Write a critical analysis of the law relating to clauses which attempt to exclude or limit liability for breach of contract. Suggest any reforms that may be desirable.

**[25 marks]**

**Potential Content**

- (A) Issues concerning incorporation of terms excluding and limiting liability
- common law rules in relation to notice
  - construction contra proferentem.
- (B) Issues concerning the control of terms excluding and limiting liability by the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999
- scope of coverage
  - conflicting terminology
  - complexity.
- (C) Appropriate suggestions for reform in relation to (A) and (B)
- proposals for greater clarity/certainty in rules on incorporation
  - proposals for unification of provisions as between statute and regulations
  - reduction of complexity.

**Note:**     **sound**           aspects of common law approach + statutory approach  
              **clear**           aspects of common law approach or statutory approach.

[AO1: 10, AO2: 15]

**Scenario 4**

**1 0** Discuss the rights and remedies available to Ray, to Sara and to Tom against Peter in connection with the subscriptions to 'Vision' magazine.

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

**REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY****Potential Content**

(A) In relation to Ray's rights and remedies against Peter

- offer/invitation to treat
- the terms of acceptance ('payment' by 30 April) and whether satisfied by posting or receipt
- status of order if not an acceptance
- breach, if any, and consequent remedies (repudiation, damages).

**Note:**     **sound**           offer and acceptance + remedies  
              **clear**            offer and acceptance

(B) In relation to Sara's rights and remedies against Peter

- offer and acceptance (agreement)
- terms
- consideration – performance of an existing duty as consideration
- nature of any breach and consequent remedy (repudiation, damages).

**Note:**     **sound**           agreement/terms + consideration + remedies  
              **clear**            consideration + agreement/terms or consideration + remedies  
              **weak clear**    consideration

(C) In relation to Tom's rights and remedies against Peter

- offer and acceptance (agreement)
- terms
- past consideration and prior promises to pay
- nature of any breach and consequent remedy (damages).

**Note:**     **sound**           agreement/terms + consideration + remedies  
              **clear**            agreement/terms + consideration or consideration + remedies  
              **weak clear**    consideration

[AO1: 10, AO2: 15, AO3: 5]



- |   |   |   |
|---|---|---|
| 1 | 1 | Discuss the rights and remedies available to Vicki against Tom in connection with the contract for personal fitness training, and in connection with the contract for the purchase of the drinks. |
|---|---|---|
- [25 marks]**

### Potential Content

(A) In relation to the contract for personal fitness training between Vicki and Tom

- analysis of the implied terms under the Supply of Goods and Services Act 1982 concerning reasonable care and skill, and performance within a reasonable time
- issues of breach and remedies
- the effect of the exclusion clauses (Unfair Contract Terms Act 1977 provisions prohibiting exclusion for personal injury caused by negligence, and imposing a requirement of reasonableness in other respects).

**Note:**

<b>sound</b>	terms + remedies + UCTA 1977
<b>clear</b>	terms + either remedies or UCTA 1977
<b>weak clear</b>	terms only or remedies + UCTA 1977 (with weak reference to terms)

(B) In relation to the contract for the sale of the 'recovery' drinks to Vicki by Tom

- misrepresentation and remedies – fraudulent misrepresentation, rescission and damages
- Sale of Goods Act 1979 implied terms as to description, quality and fitness for purpose
- breach of condition and consequent remedies, including the right to reject, and loss by acceptance.

**Note:**

<b>sound</b>	misrepresentation + Sale of Goods Act 1979
<b>clear</b>	misrepresentation or Sale of Goods Act 1979

[AO1: 10, AO2: 15]

- 1 2** Write a critical analysis of the law relating to clauses which attempt to exclude or limit liability for breach of contract. Suggest any reforms that may be desirable.

**[25 marks]**

**Potential Content**

(A) Issues concerning incorporation of terms excluding and limiting liability

- common law rules in relation to notice
- construction contra proferentem.

(B) Issues concerning the control of terms excluding and limiting liability by the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999

- scope of coverage
- conflicting terminology
- complexity.

(C) Suggestions for reform in relation to (A) and (B)

- proposals for greater clarity/certainty in rules on incorporation
- proposals for unification of provisions as between statute and regulations
- reduction of complexity.

**Note:**     **sound**           aspects of common law approach + statutory approach  
              **clear**           aspects of common law approach or statutory approach

[AO1: 10, AO2: 15]

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**A Level Law (LAW03)****(Questions to be answered on one scenario 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