

AS Law

7161/1 – Paper 1

Mark scheme

7161

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Version/Stage: 1.0 Final

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

Level of response marking instructions

Level of response mark schemes are broken down into levels, each of which has a descriptor. The descriptor for the level shows the average performance for the level. There are marks in each level.

Before you apply the mark scheme to a student's answer read through the answer and annotate it (as instructed) to show the qualities that are being looked for. You can then apply the mark scheme.

Step 1 Determine a level

Start at the lowest level of the mark scheme and use it as a ladder to see whether the answer meets the descriptor for that level. The descriptor for the level indicates the different qualities that might be seen in the student's answer for that level. If it meets the lowest level then go to the next one and decide if it meets this level, and so on, until you have a match between the level descriptor and the answer. With practice and familiarity you will find that for better answers you will be able to quickly skip through the lower levels of the mark scheme.

When assigning a level you should look at the overall quality of the answer and not look to pick holes in small and specific parts of the answer where the student has not performed quite as well as the rest. If the answer covers different aspects of different levels of the mark scheme you should use a best fit approach for defining the level and then use the variability of the response to help decide the mark within the level, ie eg if the response is predominantly level 3 with a small amount of level 4 material it would be placed in level 3 but be awarded a mark near the top of the level because of the level 4 content.

Step 2 Determine a mark

Once you have assigned a level you need to decide on the mark. The descriptors on how to allocate marks can help with this. The exemplar materials used during standardisation will help. There will be an answer in the standardising materials which will correspond with each level of the mark scheme. This answer will have been awarded a mark by the Lead Examiner. You can compare the student's answer with the example to determine if it is the same standard, better or worse than the example. You can then use this to allocate a mark for the answer based on the Lead Examiner's mark on the example.

You may well need to read back through the answer as you apply the mark scheme to clarify points and assure yourself that the level and the mark are appropriate.

Indicative content in the mark scheme is provided as a guide for examiners. It is not intended to be exhaustive and you must credit other valid points. Students do not have to cover all of the points mentioned in the Indicative content to reach the highest level of the mark scheme.

An answer which contains nothing of relevance to the question must be awarded no marks.

Examiners are required to assign each of the students' responses to the most appropriate level according to its overall quality, then allocate a single mark within the level. When deciding upon a mark in a level examiners should bear in mind the relative weightings of the assessment objectives (see page 15) and be careful not to over/under credit a particular skill. For example, in question 12 more weight should be given to AO2 than to AO1. This will be exemplified and reinforced as part of examiner training.

01 Which **one** statement best defines **direct** intention by D as to a consequence?

[1 mark]

Marks for this question: AO1 = 1

D D wants the consequence to result from her conduct.

02 Select the **one** statement that best defines the meaning of actual bodily harm in the offence under s47 Offences Against the Person Act 1861.

[1 mark]

Marks for this question: AO1 = 1

B More than merely trivial personal injury

03 Select the **one** correct statement about strict liability offences.

[1 mark]

Marks for this question: AO1 = 1

D It is not necessary to prove that D was negligent.

04 Which is the **one** correct statement about the 'thin skull' ('take your victim as you find him/her') principle?

[1 mark]

Marks for this question: AO1 = 1

B It may make it easier to prove causation.

05 Select the **one** correct statement about criminal liability.

[1 mark]

Marks for this question: AO1 = 1

C In some cases, D will be guilty of an offence of causing injury to V, even though he intended injury only to X.

06 Which **one** of the following statements about the role of magistrates is **false**?

[1 mark]

Marks for this question: AO1 = 1

C Magistrates sentence offenders up to a maximum of 3 years' imprisonment for a single offence.

07 Select the **one** correct statement about offences triable either way.

[1 mark]

Marks for this question: AO1 = 1

A The accused can always insist on being tried in the Crown Court.

08 Select the **one** correct statement about the meaning of 'distinguishing' by a court.

[1 mark]

Marks for this question: AO1 = 1

B A court does not apply a precedent from an earlier case because significant facts were different.

09 Select the **one** practice which would be in breach of the rule of law.

[1 mark]

Marks for this question: AO1 = 1

D The Prime Minister cannot be prosecuted for minor criminal offences.

10 D pleaded guilty to an offence of causing grievous bodily harm with intent to V under s18 Offences Against the Person Act 1861. Select the **one** statement which describes the factor that the judge would treat as **least** important when deciding on sentence.

[1 mark]

Marks for this question: AO1 = 1

B D knew that V was widely suspected of child abuse.

11 Explain the meaning of ratio decidendi in the doctrine of precedent. Illustrate your answer by reference to a relevant civil law or criminal law case.

[3 marks]

Marks for this question: AO1 = 3

Indicative content

- Explanation in simple terms of the meaning of *ratio decidendi*: for example, ‘the reason for the decision in a case’ or ‘the legal reason for the decision’ or ‘the binding element in a judgment’ (1).
- Explanation which supplies some further elaboration: for example, the reason for the decision distinct from the outcome in the case itself or the reason distinct from other things said ‘by the way’ (*obiter dicta*) or the element which forms the precedent which must be applied by courts in future cases or the interpretation/application of the law in the light of the material facts in the case (1).
- Reference to a relevant civil or criminal law case which assists the explanation (1).

12 Suggest why **Beth** did not commit the actus reus of battery against Claire.

[3 marks]

Marks for this question: AO1 = 1 and AO2 = 2

Indicative content

AO1

- Explanation that the actus reus of battery requires proof that Beth engaged in voluntary conduct which inflicted personal violence on Claire (1).

AO2

- Application to suggest that Beth’s contact with Claire amounted to the infliction of personal violence (1).
- Application to suggest that, because of the push, Beth had no control over her conduct which was, therefore, involuntary (1).

13

- Advise Diana as to her liability for the offence of assault occasioning actual bodily harm against Erin (s47 Offences against the Person Act 1861).
- Assess the contributions of different sources of law to the rules that you have explained and applied in examining Diana’s criminal liability.

[12 marks]

Marks for this question: AO1 = 3, AO2 = 6, AO3 = 3

Levels of response mark scheme 12 marks – AO1 (3), AO2 (6) and AO3 (3).	
Mark range	Description
10-12 Band 4	<p>Excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>Excellent use and explanation of relevant authority to support the application.</p> <p>An excellent legal argument is presented using appropriate terminology to support advice.</p> <p>Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p>
7-9 Band 3	<p>Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>Good use and explanation of relevant authority to support the application.</p> <p>A good legal argument is presented using some appropriate terminology to support advice.</p> <p>Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p>
4-6 Band 2	<p>Limited analysis of legal rules and principles to the scenario leading to limited application of the correct rules and principles to the scenario.</p> <p>Limited use and selection of relevant authority.</p> <p>Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.</p>
1-3 Band 1	<p>Knowledge is minimal and demonstrates a minimal understanding of legal rules and principles and of the English legal system. Minimal use and selection of relevant authority.</p>
0	Nothing worthy of credit

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
6	6	12

Indicative content**AO1**

- Explanation that (this form of) the offence under s47 requires proof of an assault as causing fear of immediate personal violence being intentional or reckless as to so doing.
- Explanation that the offence of assault must result in actual bodily harm, which must be more than merely trivial personal injury (physical or psychiatric).
- Identification and outline explanation of the sources of law as being statute and common law.

AO2

- Application to argue that, even though Erin may have avoided Diana, this was evidence of her fear of personal violence ‘at any time’ should she go out, and so was fear of ‘immediate’ personal violence.
- Application to suggest that the depression suffered by Erin was a direct consequence of her fear of personal violence, and was probably sufficient to be classed as ‘psychiatric’ injury.
- Application to conclude that the elements of the s47 offence, including an intention to cause fear of immediate personal violence, were present, so that Diana was probably guilty.
- Application to indicate that the 1861 Act supplied the framework to govern liability of an accused for causing more than trivial but less than serious injury, whilst directing reliance upon common law rules in key areas (for example, in the definition of an assault).
- Application to indicate that the common law supplied the foundational assault rules and that case law was active in resolving subsequent difficulties of interpretation.
- Application to conclude that both sources of law made vital contributions to the law as it currently stands, and which was applied in dealing with the substantive law issues.

AO3

- Analysis and evaluation of the meaning of “immediate” in assault and “actual bodily harm” supported by reference to relevant authority (for example, **Constanza, Ireland, Chan-Fook**).
- Analysis and evaluation of the role of statute law in providing frameworks, introducing reform, anticipating developments.
- Analysis and evaluation of the contribution of common law, originally as introducing and developing new forms of liability, but increasingly as maintaining existing common law rules or interpreting statutes.

Credit any other relevant point(s).

14

- Assuming Greg’s fractured skull to be grievous bodily harm, advise Falon as to her liability for the offence of causing grievous bodily harm with intent to cause grievous bodily harm (s18 Offences against the Person Act 1861).
- Assess the options available to Falon to obtain legal advice and representation in any investigation and prosecution.

[12 marks]

Marks for this question: AO1 = 3, AO2 = 6, AO3 = 3

Levels of response mark scheme 12 marks – AO1 (3), AO2 (6) and AO3 (3).	
Mark range	Description
10-12 Band 4	Excellent analysis of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. Excellent use and explanation of relevant authority to support the application. An excellent legal argument is presented using appropriate terminology to support advice. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.
7-9 Band 3	Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good use and explanation of relevant authority to support the application. A good legal argument is presented using some appropriate terminology to support advice. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.
4-6 Band 2	Limited analysis of legal rules and principles to the scenario leading to limited application of the correct rules and principles to the scenario. Limited use and selection of relevant authority. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study.
1-3 Band 1	Knowledge is minimal and demonstrates a minimal understanding of legal rules and principles and of the English legal system. Minimal use and selection of relevant authority.
0	Nothing worthy of credit

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
6	6	12

Indicative content**AO1**

- Explanation that only intention as to (really) serious injury will suffice.
- Explanation that intention may be regarded as direct (aim or purpose) or indirect/oblique (foresight of virtual certainty).
- Explanation that a lawyer will be needed and that there are two options for funding the services, namely, Falon's own financial resources and state funding.

AO2

- Application to suggest that, in view of the crowd, the use of bricks, and the force generated, Falon's actions could be interpreted as creating a risk of serious injury to some member of the crowd below, and arguably, the virtual certainty of doing so.
- Application to argue that, at the least, Falon must have known the above.
- Application to conclude that Falon may have directly intended serious injury but, at the least, indirectly intended it, and so could well be found guilty of the s18 offence.
- Application to suggest that initial access to advice will depend on time/location and financial resources.
- Application to emphasise the seriousness of the case, the costs involved and the requirement (probably) at least to make a contribution.
- Application to conclude that only if Falon has significant disposable income will she be able to afford to pay for her own advice and representation, otherwise state funding will be essential, especially for representation at trial.

AO3

- Analysis and evaluation of the meaning of intention as being direct or oblique/indirect, supported by reference to relevant authority (for example, **Mohan, Woollin, Matthews and Alleyne**).
- Analysis and evaluation of the options for advice: her own choice of solicitor and her own funding; state funding via the duty solicitor scheme if she is at a police station (in person or remotely).
- Analysis and evaluation of the options for representation: own choice of solicitor/barrister and her own funding; state provider via state funding, imposing a test of the 'interests of justice' and a means test applicable to the Crown Court (indictable only offence).

Credit any other relevant point(s).

15 Consider the criminal liability of Hasan for the injuries caused to Ivan **and** to Jon.

[20 marks]

Marks for this question: AO1 = 7, AO2 = 7 and AO3 = 6

Levels of response mark scheme 20 marks – AO1 (7), AO2 (7) and AO3 (6).	
Mark range	Description
17-20 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
13-16 Band 4	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
9-12 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology.</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
5-8 Band 2	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
1-4 Band 1	<p>Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority.</p> <p>There is minimal analysis and evaluation of legal rules and principles which may lead to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted.</p> <p>No chain of reasoning is attempted.</p>
0	Nothing worthy of credit

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
20	0	20

Indicative content**AO1**

- Identification and definition of the offence(s) under the Offences Against the Person Act 1861 s20 of unlawful and malicious wounding/inflicting grievous bodily harm.
- Outline explanation of the actus reus elements of s20: wounding as break in two layers of skin; grievous bodily harm as (really) serious injury.
- Outline explanation of the mens rea element of s20 as intention or (subjective) recklessness as to inflicting some harm.
- Outline explanation of the need for a duty where the conduct is an omission.
- Outline explanation of the requirements of causation in fact and causation in law.
- Reference to supporting case authority (for example, **JCC v Eisenhower**, **DPP v Smith**, **Parmenter**, **Miller**, **Roberts**).

AO2

- Application to suggest that Ivan suffered grievous bodily harm and Jon suffered a wound(s). (credit also the argument which suggests that multiple cuts may also amount to grievous bodily harm (**Brown & Stratton**)).
- Application to argue that Hasan's failure to switch off the iron and placing it near paper, combined with his knowledge that it started a fire, created a danger of which he was aware, and so imposed a duty on him.
- Application to suggest that his failure to alert the others or, apparently, to seek help, amounted to breach of the duty.
- Application to suggest that, since it may be that Ivan would not have been injured had Hasan acted in accordance with his duty, there may be a sufficient casual connection between Hasan's omission and Ivan's lung damage.
- Application to suggest that, since it may be that Jon would not have been injured had Hasan acted in accordance with his duty, there may be a sufficient casual connection between Hasan's omission and Jon's cut unless Jon's actions broke the chain of causation.
- Application to suggest that Jon's attempted escape may well have been a reasonably foreseeable response to the danger posed by the fire, so that it did not break the chain of causation.
- Application to suggest that Hasan may well have foreseen the risk of some harm to occupants of the house from his failure to act. Consequently, he may well have been reckless, so completing the elements of the s20 offence.

AO3

- Analysis and evaluation of the imposition of liability for omissions, focusing on duty arising out of creation of a dangerous situation, and breach.
- Analysis and evaluation of causation rules relating to self-induced injury.
- Analysis and evaluation of the meaning of subjective recklessness as unreasonable taking of a foreseen risk.
- Further use of supporting relevant case authority cited above, and, for example **R v G**, **Cunningham** (recklessness).

Credit any other relevant point(s).

16 Explain the role of a judge in a criminal trial, **and** discuss the advantages and disadvantages of using a jury in a criminal trial.

[20 marks]

Marks for this question: AO1 = 10, AO3 = 10

Levels of response mark scheme 20 marks – AO1 (10) and AO3 (10).	
Mark range	Description
17-20 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and/or English Legal System, rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal concepts.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
13-16 Band 4	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and/or English Legal System, rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal concepts.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
9-12 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and/or English Legal System, rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal concepts</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
5-8 Band 2	<p>Knowledge is limited and demonstrates a limited understanding of the Nature of Law and/or English Legal System, rules and principles. Limited selection and use of relevant legal authority.</p> <p>Limited analysis and evaluation of legal concepts.</p> <p>Some reasoning is attempted which leads to a limited conclusion.</p>
1-4 Band 1	<p>Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and/or English Legal System, rules and principles. Minimal selection and use of relevant legal authority.</p> <p>Minimal analysis and evaluation of legal concepts.</p> <p>No chain of reasoning is attempted.</p>
0	Nothing worthy of credit

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
0	20	20

Indicative content**AO1**

Explanation of the role of the judge in:

- controlling the conduct of the trial
- determining the need for any pre-trial hearing, granting of bail etc
- ensuring that each side has the opportunity to present its case fully
- giving directions on law and in ruling on the admissibility of evidence
- summing-up
- sentencing in consequence of a conviction.

AO3

- Analysis and evaluation of the advantages of jury trial: public confidence; jury equity; open system of justice; secrecy; impartiality; use of supporting relevant case authority.
- Analysis and evaluation of disadvantages of jury trial: perverse decisions; impenetrability of decision-making, protected by secrecy; access to sources/influence outside of evidence presented in court; prejudice/bias; length and complexity of trials; distressing nature of some trials; dissatisfaction engendered by compulsion; use of supporting relevant case authority.
- A reasoned conclusion.

Credit any other relevant point(s).

Assessment Objectives Grid

	AO1	AO2	AO3	Total
1	1			1
2	1			1
3	1			1
4	1			1
5	1			1
6	1			1
7	1			1
8	1			1
9	1			1
10	1			1
11	3			3
12	1	2		3
13	3	6	3	12
14	3	6	3	12
15	7	7	6	20
16	10		10	20
Paper Total	37	21	22	80

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
1-5	1 x 5		5
6-10		1 x 5	5
11		3	3
12	3		3
13	6	6	12
14	6	6	12
15	20		20
16		20	20
Tot	40	40	80
Tot %	50	50	100