



**General Certificate of Education
June 2012**

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 students' 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 students' 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 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.

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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 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 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 Potential Content (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

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 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 in issue).

Criminal Law (Offences against the Person)

Scenario 1**Total for this scenario: 80 marks**

- | | | | |
|----------|----------|--|------------------------------|
| 0 | 1 | Discuss Gavin's criminal liability arising out of the incident with Alice, and for the injury to Jean. | (25 marks + 5 marks for AO3) |
|----------|----------|--|------------------------------|

Potential Content

- (A) In relation to Alice, analysis of the offences of assault and assault occasioning abh (credit for unlawful and malicious infliction of gbh as an additional or alternative offence to abh) – issues of fear of immediate personal violence, description of further harm, causation ('but for', thin skull), and *mens rea*.
 assault + abh (or + gbh) – **max sound**
 assault only – **max clear**
 gbh only (no assault) – **max clear**
- (B) In relation to Jean, analysis of the offence of unlawful and malicious wounding/infliction of gbh – issues of causation, *mens rea* and transferred malice. Possible s18.
 NB discussion of abh only as the offence is **max weak clear**

- | | | | |
|----------|----------|--|------------|
| 0 | 2 | Discuss Colin's liability for the murder of Harry. | (25 marks) |
|----------|----------|--|------------|

Potential Content

- (A) The analysis of the offence of murder, referring both to *actus reus* issues (causation) and *mens rea* issues (stressing the possibility of proof of an intention to cause serious injury and possibly introducing intoxication).
- (B) Analysis of the defence under the Coroners and Justice Act 2009 of loss of self-control attributable both to fear of serious violence and to circumstances of a grave character causing D to have a justifiable sense of being seriously wronged. Consideration of objective test.
 NB anger trigger approach only – **max sound**
 fear trigger approach only – **max clear**
- (C) Analysis of the defence of diminished responsibility under the Homicide Act 1957 s2, as amended by the Coroners and Justice Act 2009 – additional issue of the effect on the defence of possible intoxication. Where insanity only is dealt with, **max clear** for correct application, **max weak** for incorrect application.

NB Intoxication can be analysed in (A), or in (C), or in both. If not dealt with in either, then the quality of the weaker is reduced, leaving the other unaffected.

- | | | | |
|----------|----------|--|------------|
| 0 | 3 | Consider what criticisms may be made of the non-fatal offences against the person. Discuss what reforms might be introduced to deal with these criticisms. | (25 marks) |
|----------|----------|--|------------|

Potential Content

- (A) General structural criticisms, including antiquated language and hierarchy related to sentencing.
- (B) Specific *actus reus* and *mens rea* criticisms. Consent (additional or alternative)
- (C) Appropriate suggestions for reform, probably based upon Law Commission proposals.
-

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

- | | |
|----------|----------|
| 0 | 4 |
|----------|----------|
- Discuss the criminal liability of Jameela and of Leah arising out of the incidents in the town
(25 marks + 5 marks for AO3)

Potential Content

- (A) In relation to the injuries to Ken and Iris: offences of unlawful and malicious infliction of gbh, raising issues of *actus reus* (definitions, causation) and *mens rea* (including transferred malice).
gbh in relation to Ken and Iris – **max sound**
gbh in relation to Ken only – **max clear**
abh in relation to Ken and Iris – **max weak clear**
abh in relation to Ken only – **max some**
- (B) In relation to the above, the defence of insanity.
- (C) In relation to the injury to Jameela, the offence of unlawful and malicious wounding; the defence of self-defence/prevention of crime.
wounding + self-defence – **max sound**
abh + self-defence – **max clear**
wounding only – **max weak clear**
abh only – **max some**
self-defence only – **max some**

- | | |
|----------|----------|
| 0 | 5 |
|----------|----------|
- Discuss Michael's liability for involuntary manslaughter arising out of the deaths of Nick and of Tina.
(25 marks)

Potential Content

- (A) In relation to the death of Nick: analysis of the offence of gross negligence manslaughter, including the issue of causation and medical treatment as a possible *novus actus interveniens*.
- (B) In relation to the death of Tina: analysis of the offence of unlawful act manslaughter, including the possible defence of automatism.
unlawful act manslaughter only – **max clear**
automatism only – **max weak clear**

- | | |
|----------|----------|
| 0 | 6 |
|----------|----------|
- Consider what criticisms may be made of the non-fatal offences against the person. Discuss what reforms might be introduced to deal with these criticisms.
(25 marks)

Potential Content

- (A) General structural criticisms, including antiquated language and hierarchy related to sentencing.
- (B) Specific *actus reus* and *mens rea* criticisms. Consent (additional or alternative)
- (C) Appropriate suggestions for reform, probably based upon Law Commission proposals.

Contract Law

Scenario 3

Total for this scenario: 80 marks

- | | | |
|----------|----------|--|
| 0 | 7 | Consider whether there was a contract between Alec and Bill for the payment of the £500. If Alec eventually made the payment, consider whether there would then be a contract between Craig and Alec for the purchase of the ladders.
<i>(25 marks + 5 marks for AO3)</i> |
|----------|----------|--|

Potential Content

- (A) Analysis of the issue of intention to create legal relations, in terms of the possible contract between Alec and Bill and between Craig and Alec.
- (B) Analysis of the past consideration issue in relation to Alec and Bill.
- (C) Analysis of the issue of performance of an existing duty as consideration in relation to Craig and Alec.

- | | | |
|----------|----------|---|
| 0 | 8 | Consider Ellie’s rights, duties and remedies against Dean Enterprises if she wishes to avoid any further liability and to recover at least some of the money she has paid out.
<i>(25 marks)</i> |
|----------|----------|---|

Potential Content

- (A) Analysis of the misrepresentation issue – the nature of misrepresentation and reliance.
- (B) The types of misrepresentation and appropriate remedies.
- (C) Analysis of the terms of the contract issue – probability of express term as to provision of customer contacts, possibility of implied term as to exclusivity of such contacts; nature of any such term (condition, warranty, innominate); implications for breach and remedies.

- | | | |
|----------|----------|---|
| 0 | 9 | Consider whether the current law on exclusion and limitation clauses is satisfactory and suggest what reforms may be desirable.
<i>(25 marks)</i> |
|----------|----------|---|

Potential Content

- (A) The common law approach to the control of exclusion/limitation clauses: incorporation issues – for example, signature, small print, contractual documents, course of dealing, special notice; interpretation *contra proferentem*; inherent inability of incorporation approach to counteract unfairness.
- (B) The statutory approach to control of exclusion/limitation clauses: obscurity and complexity of the approach adopted in the *Unfair Contract Terms Act 1977*; confusion with overlapping provisions of the *Unfair Terms in Consumer Contracts Regulations 1999*; confusion between English and European concepts; deficiencies in particular provision (for example, the protection for small businesses).
- (C) Appropriate suggestions for reform in relation to (A) and/or (B). These should be related to the criticisms advanced and should, where possible, draw on substantial proposals (such as those made by Law Reform bodies – for example, Law Com 292 (2005), *Unfair Contract Terms* – and/or expert commentators).

Scenario 4**Total for this scenario: 80 marks**

- | | |
|---|---|
| 1 | 0 |
|---|---|
- Discuss the rights, duties and remedies, if any, of Faruq and of George arising out of the negotiations for the sale of George's car. (25 marks +5 marks for AO3)

Potential Content

- (A) Explanation and analysis of initial messages in terms of offer and counter offer/request for further information.
- (B) Explanation and analysis of subsequent messages/events in terms of offer, counter offer, acceptance and withdrawal of offer through rejection or lapse of time. Remedies.

- | | |
|---|---|
| 1 | 1 |
|---|---|
- Discuss Faruq's rights and remedies, if any, against Sharpview and against James, arising out of the purchase, and the installation, of the TV aerial. (25 marks)

Potential Content

- (A) In connection with Faruq and Sharpview: analysis of the rights and duties under the Sale of Goods Act 1979 in relation to satisfactory quality and fitness for purpose. Where dealt with as misrepresentation only, **max clear**.
- (B) In connection with Faruq and James: analysis of the rights and duties under the Supply of Goods and Services Act 1982 in relation to reasonable time for performance and reasonable care and skill.
- (C) Consideration of the remedies for breach in (A) and (B), including the significance of business and consumer contracts; rejection (and loss of the right to reject) under the 1979 Act and damages; nature of the implied terms in the 1982 Act and the impact, if any, of the limitation clause (incorporation, and Unfair Contract terms Act 1977).

- | | |
|---|---|
| 1 | 2 |
|---|---|
- Consider whether the current law on exclusion and limitation clauses is satisfactory **and** suggest what reforms may be desirable. (25 marks)

Potential Content

- (A) The common law approach to the control of exclusion/limitation clauses: incorporation issues – for example, signature, small print, contractual documents, course of dealing, special notice; interpretation *contra proferentem*; inherent inability of incorporation approach to counteract unfairness.
- (B) The statutory approach to control of exclusion/limitation clauses: obscurity and complexity of the approach adopted in the *Unfair Contract Terms Act 1977*; confusion with overlapping provisions of the *Unfair Terms in Consumer Contracts Regulations 1999*; confusion between English and European concepts; deficiencies in particular provision (for example, the protection for small businesses).
- (C) Appropriate suggestions for reform in relation to (A) and/or (B). These should be related to the criticisms advanced and should, where possible, draw on substantial proposals (such as those made by Law Reform bodies – for example, Law Com 292 (2005), *Unfair Contract Terms* – and/or expert commentators).

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	AO3
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	
Total marks	30	45	5