

GCE

Law

Unit **H015/01**: The legal system and criminal law

Advanced Subsidiary GCE

Mark Scheme for June 2018

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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SUBJECT-SPECIFIC MARKING INSTRUCTIONS**Introduction**

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with examples of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates might use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles and concepts.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a best-fit approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At the bottom level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**

Questions 1-3

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
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Question 4

Assessment Objective:	AO3 1b: Analyse and evaluate legal principles. 10 marks
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Section B

Question 5

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
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Questions 6 and 7















Assessment Objective:	AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 10 marks
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Question 8*

Assessment Objective:	AO3 1a: Analyse and evaluate legal principles. 10 marks
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Questions that have an asterisk (*) assess the quality of a candidate's extended response. Level descriptors are identified in the AO3 column in italics.

Annotations

Annotation	Meaning
	Very well developed point (WDP)
	Unclear
	Applied point
	Developed point (DP)
	Well developed point (WDP)
	Not answered question
	Not Relevant
	Point
	Repetition
	Sort of
	Point has been noted, but no credit has been given / blank page has been checked for response
	Correct
	Applied
	Spare 1

	Answer	Marks	Guidance
1	<p>Explain how civil cases are allocated to the three tracks.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Complete allocation questionnaire <p><u>Small Claims:</u></p> <ul style="list-style-type: none"> • Allocated to this court if cases involve contract and tort up to £10,000 • £1,000 for personal injury and landlord and tenant cases • Allocated to the County Court and heard by a District Judge • Time allocated will be between 2 and 3 hours max with limited number of witness. <p><u>Fast Track:</u></p> <ul style="list-style-type: none"> • Allocated to the fast track if claim between £10,000 to £25,000 • Cases are heard in the County Court before a District Judge • Time allocated will be one day and limited number of witnesses • Cases are heard within 30 weeks of allocation <p><u>Multi-track:</u></p> <ul style="list-style-type: none"> • Allocated to multi-track if value of claim is between £25,000-£50,000 • Allocated to the County Court in the first instance to be heard by a Circuit Judge • Will be sent to the High court if case involves complex points or is for +£50,000 • Case will be case-managed by the Circuit Judge • A strict timetable will be set including what must be disclosed, witnesses and how long the case will last <p>Credit any other relevant point(s)</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent knowledge and understanding of the English Legal System, rules and principles. The response is accurate, fully developed and detailed.</p> <p>Level 3 (6-8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places.</p> <p>Level 2 (3-5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p> <p><u>NOTES:</u></p> <ul style="list-style-type: none"> • All three areas must be covered in some detail to achieve L4 • Two areas in some detail may achieve mid-L3

	Answer	Marks	Guidance
2	<p>Describe the procedure for deciding where a triable either way offence should be tried.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Procedure set out in the Magistrates' Court Act 1980 • Pre-trial procedure starts in the Magistrates' Court Act • Process will start with the plea before venue • The defendant is asked whether they plead guilty or not guilty • If the plea is guilty the matter is automatically heard by the Magistrates' Court and sentencing hearing will take place • If the plea is not guilty or no plea given, then a mode of trial procedure will take place • The Magistrates will decide the most appropriate court to hold the trial taking into consideration matters such as sentencing power and the nature and seriousness of the offence • If the magistrates decide they lack the necessary sentencing power, they will transfer the case to the Crown Court • If the magistrates consider the matter suitable for summary trial the defendant will be given the choice as to which court they wish to be tried in - Magistrates' Court or Crown Court • The Magistrates retain the option of sending the defendant to the Crown Court for sentencing if necessary. <p>Credit any other relevant point(s)</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent knowledge and understanding of the English Legal System, rules and principles. The response is accurate, fully developed and detailed.</p> <p>Level 3 (6-8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places.</p> <p>Level 2 (3-5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
3	<p>Describe the types of work undertaken by a barrister.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Specialise in specific areas. Examples may include: <ul style="list-style-type: none"> • criminal law • family law • commercial law • personal injury • Give advice – meet with clients to assist with legal issues • Hold case conferences – meet with clients and any other relevant parties involved • Draft documents for use in court – ensure necessary documentation is produced • Accept and undertake work through Public Access (unless publicly funded) • Where appropriate they negotiate settlements • Undertake legal research • Write Counsel’s opinion – producing a written opinion on a case or an aspect of a case • They prepare cases for court • Advocacy – representing clients in court. This may include presenting arguments, examining and cross examining witnesses and summing up the case <p>Credit any other relevant point(s)</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent knowledge and understanding of the English Legal System, rules and principles. The response is accurate, fully developed and detailed.</p> <p>Level 3 (6-8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places.</p> <p>Level 2 (3-5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
4	<p>Discuss the challenges facing a graduate wanting to become a barrister</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • In the absence of a qualifying law degree the graduate will be required to undertake a further year of study and pay an additional course fee. The GDL lasts one-year full time or two-years part time and costs between £9,000-£12,000. • The cost of the BPTC (Bar Professional Training Course) increases annually. Currently the cheapest is approximately £13,500 and most expensive £19,000+ • Unrealistic entry requirements for the BPTC. Currently a 2:2 or above is required. Evidence suggests that those graduates with below a 2:1 will struggle to join the profession but are accepted on the course • The BPTC concentrates on skills required to become a practicing barrister. There is very limited use for the skills learnt on the course in other professions. If unsuccessful in obtaining pupillage the course may be both a waste of time and money to the graduate • Too many people complete the BPTC. Approximately 1,500 students successfully pass the BPTC however, on average there are only 400 pupillage place on offer. Each year nearly 3000 people apply for the available pupillage places • Equality/diversity issues <p>Credit any other relevant point(s)</p>	<p>10 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent analysis and evaluation of a wide range of legal concepts. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p>Level 3 (6-8 marks) Good analysis and evaluation of a range of legal concepts. The response has a mainly consistent focus on the question. Most of the key points are discussed and well developed.</p> <p>Level 2 (3-5 marks) Basic analysis and evaluation of legal concepts. The response is partially focused on the question. Some of the key points are discussed and partially developed.</p> <p>Level 1 (1-2 marks) Limited analysis of legal concepts. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
5	<p>Explain what is meant by causation in criminal law</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Essential element when looking to establish <i>actus reus</i> in result crimes i.e. those requiring proof of a consequence e.g. s20 or s18 Offences Against the Person Act 1861. • Causation is identifiable in two forms: factual and legal • Factual causation established by ‘but for’ test – if it wasn’t for the defendant’s act the prohibited consequence wouldn’t have occurred – <i>Pagett</i> • Legal causation requires the defendant’s act must be more than a minimal cause of the harm (<i>de minimis</i>) – <i>Kimsey</i>; D’s act must be an operating and substantial cause of harm – <i>R v Cheshire</i>; • that the defendant must not accelerate the victim’s death – <i>Adams</i>; and the defendant must take his victim as he finds them – <i>Blaue</i> • The chain of causation can be broken by a <i>novus actus interveniens</i> e.g. ‘palpably’ wrong medical treatment – <i>Jordan</i>. <p>Credit any other relevant point(s).</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.</p> <p>Level 3 (6–8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.</p> <p>Level 2 (3–5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.</p> <p>Level 1 (1–2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
6	<p>Advise how the law relating to non-fatal offences against the person will apply to Dexter.</p> <p>Answers may include the following:</p> <p>Dexter: In the case of Dexter throwing the tin cutting Charlotte's cheek</p> <ul style="list-style-type: none"> • Identify grievous bodily harm/wounding under s20 OAPA1861 – define <i>actus reus</i> and <i>mens rea</i> • Level of harm could satisfy grievous bodily harm/wounding as the deep cut is serious harm or a breaking of the continuity of the whole or outer skin • The cut was not intentional but his actions could be reckless. Was he aware of the risk? <p>In the case of Dexter whispering menacingly at Charlotte</p> <ul style="list-style-type: none"> • Identify assault under s39 CJA88 - define <i>actus reus</i> and <i>mens rea</i> • His threats could put Charlotte in fear of immediate and unlawful personal violence • Dexter appears to have intention because of what he says <p>Credit any other relevant point(s).</p>	<p>10 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.</p> <p>Level 3 (6-8 marks) Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used</p> <p>Level 2 (3-5 marks) Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used</p> <p>Level 1 (1–2 marks) Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
7	<p>Advise how the law relating to non-fatal offences against the person will apply to Eric.</p> <p>Answers may include the following:</p> <p>Eric: In the case of Eric pushing Dexter out of the way</p> <ul style="list-style-type: none"> • Identify battery under s39 CJA88 - define <i>actus reus</i> and <i>mens rea</i> • Level of harm could satisfy a battery as pushing him is an unwanted touching • The pushing was unlawful as it was intentional <p>In the case of Eric dislocating Charlotte's arm</p> <ul style="list-style-type: none"> • Identify s18, s20 or s47 OAPA 1861 - define <i>actus reus</i> and <i>mens rea</i> • Dislocated bones may constitute GBH making a charge of s20 or s18 possible but, may constitute ABH making a charge of s47 possible • Eric acts maliciously and intentionally as he violently grabs her by the arm • Consider whether he intends to cause serious injury <p>Credit any other relevant point(s).</p>	<p>10 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.</p> <p>Level 3 (6-8 marks) Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used</p> <p>Level 2 (3-5 marks) Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used</p> <p>Level 1 (1-2 marks) Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
8	<p>Discuss the problems with the offence of s47 Offences Against the Person Act 1861 and the extent to which reform of the law would make it morally justifiable.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • The 1861 Act is complex and outdated in its language • The question of the <i>actus reus</i> of s.47 is complex • No definition of ‘assault’ in the Act – defined as either a technical assault or a battery • No definition of ‘occasioning’ in the Act – defined as synonymous with causation • No definition of ‘actual bodily harm’ in the Act – defined as any hurt or injury calculated to interfere with the health or comfort of the victim • s47 carries the same maximum sentence as for section 20 even though the two are supposed to represent different levels of seriousness; • No definitive list of injuries but Crown Prosecution Guidance provides some assistance • ‘Bodily’ has been given a wide interpretation which may depart from its original intention e.g. hair attached to the body • Debate over ‘psychiatric’ harm rather than ‘bodily’ harm has led to such injuries being allowed under s.47, but not fear, distress or panic • The question of the <i>mens rea</i> of s.47 is complex • No definition of <i>mens rea</i> in the Act – defined as that under common assault • Is it morally justifiable to convict the defendant when they only intended or were subjectively reckless in committing an assault or battery but an injury is caused? <p>Credit any other relevant point(s).</p>	<p>10 AO3 1a</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent analysis and evaluation on of a wide range of legal rules principles and concepts. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion, where appropriate to the question. <i>There is a well- developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p> <p>Level 3 (6-8 marks) Good analysis and evaluation on of a range of legal rules, principles and concepts. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion, where appropriate to the question. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i></p> <p>Level 2 (3-5 marks) Basic analysis and evaluation on of legal rules, principles and concepts. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion, where appropriate to the question. <i>The information has some relevance and is presented with basic structure. The information is supported by limited evidence.</i></p> <p>Level 1 (1-2 marks) Limited analysis of legal rules, principles and concepts. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is limited and</i></p>

	Answer	Marks	Guidance
			<p data-bbox="1263 209 2074 304"><i>communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p> <p data-bbox="1263 341 1850 408">Level 0 (0 marks) No response or no response worthy of credit.</p>

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