



A-Level

Law

LAW03 Criminal Law (Offences against the Person) or Contract Law
Final Mark Scheme

2160
June 2017

Version/Stage: v1.0

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

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

Maxima for Substantive Law questions

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. The references above to explanation only are to be understood as explanation without application. 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 should be combined as follows:

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

Descriptors for Substantive Law questions

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, 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, so that, at best, a very superficial or partial analysis emerges.</p>
Fragments	<p>Isolated words or phrases, including case names and statutes, which have potential relevance but remain entirely undeveloped.</p> <p>Or</p> <p>Mere identification of relevant offences/defences.</p>

Use of case authority

1. It is usually sufficient to associate a relevant case with an explained/applied rule. Further explanation of cases is required only where necessary to elucidate the rule or its application.

2. An answer in relation to any PC should not be described as 'sound' unless some relevant authority appears, where appropriate. However, where there is appropriate use of authority in relation to the other PC(s) in the mark scheme for the question, an answer in relation to a PC where no authority appears may be given a 'lower' sound (the 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).

0 1

Discuss Arron’s criminal liability for his conduct in relation to Bilal. Discuss Chan’s criminal liability for his conduct in relation to Arron.

[25 + 5 marks for AO3 marks]

Potential Content

(A) Arron’s possible liability for assault:

- causing fear of immediate personal violence - words and gestures; immediacy; words as negating the intention
- intention or recklessness as to doing so.

sound all elements
clear no discussion of possible effect of words negating intention

(B) Chan’s possible liability for assault occasioning abh/unlawful and malicious infliction of gbh:

- the blow and swelling as a battery resulting in abh – more than trivial hurt/injury; intention to inflict personal violence
- the blow, swelling and possible concussion as the infliction of gbh – really serious personal injury; intention to inflict at least some personal injury.

sound abh + gbh
clear abh **or** gbh

(C) Chan’s possible defence of self-defence (defence of another)/prevention of crime:

- necessity to use force – relevance of agreement to fight, possibility of flight
- proportion in force used – nature of threat, use of branch as weapon and target area of body.

sound necessity + proportion
weak clear necessity **or** proportion

0 2

Discuss Arron’s criminal liability for manslaughter in relation to Derek. Discuss Chan’s criminal liability for manslaughter in relation to Elroy.

[25 marks]

Potential Content

(A) Arron’s possible liability for unlawful act manslaughter:

- the unlawful act as s20 wounding (or lesser offences of battery/battery abh)
- the mens rea associated with the chosen unlawful act
- dangerousness
- causation – the infection as a possible novus actus interveniens
- the confusion/concussion as an issue of automatism and/or of undermining the

mens rea for the selected offence (unlawful act).

Note: credit an alternative argument that the unlawful act is the possession of the knife, rather than its use, but with consequent issues of ‘dangerousness’.

sound	all elements
clear	no significant discussion of causation or of automatism/mens rea
some	no significant discussion of causation and of automatism/mens rea

(B) Chan’s possible liability for gross negligence manslaughter:

- the basic requirements of duty, breach (creating a risk of death), causation, grossness of negligence
- an analysis based on the condition of the car and the failure to spot the sign as the duty and breach – causation issue in relation to Elroy’s attempt to swim to safety
- an analysis based on the failure to go to Elroy’s assistance as the duty and breach – is there a duty? Did Chan’s failure cause Elroy’s death (would action have saved Elroy)?

sound	both analyses (one may be emphasised over the other)
clear	one analysis only

0 3 Critically evaluate any **two** general defences in criminal law. Consider what reforms may be necessary to any **one** of your chosen defences.

[25 marks]

Potential Content

- (A) Critical evaluation of first defence.
- (B) Critical evaluation of second defence.
- (C) Appropriate suggestions for reform in relation to (A) 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 and/or expert commentators).

Note - credit should be given for any explanatory material on which criticisms are found

Possible areas for critical evaluation:

Insanity:

1. stigma
2. the legal/medical notions of mental incapacity
3. relationship with diminished responsibility
4. limited nature of defect of reason
5. nature of disease of mind, including internal/external distinction and associated

anomalies; uncertainty in scope and extent of required consequences (nature and quality/wrong)

6. procedural aspects, including burden and standard of proof.

Automatism:

1. definition of involuntariness (distinction between total and partial involuntariness)
2. anomalies in distinguishing between insane and non-insane automatism
3. fault in becoming an automaton.

Intoxication:

1. lack of clear rationale (defence or aggravation of offence)
2. distinction between voluntary and involuntary intoxication (including legal effect)
3. where voluntary intoxication, the specific intent/basic intent as crucial element in the approach
4. uncertainty in definition of specific intent
5. relationship with other defences (e.g. self-defence).
6. issues of liability based on prior fault (recklessness, contemporaneity/coincidence etc)

Consent:

1. issues of factual consent (age, capacity, fraud etc)
2. murder and assisted dying
3. violence for sexual gratification
4. issues arising out of specific exceptions
5. general issues of structure (works on strict rule + exceptions) and lack of clear rationale for exceptions.

Self-defence:

1. issues arising out of necessity for use of force (mistakes, voluntary submission to danger of harm, carrying weapons and other possible preparation, pre-emptive force)
2. issues arising out of requirement for proportionate force (how objective, what degree of force, variation for residential property)
3. excessive self-defence, especially in homicide (relationship with defence of loss of control)
4. relationship with other defences, especially intoxication.

Note – sound three points (weak sound max for two very well developed points)
clear two points (weak clear max for one very well developed point)
some one point

Possible suggestions for reform

These could include matters such as:

- the re-definition of the defence of *insanity* to achieve closer alignment with medical notions
- removal of the insane/non-insane *automatism* anomalies in the re-definition of insanity
- re-definition of the meaning of *voluntary intoxication* and its effect on criminal liability, including its effect on other defences

- re-structuring of the defence of *consent* and the provision of a clear rationale for the circumstances in which consent should be available (leading to re-consideration of the current inclusions and exclusions)
- clearer proposals on the effect of *excessive self-defence*, avoiding a requirement for loss of self-control (as currently contained in the defence of loss of control)
- a more rational provision in relation to the effect of intoxication on the defence of self-defence.

0 4

Discuss Grace's criminal liability for her conduct in relation to Isla. Discuss Isla's criminal liability for her conduct in relation to Grace.

[25 marks + 5 marks for AO3]

Potential Content

(A) Grace's possible liability for s20 unlawful and malicious wounding:

- meaning of 'wound'
- intention or recklessness as to some injury
- transferred malice.

Note: credit discussion of battery occasioning abh as an alternative, as indicated below.

sound all elements
 clear no discussion of transferred malice **or** abh + transferred malice (no s20)
 weak clear abh without transferred malice

(B) Grace's possible defence of insanity:

- possible defect of reason
- disease of the mind
- lack of appreciation of nature of conduct or that what is done is legally wrong.

(C) Isla's possible liability for an offence of assault occasioning abh and of s20 unlawful and malicious infliction of gbh:

- elements of assault as causing fear of immediate personal violence, and intending to do so, or being reckless as to doing so
- abh as more than merely trivial hurt or injury
- psychiatric injury as abh
- causation issue in view of existing mental health problems
- gbh as (really) serious injury, including psychiatric injury
- possible intention or recklessness to cause injury given Isla's probable knowledge of Grace's mental health condition.

sound abh + gbh (but emphasis may be on one)
 weak sound abh **or** gbh

0 5 Discuss Jamie’s criminal liability for murder in relation to Holly.

[25 marks]

Potential Content

(A) Jamie’s possible prima facie liability for murder:

- basic actus reus
- mens rea as requiring intention to kill or cause gbh – direct and indirect intention
- transferred malice (reliance on any explanation of transferred malice rule provided in answer to Question 04)
- possible effect of intoxication.

sound	basic actus reus + kill/gbh + direct/indirect + transferred malice + intoxication
weak sound	no discussion of transferred malice
clear	basic actus reus + kill/gbh + direct/indirect + transferred malice or basic actus reus + direct/indirect (in kill or gbh context) + intoxication
some	basic actus reus + basic mens rea

(B) Jamie’s possible defence of diminished responsibility:

- abnormality of mental functioning from recognised medical condition, based on alcohol addiction
- possible substantial impairment of ability to form a rational judgment or exercise self-control
- abnormality causes Jamie’s conduct or is a significant contributory factor in causing it.

sound	all elements, including relevance of alcohol addiction
weak sound	no reference to causation aspect
clear	significance of alcohol addiction is not recognised

(C) Jamie’s possible defence of loss of control:

- loss of self-control (not ‘considered desire for revenge’ in view of wish to protect Grace?)
- qualifying trigger – ‘fear trigger’ (fear of serious violence from Isla against Grace) and/or ‘anger trigger’ (threats as circumstances of an extremely grave character/justifiable sense of being seriously wronged)
- reaction of person of normal degree of tolerance and self-restraint (objective test).

sound	all elements
clear	qualifying trigger + one other element
weak clear	loss of self-control + objective test + identification of qualifying trigger

- 0 6** Critically evaluate any **two** general defences in criminal law. Consider what reforms may be necessary to any **one** of your chosen defences.

[25 marks]

Potential Content

- (A) Critical evaluation of first defence.
- (B) Critical evaluation of second defence.
- (C) Appropriate suggestions for reform in relation to (A) 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 and/or expert commentators).

***Note** - credit should be given for any explanatory material on which criticisms are found*

Possible areas for critical evaluation:

Insanity:

1. stigma
2. the legal/medical notions of mental incapacity
3. relationship with diminished responsibility
4. limited nature of defect of reason
5. nature of disease of mind, including internal/external distinction and associated anomalies; uncertainty in scope and extent of required consequences (nature and quality/wrong)
6. procedural aspects, including burden and standard of proof.

Automatism:

1. definition of involuntariness (distinction between total and partial involuntariness)
2. anomalies in distinguishing between insane and non-insane automatism
3. fault in becoming an automaton.

Intoxication:

1. lack of clear rationale (defence or aggravation of offence)
2. distinction between voluntary and involuntary intoxication (including legal effect)
3. where voluntary intoxication, the specific intent/basic intent as crucial element in the approach
4. uncertainty in definition of specific intent
5. relationship with other defences (e.g. self-defence).
6. issues of liability based on prior fault (recklessness, contemporaneity/coincidence etc)

Consent:

1. issues of factual consent (age, capacity, fraud etc)
2. murder and assisted dying
3. violence for sexual gratification

4. issues arising out of specific exceptions
5. general issues of structure (works on strict rule + exceptions) and lack of clear rationale for exceptions.

Self-defence:

1. issues arising out of necessity for use of force (mistakes, voluntary submission to danger of harm, carrying weapons and other possible preparation, pre-emptive force)
2. issues arising out of requirement for proportionate force (how objective, what degree of force, variation for residential property)
3. excessive self-defence, especially in homicide (relationship with defence of loss of control)
4. relationship with other defences, especially intoxication.

Note – sound three points (weak sound max for two very well developed points)
 clear two points (weak clear max for one very well developed point)
 some one point

Possible suggestions for reform

These could include matters such as:

- the re-definition of the defence of *insanity* to achieve closer alignment with medical notions
- removal of the insane/non-insane *automatism* anomalies in the re-definition of insanity
- re-definition of the meaning of *voluntary intoxication* and its effect on criminal liability, including its effect on other defences
- re-structuring of the defence of *consent* and the provision of a clear rationale for the circumstances in which consent should be available (leading to re-consideration of the current inclusions and exclusions)
- clearer proposals on the effect of *excessive self-defence*, avoiding a requirement for loss of self-control (as currently contained in the defence of loss of control)
- a more rational provision in relation to the effect of intoxication on the defence of self-defence.

0 7

Discuss Austin's rights and remedies against Blake in connection with the supply and fitting of the radiators and pipework.

[25 marks + 5 marks for AO3]

Potential Content

(A) The rights arising out of the effect of the **Consumer Rights Act 2015** on the contract between Austin and Blake, and more generally:

- the trader/consumer relationship
- a 'mixed contract' (supply of goods/supply of services)
- rights as to goods of satisfactory quality (s9), fitness for purpose (s10), and as described (s11)

- 0 9** How satisfactory is the current law on agreement (offer and acceptance, and rules related to offer and acceptance) in formation of contract? Consider what reforms might improve the law.

[25 marks]

Potential Content

(A) Issues concerning offer:

- well-established nature of the rules
- established in response to specific cases
- pragmatic in application
- problems with distinction between offer, invitation to treat, statements of price; problems with adaptation to modern methods of communication
- ‘battle of the forms’.

(B) Issues concerning acceptance:

- strengths as above
- problems with distinction between acceptance, requests for further information, counter offer
- problems with particular modes of acceptance – postal rule, and modern forms of electronic communication
- ‘battle of the forms’ (as above).

(C) Suggestions for reform:

- proposals concentrating on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications
- proposals seeking to develop proposals from a broader perspective, such as adaptation to modern commerce and communication.

- 1 0** Discuss the rights, duties and remedies of Keira, of Harley and of Lilly in connection with the rabbit hutch.

[25 marks + 5 marks for AO3]

Potential Content

(A) The analysis of Keira’s advertisement in terms of offer and acceptance, consideration and intention to create legal relations:

- offer distinguished from invitation to treat
- requirements for valid acceptance if offer – telephone or visit
- issue of nature of consideration in relation to alternatives in advertisement – hutch

- free in return for disposal or hutch/delivery for £20
- issue of intention to create legal relations given possible free supply.

sound all elements
 clear no discussion of consideration **or** of intent to create aspect
 weak clear offer + acceptance issues only

(B) The analysis of the responses of Harley and Lilly:

- did Harley validly accept a valid offer – possible alternative conclusions
- possible remedy in damages for Harley
- did Lilly validly accept a valid offer?
- is Lilly bound to pay £50 and collect?
- possible remedy in damages for Lilly if Keira refuses to allow her to collect free?

sound all elements
 clear analysis of both Harley and Lilly but no discussion of remedies
 weak clear Harley + remedies **or** Lilly + remedies
 some Harley **or** Lilly but no remedies

1 1

Discuss Keira's rights and remedies against Wordflow in connection with the printer.
 Discuss Keira's rights and remedies against Mortons in connection with the ink cartridge.

[25 marks]

Potential Content

(A) The rights and remedies arising out of the effect of the **Consumer Rights Act 2015** on the contract between Keira and Wordflow:

- the trader/consumer relationship
- a supply of goods contract
- rights as to goods of satisfactory quality (s9), and fitness for purpose (s10)
- right to repair or replacement (s23)
- right to price reduction or final rejection (s20 and s24)
- incorporation of exclusion term
- non-excludability of CRA 2015 terms

sound all elements
 clear rights and remedies but no discussion of exclusion term
 weak clear rights + exclusion term
 some rights **or** remedies

(B) The rights and remedies arising out of the effect of the **Consumer Rights Act 2015** on the contract between Nick/Keira and Mortons, and more generally:

- the trader/consumer relationship and supply of goods (reliance on explanations in (A))

- rights as to goods of satisfactory quality (s9), and fitness for purpose (s10) (reliance on explanations in (A))
- short-term right of rejection (s20 and s22)
- right to repair or replacement (s23)
- right to price reduction or final rejection (s20 and s24)
- general contractual remedies of damages and treating contract as at an end
- issue of privity of contract and **Contract (Rights of Third Parties) Act 1999**

sound	all elements
clear	rights and remedies but no privity
weak clear	privity + rights or remedies
some	rights or remedies or privity

1 2 How satisfactory is the current law on agreement (offer and acceptance, and rules related to offer and acceptance) in formation of contract? Consider what reforms might improve the law.

[25 marks]

Potential Content

(A) Issues concerning offer:

- well-established nature of the rules
- established in response to specific cases
- pragmatic in application
- problems with distinction between offer, invitation to treat, statements of price; problems with adaptation to modern methods of communication
- ‘battle of the forms’.

(B) Issues concerning acceptance:

- strengths as above
- problems with distinction between acceptance, requests for further information, counter offer
- problems with particular modes of acceptance – postal rule, and modern forms of electronic communication
- ‘battle of the forms’ (as above).

(C) Suggestions for reform:

- proposals concentrating on specific aspects, such as distinctions outlined above between offer and other communications, and acceptance and other communications
- proposals seeking to develop proposals from a broader perspective, such as adaptation to modern commerce and communication.