



**AS
LAW
7161/1**

Paper 1

Mark scheme

June 2019

Version: 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, i.e. 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.

01 Which **one** of the following statements regarding omissions is **false**?

[1 mark]

Marks for this question: AO1 = 1

A The defendant is liable if they fail to act and could easily have saved a stranger.

02 Which **one** of the following statements about oblique (indirect) intent is **true**?

[1 mark]

Marks for this question: AO1 = 1

A The jury may find intent if the defendant foresaw the consequence as a virtual certainty.

03 Which **one** of the following statements about transferred malice is **false**?

[1 mark]

Marks for this question: AO1 = 1

C Transferred malice is when the actus reus is transferred from one victim to another victim.

04 Which **one** of the following statements about strict liability is **false**?

[1 mark]

Marks for this question: AO1 = 1

B The defendant must have acted involuntarily.

05 Which **one** of the following statements accurately defines the mens rea of actual bodily harm under s47 of the Offences Against the Person Act 1861?

[1 mark]

Marks for this question: AO1 = 1

B The defendant must have the mens rea of assault or battery.

06 Which **one** of the following is **not** an aim of sentencing?

[1 mark]

Marks for this question: AO1 = 1

B Discharging the defendant.

07 Which **one** of the following statements about the role of barristers is **false**?

[1 mark]

Marks for this question: AO1 = 1

A Anyone wanting to instruct a barrister must first instruct a solicitor.

08 Which **one** of the following is available as an appeal route from the Magistrates' Court?

[1 mark]

Marks for this question: AO1 = 1

A The defendant can appeal to the Crown Court against sentence following conviction.

09 Which **one** of the following is **true** in relation to The Practice Statement 1966?

[1 mark]

Marks for this question: AO1 = 1

B The Practice Statement allows the Supreme Court to overrule its own previous decisions.

10 Which **one** of the following will allow a defendant to be given legal funding in a criminal case?

[1 mark]

Marks for this question: AO1 = 1

A The case will involve consideration of a point of law.

11 Explain what is meant by obiter dicta and explain why it is an important feature of judicial precedent.

[3 marks]

Marks for this question: AO1 = 3

Indicative content

- Translation – obiter dicta are the other things said outside of the ratio. Obiter dicta may occur when a judge speculates on what the outcome might have been if the facts were different.
- Effect – obiter dicta are not binding but may be persuasive and may be used by a judge in a later case to form the ratio. Credit any relevant legal authority.
- Importance – the ratio may become binding precedent and if so would be followed by other judges. Credit any relevant legal authority.

Credit any alternative argument regarding the importance of obiter dicta i.e. the obiter may not have any effect on a judgement in a later case.

12 A criminal offence usually requires proof that actus reus and mens rea coincided in time. Suggest why there was coincidence of actus reus and mens rea in Ben's case.

[3 marks]

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

Indicative content

AO1

- Explanation that coincidence of actus reus and mens rea does not require initial coincidence as long as it exists at some point, e.g. where mens rea fuses with a continuing actus reus.

AO2

- Application to suggest that, initially, Ben's act creates an actus reus without mens rea.
- Application to suggest that the actus reus continues when Ben maintains pressure, and that he then has mens rea because he knows, hence coincidence.

Any or all of these points may emerge through reference to a relevant case, e.g. Fagan v MPC.

13	<ul style="list-style-type: none"> Advise David as to his liability for an offence of assault occasioning actual bodily harm under s47 of the Offences Against the Person Act 1861. Assess the likelihood that this case would be tried in the Crown Court. 	[12 marks]
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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

- Definition of s47 ABH: actus reus – assault (battery) occasioning bodily harm; mens rea – common assault.
- Explanation of what could constitute ABH via a relevant case, e.g. T v DPP, Cole v Turner, Chan Fook.
- Explanation of how the case could be heard in the Crown Court.

AO2

- Application that the swelling was caused by a battery.
- Application as to the fact the swelling under the eye was ABH.
- Application as to the MR – David deliberately inflicted force as he threw the sun cream over Cara as a joke.
- Application as to whether it is likely to go to the Crown Court and explain the potential alternative of going to the Magistrates Court.

AO3

- Analysis and evaluation of constructive intent within ABH.
- Analysis and evaluation of the case being heard in the Crown Court.
- Analysis and evaluation of the case being heard in the Magistrates Court.

Credit any other relevant points.

14	<ul style="list-style-type: none"> Advise Ellie as to her criminal liability for an offence of wounding with intent under s18 of the Offences Against the Person Act 1861. Assess the role of the judge in the trial, assuming Ellie pleaded not guilty. 	[12 marks]
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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

- Definition of wounding actus reus – that it must break two layers of skin (dermis and epidermis). This may be supported by legal authority, e.g. JCC v Eisenhower.
- Explanation of the mens rea of s18.
- Brief explanation of the role of a judge.

AO2

- Application to the fact that the deep gash would break two layers of skin (dermis and epidermis).
- Application to the fact that it was Ellie's intent to cause serious harm as she hit Farouk several times with a heavy vase; if not and there was another aim did Ellie see it as a virtual certainty?
- Conclusion that Ellie may be guilty of s18.
- Application to the role of the judge, e.g. sit in the Crown Court with a jury, explain law to the jury.
- Application as to the likelihood that Ellie will be found guilty and the role of the judge will be to sentence her.

AO3

- Analysis and evaluation of the meaning of intent. Direct intent is likely here as she decides to cause him harm, perhaps serious harm, as she grabs the heavy vase and hits him several times in the face with it. Credit analysis and evaluation of oblique intent.
- Analysis and evaluation of the role of a judge in a criminal trial.

Credit any other relevant points.

15	Consider the criminal liability of Harry in relation to Gina’s permanently damaged kidney and of Irene in relation to Harry’s reaction to the text.	[20 marks]
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Marks for this question: AO1 = 7, AO2 = 7, 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. There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario.</p> <p>An excellent legal argument is presented using appropriate terminology. 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. There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario.</p> <p>A good legal argument is presented using appropriate terminology. 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. 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. 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.</p> <p>A limited legal argument is presented using little appropriate terminology. 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. 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 GBH in relation to Harry and Gina.
- Outline and explanation of the actus reus and mens rea issues of s20 GBH/s18.
- Outline explanation of causation issues, in particular thin skull rule and intervening acts.
- Identification and definition of ABH with reference to assault in relation to Irene.
- Outline and explanation of actus reus and mens rea issues in relation to ABH. Identification of assault as relevant MR.
- Reference to supporting case authority (Smith v Superintendent of Woking Police, Lamb, Blaue, Burstow, Bollom).

AO2

- Application as to the fact Gina suffered serious harm as she had a permanently damaged kidney.
- Application as to causation in particular the thin skull rule (possible relevance also to Irene and Harry below).
- Application as to mens rea issues: did Harry intend some harm? If not, then he would have seen a risk of some harm when punching someone in the back. Alternatively, application to s18.
- Application as to the actus reus of ABH with reference to assault; in particular the issue of immediacy needs to be considered – where was Irene when she sent the message? The ABH was Harry's mild depression.
- Application as to the mens rea. Irene possibly had intent to cause Harry to fear immediate unlawful personal violence as she deliberately sent the text in revenge.

AO3

- Analysis and evaluation of alternative routes to actual bodily harm.
- Analysis and evaluation of causation rules relating to the thin skull rule and intervening acts. Did Gina's own act of delaying before seeing the doctor break the chain? Probable conclusion that the original injury was still the operating and substantial cause – R v Cheshire.
- Use of supporting legal authority – Blaue, Chan Fook, Smith, Savage.

Credit any other relevant point(s).

16	Explain the work of the Law Commission and discuss the effectiveness of its role as a law reforming body.	[20 marks]
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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 as to the overview role of the Law Commission as set out in the Law Commissions Act 1965 – in particular that it is concerned with: systematic development and reform, codification and repeal.
- Explanation of how the Law Commission considers areas of law thought to be in need of reform.
- Explanation as to how the Law Commission presents and researches the area for reform with the end result being a final report with positive proposals for reform.
- An explanation of codification, which requires reviewing all the law on a particular topic and then creating a code to cover all aspects of law on that topic.
- An explanation that an aim of the Law Commission is to consolidate all existing provisions together in one act; this may not require law to be changed or reviewed.
- Explanation of how the Law Commission can recommend the repeal of Acts if they are out of date and no longer used.
- Outline of relevant authority and examples, e.g. The Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- Outline arguments for and against the effectiveness of the Law Commission. Reasons to illustrate effectiveness may include: expertise, clarity, law being kept up to date. Reasons to illustrate lack of effectiveness may include: the government is slow to respond, or lack of time.

AO3

- Analysis and evaluation of the reasons that suggest the Law Commission is effective.
- Analysis and evaluation of the reasons that suggest the Law Commission is not effective.
- Use of examples to illustrate these arguments, e.g. the law on non-fatal offences.
- A conclusion which draws together the analysis and evaluation, whether in favour or against the proposition that the Law Commission is or is not effective in its role.

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
Total	40	40	80
Total %	50	50	100