
AS
LAW
COMPONENT CODE

PAPER 1

Mark scheme

Series

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

Level of response marking instructions

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

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

Step 1 Determine a level

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

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

Step 2 Determine a mark

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

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

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

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

Examiners are required to assign each of the students' responses to the most appropriate level according to its overall quality, then allocate a single mark within the level. When deciding upon a mark in a level examiners should bear in mind the relative weightings of the assessment objectives (see page 16) and be careful not to over/under credit a particular skill. For example, in question 14 more weight should be given to AO2 than to AO1. This will be exemplified and reinforced as part of examiner training.

Examiners are reminded that AO1, AO2 and AO3 are regarded as interdependent. When deciding on a mark all should be considered together using the best fit approach. For example, a level 3 mark could be awarded for level 3 evidence against each objective, or a mixture of level 4, 3 and 2 evidence across different objectives.

01 Which **one** of the following statements best defines the rule of transferred malice?

[1 mark]

Marks for this question: AO1 = 1

D The mens rea moves from the intended victim to the actual victim.

02 Which **one** of the following statements about strict liability offences is **true**?

[1 mark]

Marks for this question: AO1 = 1

C Strict liability offences are usually statutory offences.

03 Which **one** of the following statements best defines the actus reus of s47 Offences Against the Person Act 1861?

[1 mark]

Marks for this question: AO1 = 1

B Assault or battery causing some harm.

04 Dave is sitting on a bench when he points a gun at Nick who is coming towards him. Dave puts the gun away when he realises that Nick is blind. What offence has Dave committed?

[1 mark]

Marks for this question: AO1 = 1

D None of the above.

05 Which **one** of the following statements about causation is **false**?

[1 mark]

Marks for this question: AO1 = 1

B D can cause a consequence only by doing an act.

06 Select the **one** court to which the prosecution can appeal by way of case stated (on a point of law) from a Magistrates' Court trial.

[1 mark]

Marks for this question: AO1 = 1

D The Queen's Bench Divisional Court.

07 Yvette is unemployed and is charged with grievous bodily harm with intent contrary to s18 Offences Against the Persons Act 1861. What would be the best course of action for Yvette to fight her case?

[1 mark]

Marks for this question: AO1 = 1

A Apply to the court for a representation order.

08 Select the most senior court in the hierarchy in terms of judicial precedent.

[1 mark]

Marks for this question: AO1 = 1

D The Supreme Court.

09 Select the **one** type of lawyer who is **not** authorised to represent a client in a Crown Court trial.

[1 mark]

Marks for this question: AO1 = 1

B A legal executive.

10 Select the **one** correct statement about lay magistrates.

[1 mark]

Marks for this question: AO1 = 1

A Lay magistrates decide on a defendant's guilt or innocence.

11 Explain what is meant by a majority verdict of a jury in a criminal trial, and explain when a jury may be entitled to reach a majority verdict.

[3 marks]

Marks for this question: AO1 = 3

Indicative Content

- Explanation that a jury can reach a majority verdict when there is no unanimous agreement amongst jurors but either 11:1 or 10:2 votes in support of the verdict (1)
- Explanation that if the jury falls to 11, then a majority could be 10:1 or if it falls to 10 then a majority could be 9:1 (1)
- Explanation that a majority verdict can only be reached when the trial judge directs accordingly and that that will only happen after the jury have been deliberating for a minimum of 2 hours without a unanimous decision (1)

12 In some circumstances, an omission can form the basis of the actus reus of a criminal offence. Suggest why Anne's failure to do anything about the fire might, in law, form the basis of the actus reus of an offence of causing damage to her neighbour's house.

[3 marks]

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

Indicative Content

AO1

- Explanation that an omission can be the basis of the conduct element of an actus reus if it can be proved that D was under a duty which was broken. (1)

AO2

- Application to suggest that Anne created the danger, of which she was probably aware when she left the bedroom, and so was under a duty to act. (1)
- Application to suggest that her failure to minimise the risk by putting out the fire, or seeking help, was a breach of the duty, and so could form the conduct element of the actus reus of an offence of damage to property. (1)

13 Advise Josh as to his liability for an offence under the Offences against the Person Act 1861 s18. Assuming conviction, assess the likelihood that a severe custodial sentence might be imposed.

[12 marks]

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

Levels of response mark scheme 12marks – 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 the offence under s18 as wounding (or causing grievous bodily harm) with intent to cause grievous bodily harm
- Explanation that a wound involves a break in the outer and inner layers of skin (JCC v Eisenhower)
- Explanation that the threshold for a custodial sentence is only met when imposition of a non-custodial sentence is inappropriate (and that it is not appropriate to suspend the sentence so as to avoid immediate custody)

AO2:

- Application to argue that the deep cut was a 'wound' (perhaps, also, grievous bodily harm)
- Application to suggest that the pre-meditated attack, involving use of a knife in such a way that failure to penetrate vital organs was merely a fortunate (for Kerry) accident, was a strong indicator of an intention by Josh to cause serious injury
- Application to conclude that there is a very strong argument that all the elements of the s18 offence, both actus reus and mens rea, were present, so that Josh was guilty
- Application to argue that a custodial sentence is strongly indicated in the seriousness of the offence, given Josh's apparent intentions (even if the actual outcome was less than might have been expected)
- Application to suggest that there were a number of aggravating features (previous convictions, pre-meditation, use of a weapon, targeting of a public servant)
- Application to conclude that a custodial sentence is justified and that there are sufficient features to induce the judge to move up the range of severity (no statement as to a specific number of years is required)

AO3

- Analysis and evaluation of the meaning of intention (direct/indirect) to cause grievous (serious or 'really' serious) injury supported by reference to relevant authority (for example, Belfon, Matthews and Alleyne)
- Analysis and evaluation of the general requirement that the offence must be sufficiently serious that imposition of a custodial sentence is unavoidable (to be deduced from the circumstances of the individual offence and the factors assessed by any offence-specific guidelines)
- Analysis and evaluation of factors considered as aggravating and mitigating which bear on the specific severity of a custodial sentence, where a custodial sentence is deemed appropriate (for example, previous convictions, use of a weapon, pre-meditation, injury to a public servant)

Credit any other relevant point(s).

14 Advise Liam as to his liability for an offence under the Offences Against the Person Act 1861 s20. Assuming conviction, assess the likelihood that an appeal by Liam might reach the Supreme Court.

[12 marks]

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

Levels of response mark scheme 12marks – 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 the offence under s20 as unlawfully and maliciously inflicting grievous bodily harm
- Explanation that grievous bodily harm is a matter of fact defined only as serious or really serious harm in which the age of the victim can be relevant (Bollom)
- Explanation that there are two routes of appeal from conviction in the Magistrates' Court, namely, to the Crown Court and to the QBD Divisional Court, with a further appeal from the Crown Court to the QBD Divisional Court and a final appeal from the QBD Divisional Court to the Supreme Court.

AO2:

- Application to argue that the severe bruising suffered by Maria could be sufficiently serious to be grievous bodily harm, taking into account her age
- Application to suggest that there is no evidence that Liam intended any injury and that, given the circumstances and his probable pre-occupation with the rowdy game, it is very questionable whether he foresaw the risk of any injury to any person
- Application to conclude that there is a very strong argument that the mens rea elements of the s20 offence were not present, so that Liam should not have been found guilty
- Application to affirm that, having pleaded not guilty, Liam could appeal to the Crown Court on any grounds and, if unsuccessful, could make a further appeal on a matter of law to QBD Divisional Court by way of case stated
- Application to affirm that Liam could appeal directly to the QBD Divisional Court by way of case stated on a matter of law only
- Application to argue that, though in theory an appeal from the QBD Divisional Court to the Supreme Court is possible, in practice, the case is unlikely to meet the requirements that a point of law of general public importance was involved and that it appeared to either the QBD Divisional Court or the Supreme Court that the Supreme Court should consider the point

AO3

- Analysis and evaluation of the meaning of 'malicious' as requiring proof of intention or recklessness as to some injury, the recklessness being subjective, and so requiring proof of awareness of risk, supported by reference to relevant authority (for example, Parmenter)
- Analysis and evaluation of the routes of appeal from conviction in the Magistrates' Court: via the Crown Court on any grounds and as a re-hearing of the issues; and via the QBD Divisional Court by way of case stated on a point of law, either directly or from an appeal to the Crown Court
- Analysis and evaluation of the possibility of a further appeal from the QBD Divisional Court to the Supreme Court but requiring a certificate from QBD Divisional Court that a point of law of general public importance is involved and that it appears to either the QBD Divisional Court or the Supreme Court that the Supreme Court should consider the point

Credit any other relevant point(s)

15 Consider the criminal liability of Elena arising out of her actions in the library.

[20 marks]

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

Levels of response mark scheme 20 marks – AO1 (7), AO2 (7) and AO3 (6).	
Mark range	Description
17-20 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of relevant legal authority.</p> <p>There is excellent analysis and evaluation of legal rules and principles leading to excellent application of the correct rules and principles to the scenario. An excellent legal argument is presented using appropriate terminology.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
13-16 Band 4	<p>Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of relevant legal authority.</p> <p>There is good analysis and evaluation of legal rules and principles leading to good application of the correct rules and principles to the scenario. A good legal argument is presented using appropriate terminology.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
9-12 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>There is satisfactory analysis and evaluation of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. A satisfactory legal argument is presented using some appropriate terminology</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
5-8 Band 2	<p>Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of relevant legal authority.</p> <p>There is limited analysis and evaluation of legal rules and principles which may lead to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology.</p>

	Some reasoning is attempted which leads to a limited conclusion.
1-4 Band 1	Knowledge is minimal and demonstrates minimal understanding of legal rules and principles. Minimal selection and use of legal authority. 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.
0	Nothing worthy of credit

Indicative Content:**AO1**

- Identification and definition of the offence under the Offences Against the Person Act 1861 s47 of assault (as assault or battery) occasioning actual bodily harm
- Outline explanation of the actus reus elements of s47 apprehension of immediate personal violence or infliction of personal violence which causes more than trivial hurt or injury
- Outline explanation of the mens rea elements of s47 as intention or (subjective) recklessness as to causing apprehension of personal violence or as to inflicting personal violence
- Outline explanation of the principle of transferred malice
- Outline explanation of the requirements of causation in fact and causation in law
- Reference to supporting case authority (for example, Chan-Fook, Savage, Latimer, Blaue)

AO2

- Application to suggest that both Catherine and Gurdeep suffered actual bodily harm: the black eye and the persistent anxiety both satisfy the test
- Application to argue that Elena's conduct probably caused both Catherine and Gurdeep to fear immediate personal injury (though perhaps more open to challenge in Gurdeep's case)
- Application to suggest that, in both instances, there is a sufficient causal connection between the fear of immediate personal injury and the black eye/psychiatric injury, despite the possible 'self-inflicted' aspect (Catherine) and the 'thin skull' (Gurdeep)
- Application to argue that Catherine probably suffered a battery (infliction of personal violence) when falling over the books (causation issue as above)
- Application to suggest that Elena intended Catherine to apprehend immediate personal violence, and so was guilty of assault occasioning actual bodily harm, but probably did not intend or foresee the risk of Catherine falling over the books, and so was not guilty of battery or of s47 via the battery route
- Application to suggest that, using the principle of transferred malice, Elena's mens rea for assault in relation to Catherine could also be transferred to the actus reus of assault that she committed against Gurdeep, so that she was guilty of a s47 offence against Gurdeep, too.

AO3

- Analysis and evaluation of the alternative routes to actual bodily harm via an assault (causing fear which results in self-inflicted injury and causing fear which results in psychiatric injury)
- Analysis and evaluation of causation rules relating to self-induced injury and to pre-existing weakness ('thin skull'/'take your victim')
- Analysis and evaluation of the transferred malice principle – the requirement for the same or closely associated crimes, the possibility that the intended crime against the intended victim may also be committed

- Use of supporting case authority (for example, further development of cases cited above, Roberts, Ireland)

Credit any other relevant point(s).

16 Referring to examples from criminal and/or civil law, explain how judges in the Supreme Court and the Court of Appeal can avoid following precedent, and discuss the necessity for the judges to be able to do so.

[20 marks]

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

Levels of response mark scheme 20 marks – AO1 (10) and AO3 (10).	
Mark range	Description
17-20 Band 5	<p>Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and/or English Legal System, rules and principles. Excellent selection and use of relevant legal authority.</p> <p>Excellent analysis and evaluation of legal concepts.</p> <p>A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.</p>
13-16 Band 4	<p>Knowledge is good and demonstrates a good understanding of the Nature of Law and/or English Legal System, rules and principles. Good selection and use of relevant legal authority.</p> <p>Good analysis and evaluation of legal concepts.</p> <p>A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.</p>
9-12 Band 3	<p>Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and/or English Legal System, rules and principles. Satisfactory selection and use of relevant legal authority.</p> <p>Satisfactory analysis and evaluation of legal concepts</p> <p>A chain of reasoning starts to develop which leads to a partially justified conclusion.</p>
4-8 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

Indicative Content:**AO1**

- Explanation of the Practice Statement 1966 as it applies to the Supreme Court in connection with its own precedents – the importance of adhering to precedent, particularly in relation to contract, property and fiscal arrangements, and the need for certainty in criminal law. The determination to depart from precedent ‘when it appears right to do so’.
- Explanation of the power of a higher court to overrule a decision of a lower court (and so applied, here, to the power of the Supreme Court to overrule precedents set by the Court of Appeal)
- Explanation of the slightly more flexible approach of the Court of Appeal (Criminal Division) compared with that of the Civil Division to its own precedents – but acknowledging the pre-eminence of the Supreme Court, despite occasional attempts to evade constraints
- Explanation of the Young v BAC exceptions to the rule that the Court of Appeal, especially the Civil Division, is bound by its own decisions
- Explanation of the concept of distinguishing, as way in which either the Supreme Court or the Court of Appeal may evade a precedent without needing formally to overrule or otherwise depart from an earlier decision
- Use of relevant supporting authority (for example, R v G&R/R v Caldwell; BRB v Herrington/Addie v Dumbreck, Anderton v Ryan/Shivpuri, A v Hoare/Stubbings, Hedley Byrne v Heller/Candler v Crane Christmas, R v Wilson/R v Brown, Balfour v Balfour/Merritt v Merritt)
- Outline explanation of arguments for flexibility: for example, modernisation, justice in individual cases, correction of errors, avoidance of rigidity and stagnation
- Outline arguments against flexibility: for example, complexity, illogicality, lack of certainty and precision

AO3

- Analysis and evaluation of reasons for, and advantages of, the flexibility involved in the capacity to avoid precedent, distinguishing, where appropriate, between the Supreme Court and the Court of Appeal – for example: the need to modernise the law in accordance with current moral values, policies and technology; the requirement to do justice in the individual case and correct errors in lower courts or previous decisions; the requirement to clarify the distinctions between cases with different material facts leading to detailed and practical law making; the particular powers given to Supreme Court justices given their status in the hierarchy and experience and perhaps the inability of Parliament to provide all the law needed; the significance of the Court of Appeal in view of the relatively limited number of cases that can be heard by the Supreme Court; the avoidance of rigidity
- Use of supporting case authority to illustrate these arguments – further explanation and analysis of the kinds of cases cited above to develop an evaluative perspective
- Analysis and evaluation of reasons against, and disadvantages of, the flexibility involved in the capacity to avoid precedent – for example: the generation of undue complexity and illogicality associated, in particular, with distinguishing; the creation of imprecision and uncertainty in the law
- Use of supporting case authority to illustrate these arguments – for example, the enduring controversy surrounding the definition of intention (Woollin, Matthews and Alleyne, and preceding cases)
- A conclusion which draws together the analysis and evaluation and, whether in favour of or against the proposition that it is necessary that judges in the Supreme Court and/or the Court of Appeal should have the capacity to avoid precedent, is clearly grounded in that analysis and evaluation.

Credit any other relevant point(s).

Assessment Objectives Grid

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

Distribution of marks for substantive and non-substantive law

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