A-level
LAW
7162/1

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 Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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 about mens rea is **false**?
	[1 mark]

Marks for this question: AO1 = 1

C Mens rea must be proven in all criminal cases.

02	Which **one** of the following statements about gross negligence manslaughter is **true**?
	[1 mark]

Marks for this question: AO1 = 1

D The defendant's act or omission must create a risk of death.

03	Which **one** of the following statements about the use of the golden rule within statutory interpretation is correct?
	[1 mark]

Marks for this question: AO1 = 1

C The golden rule enables the judge to avoid an interpretation which would lead to an absurd result.

04	Which **one** statement best describes the method of 'distinguishing' within the doctrine of judicial precedent?
	[1 mark]

Marks for this question: AO1 = 1

A Not following a previous decision because the facts in the present case are materially different.

05	Which **one** of the following statements about the jurisdiction of lay magistrates is **false**?
	[1 mark]

Marks for this question: AO1 = 1

C Magistrates can try indictable-only offences.

06	Explain what is meant by the purposive approach to statutory interpretation.
	[5 marks]

Marks for this question: AO1 = 5

	Levels of response mark scheme 5 marks – AO1 only
Mark range	**Description**
4–5 **Band 3**	Knowledge is good and demonstrates a good understanding of the English legal system. Where appropriate a good example of a case to illustrate suggested reasons.
2–3 **Band 2**	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system. Where appropriate a satisfactory example of a case to illustrate reasons.
1 **Band 1**	Knowledge is limited and demonstrates a limited understanding of the English legal system. Where appropriate a limited example of a case to illustrate reasons.
0	Nothing worthy of credit.

Indicative content

- An attempt to establish Parliament's intention
- It is a broad approach that can lead to justice in individual cases.
- Allows for new developments in technology.
- Gives the judge more discretion to avoid absurd results.
- Useful for interpreting EU law.
- Appropriate example which illustrates the suggested reason, e.g. **R(Quintavalle) v Secretary State**, **Pepper v Hart**, **R v Registrar General ex parte Smith**.

Credit any other relevant point(s)

07	Using the rules on transferred malice, suggest why, in law, Alfred may be found to have the mens rea of an offence against Charlie.
	[5 marks]

Marks for this question: AO1 = 2 and AO2 = 3

	Levels of response mark scheme 5 marks – AO1 (2) and AO2 (3)
Mark range	**Description**
4–5 **Band 3**	Good outline explanation of legal rules and principles and good application to the scenario in order to present a legal argument using appropriate terminology. Good explanation of a relevant case to support the application.
2–3 **Band 2**	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory application of legal rules and principles to the scenario. Satisfactory explanation of a relevant case to support the application.
1 **Band 1**	Knowledge is limited and demonstrates a limited understanding of legal rules and principles.
0	Nothing worthy of credit.

Indicative content

AO1
- Definition of transferred malice and outline explanation stating that mens rea can be transferred from the intended victim to the actual victim.
- Explanation of the limits of transferred malice; it only applies to crimes of the same kind.
- Possible reference to the mens rea of an appropriate offence.

AO2
- Identification of key facts: Alfred intends to throw the can at Bert but it misses and hits Charlie, the intended outcome against the wrong person.
- Application of the rule that mens rea can only be transferred if the crimes are of the same kind, conclude that they are of the same kind (an offence against the person), permitting transfer of mens rea.
- Brief explanation of a relevant case to support application and argument, e.g. **Latimer**, **Pembliton**.

Credit any other relevant point(s).

08	Assume that Earl would be guilty of an offence of assault occasioning actual bodily harm in relation to the incident with Faraz, unless he could successfully plead the defence of insanity.
	Advise Earl on whether he could successfully plead the defence of insanity.
	[10 marks]

Marks for this question: AO1 = 3, AO2 = 4 and AO3 = 3

	Levels of response mark scheme 10 marks – AO1 (3), AO2 (4) and AO3 (3)
Mark range	**Description**
7–10 **Band 3**	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good analysis of legal rules and principles leading to good application of the correct rules and principles to the scenario. Good explanation of relevant legal authority to support the application. A good legal argument is presented using appropriate terminology to support advice.
3–6 **Band 2**	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory analysis of legal rules and principles leading to satisfactory application of the correct rules and principles to the scenario. Satisfactory explanation of relevant legal authority to support the application. A satisfactory legal argument is presented using some appropriate terminology to support advice.
1–2 **Band 1**	A limited demonstration of knowledge. Limited analysis of legal rules and principles in relation to the scenario but rules and principles are not applied correctly to the scenario.
0	Nothing worthy of credit.

Indicative content

AO1
- Outline explanation of the defence of insanity.
- Reference to supporting case authority, e.g. **M'Naghten**, **Clarke**, **Sullivan**, **Windle**.

AO2
- Application of the rules of insanity; defect of reason, disease of the mind, internal factor (hyperglycaemia), argue no understanding of the nature and quality of the act (no memory of the events).
- Application of the effect on criminal liability of the defence of insanity. Acknowledgement of the special verdict.

AO3
- Analysis and evaluation of the elements of the defence of insanity.
- Use of supporting case authority, e.g. **Hennessy**, **Quick**.

Credit any other relevant point(s).

09	Offences of strict liability do not require mens rea for at least part of the actus reus.
	Examine the meaning and significance of 'fault' within criminal law, and discuss the extent to which offences of strict liability criminalise those who are not at 'fault'.
	[15 marks]

Marks for this question: AO1 = 5 and AO3 = 10

Mark range	Levels of response mark scheme 15 marks – AO1 (5) and AO3 (10)
	Description
13–15 **Band 5**	Knowledge is excellent and demonstrates an excellent understanding of the Nature of Law and legal rules and principles. Excellent selection and use of relevant legal authority. Excellent analysis and evaluation of legal rules and principles; concepts and issues. Excellent drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
10–12 **Band 4**	Knowledge is good and demonstrates a good understanding of the Nature of Law and legal rules and principles. Good selection and use of relevant legal authority. Good analysis and evaluation of legal rules and principles; concepts and issues. Good drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
7–9 **Band 3**	Knowledge is satisfactory and demonstrates a satisfactory understanding of the Nature of Law and legal rules and principles. Satisfactory selection and use of relevant legal authority. Satisfactory analysis and evaluation of legal rules and principles; concepts and issues. Some drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.
4–6 **Band 2**	Knowledge is limited and demonstrates a limited understanding of the Nature of Law and legal rules and principles. Limited selection and use of relevant legal authority. Limited analysis and evaluation of legal rules and principles; concepts and issues. Limited drawing together of knowledge and understanding of substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
1–3 **Band 1**	Knowledge is minimal and demonstrates a minimal understanding of the Nature of law and legal rules and principles. Minimal selection and use of relevant legal authority. Minimal analysis and evaluation of legal concepts and issues. No chain of reasoning is attempted.

0	Nothing worthy of credit.

Indicative content

AO1
- Identification and explanation of the meaning of fault within criminal law e.g. actus reus and mens rea issues
- Explanation of the significance of fault within specific areas of law in order to demonstrate how they indicate the presence or absence of fault and levels of fault e.g. murder and defences.
- Outline explanation of the offence of strict liability

A03
- Analysis of actus reus issues (e.g. voluntariness **Hill v Baxter**, causation, omissions) and mens rea issues (consideration of the presumption of mens rea and the distinction between intention and recklessness)
- Analysis of the notion of levels of fault, the relevance of blameworthiness to sentencing, etc.
- Analysis and evaluation of significance of fault as a marker of blame which imposes responsibility, and therefore justifies imposition of penalties or sanctions possible reference to argument to support this e.g. utilitarianism/protection of the pubic from harm
- Analysis and evaluation of liability without fault, areas of strict liability in criminal law such as offences relating to food hygiene (e.g. **Smedleys v Breed**), pollution (e.g. **Alphacell v Woodward**), the protection of under-age children (e.g. **Harrow v Shah**)
- Analysis and evaluation of the extent to which strict liability offences criminalise those who are at fault e.g. mens rea being present for part of the offence (e.g. **R v Prince** and **R v Hibbert**)

Credit any other relevant point(s) Credit will be given for examples illustrating fault from any area of law.

Indicative Content Groups (ICGs)
1. Meaning and significance of fault
2. Strict liability discussion

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
5	10	15

10	Consider the criminal liability of Gail for the murder of Harry **and** of Ian for the injuries to Gail.
	[30 marks]

Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	**Description**
25–30 **Band 5**	Knowledge is excellent and demonstrates an excellent understanding of relevant legal rules and principles. Excellent selection and use of appropriate 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. 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.
19–24 **Band 4**	Knowledge is good and demonstrates a good understanding of relevant legal rules and principles. Good selection and use of appropriate 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. 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.
13–18 **Band 3**	Knowledge is satisfactory and demonstrates a satisfactory understanding of relevant legal rules and principles. Satisfactory selection and use of appropriate legal authority. 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.
7–12 **Band 2**	Knowledge is limited and demonstrates a limited understanding of relevant legal rules and principles. Limited selection and use of appropriate 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. A limited legal argument is presented using little appropriate terminology. Some reasoning is attempted which leads to a limited conclusion.
1–6 **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 outline explanation of the offence of murder.
- Identification and outline explanation of the defence of loss of control.
- Identification of and outline explanation of the offence of grievous bodily harm/wounding (s18+20).
- Identification and outline explanation of the elements of the defence of self-defence.
- Reference to appropriate supporting case and statutory authority (for example, **Coroners and Justice Act 2009, Criminal Justice and Immigration Act 2008).**

AO2
- Application to suggest that Gail's blow with a weapon is strong evidence of an intention to cause at least serious injury; there is a prima facie case of murder.
- Application to suggest that Gail may raise the defence of loss of control via the anger trigger in response to the laughter and consideration of the taunt.
- Application to suggest that Ian's push caused grievous bodily harm/wounding (s18+20).
- Possibility of the speeding car as an intervening event.
- Application to suggest that Ian could claim to be acting in self-defence/defence of another/ prevention of crime, in that use of some force was necessary.
- Application to suggest that Ian's actions were necessary and proportionate, given the level of threat.

AO3
- Analysis and evaluation of mens rea in murder: direct and oblique intent; death and serious injury.
- Analysis and evaluation of the availability of the defence of loss of control.
- Analysis and evaluation of the rules of causation in relation to potential breaks in the chain of causation: act of a third party.
- Analysis and evaluation of mens rea for s18/s20.
- Analysis and evaluation of necessity for the use of force in self-defence/prevention of crime.
- Analysis and evaluation of proportionate force in self-defence/prevention of crime.
- Use supporting statutory and case authority – (For example**, Coroners and Justice Act 2009, Eisenhower, Woollin, Dawes, Martin).**

    ICGs
    1. Murder
    2. Loss of control
    3. Wounding/GBH s.18/s.20
    4. Self defence

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
30	0	30

11	Consider Daryl and Fran's criminal liability for property offences in relation to the laptop computer and the mobile phone.
	Assess the ways in which Daryl and Fran may obtain legal advice about their cases before trial.
	[30 marks]

Marks for this question: AO1 = 10, AO2 = 10 and AO3 = 10

	Levels of response mark scheme 30 marks AO1 (10), AO2 (10) and AO3 (10)
Mark range	**Description**
25–30 **Band 5**	Knowledge is excellent and demonstrates an excellent understanding of the English legal system and legal rules and principles. Excellent selection and use of relevant legal authority. There is excellent analysis 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 There is excellent analysis and evaluation of legal concepts and issues. Excellent drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion.
19–24 **Band 4**	Knowledge is good and demonstrates a good understanding of the English legal system and legal rules and principles. Good selection and use of relevant legal authority. There is good analysis 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. There is good analysis and evaluation of legal concepts and issues. Good drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A sustained and, but not yet fully, developed line of reasoning is established leading to a partially justified conclusion.
13–18 **Band 3**	Knowledge is satisfactory and demonstrates a satisfactory understanding of the English legal system and legal rules and principles. Satisfactory selection and use of relevant legal authority. There is satisfactory analysis 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. There is satisfactory analysis and evaluation of legal concepts and issues. Some drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. A chain of reasoning starts to develop which leads to a partially justified conclusion.

7–12 **Band 2**	Knowledge is limited and demonstrates a limited understanding of the English legal system and legal rules and principles. Limited selection and use of relevant legal authority. There is limited analysis of legal rules and principles leading to limited application of the correct rules and principles to the scenario. A limited legal argument is presented using little appropriate terminology. There is limited analysis and evaluation of legal concepts and issues. Limited drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. Some reasoning is attempted which leads to a limited conclusion.
1–6 **Band 1**	Knowledge is minimal and demonstrates a minimal understanding of the English legal system and legal rules and principles. Minimal selection and use of relevant legal authority. There is minimal analysis of legal rules and principles leading to minimal application of the correct rules and principles to the scenario. A fragmented legal argument is attempted. There is minimal analysis and evaluation of legal concepts and issues. Minimal drawing together of knowledge and understanding from substantive and non-substantive law from across the course of study. No chain of reasoning is attempted.
0	Nothing worthy of credit.

Indicative content

AO1
- Identification and outline explanation of the offence of theft.
- Identification and outline explanation of the offence of robbery.
- Identification and outline explanation of the elements of the defence of duress.
- Reference to appropriate supporting authority, e.g. **Theft Act 1968**.
- Brief explanation of sources of legal advice available before trial (For example, Own Solicitor, 24-hour duty solicitor at police station, duty solicitor at Magistrates Court (first appearance only) and the internet/advice helplines.

AO2
- Application of the elements of theft to the mobile phone suggest initial appropriation with consent.
- Application of section 3(1) to suggest that the mobile phone was appropriated when Fran decided to keep it.
- Application of section 5; property received by mistake or property received from another under obligation to retain and deal.
- Application of mens rea to suggest that Fran was dishonest and intention was formed when she realised the phone was not hers and decided to keep it.
- Application of appropriation to suggest that the laptop computer was appropriated when it was 'snatched'.
- Application of the additional elements of robbery and the use of force when Daryl 'snatched' the laptop.
- Application of mens rea to suggest that Daryl has intention to permanently deprive due to the threat.
- Application of the elements of duress by threats, threat of hospitalisation would be deemed a serious threat, consideration of the immediacy of the threat.
- Application of rules on self-induced duress as Daryl had voluntarily joined a gang and the effect of the defence if successful.

AO3
- Analysis and evaluation of the actus reus covering appropriation of property belonging to another.
- Analysis and evaluation of the mens rea dishonesty and intention to permanently deprive.
- Analysis and evaluation of the additional elements for robbery (s8 **Theft Act 1968**).
- Analysis and evaluation of the rules on duress by threats.
- Analysis and evaluation relating to self-induced duress.
- Use of supporting statutory and case authority, e.g. **Theft Act 1968**, **Morris**, **Ghosh/Ivey**, **Hasan**, **Graham**, **Sharp**, **Shepherd**, **Robinson**, **Clouden** etc.
- Analysis and evaluation of the types of advice and funding available within criminal cases, probably suggesting that advice from a solicitor is most favourable.

- Credit any other relevant point(s)

    ICGs
    1. Robbery
    2. Duress
    3. Theft
    4. Legal Advice

Distribution of marks for substantive and non-substantive law:

Substantive	Non-substantive	Total Marks
23	7	30

Assessment Objectives Grid

	AO1	AO2	AO3	Total
1	1			**1**
2	1			**1**
3	1			**1**
4	1			**1**
5	1			**1**
6	5			**5**
7	2	3		**5**
8	3	4	3	**10**
9	5		10	**15**
10	10	10	10	**30**
11	10	10	10	**30**

| **Paper Total** | **40** | **27** | **33** | **100** |

Distribution of marks for substantive and non-substantive law

Question	Substantive	Non-substantive	Total Marks
1	1		1
2	1		1
3		1	1
4		1	1
5		1	1
6		5	5
7	5		5
8	10		10
9	5	10	15
10	30		30
11	23	7	30
Total	75	25	100
Total %	75	25	100