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

<table>
<thead>
<tr>
<th>Level 3</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4–5 marks</td>
</tr>
<tr>
<td>Level 2</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>2–3 marks</td>
</tr>
<tr>
<td>Level 1</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>1 mark</td>
</tr>
<tr>
<td>Level 0</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>0 marks</td>
</tr>
</tbody>
</table>
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
sound/some   - clear
clear/clear   - clear
clear/some   - weak clear
some/some    - some
## Descriptors for Substantive Law questions

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
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<tbody>
<tr>
<td>Sound</td>
<td>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.</td>
</tr>
<tr>
<td>Clear</td>
<td>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. Or 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).</td>
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<tr>
<td>Some</td>
<td>Explanation and/or application in relation to relevant aspects but characterised by significant omissions and/or errors and/or confusion. Or 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.</td>
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<tr>
<td>Fragments</td>
<td>Isolated words or phrases, including case names and statutes, which have potential relevance but remain entirely undeveloped. Or Mere identification of relevant offences/defences.</td>
</tr>
</tbody>
</table>

### 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).
Scenario 1

Discuss Ellie’s criminal liability for her actions in relation to Beth. Discuss Beth’s criminal liability for the injuries that she caused to Ellie.

[25 marks + 5 marks for A03]

REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

Potential content

(A) Ellie’s possible liability for assault against Beth:

- causing fear of immediate personal violence – words and gestures; immediacy; mistake in perception by Beth
- intention or recklessness (knowledge of substance in bottle)
- transferred malice from Alison to Beth.

Sound: all elements
Clear: no discussion of transferred malice

(B) Beth’s possible liability for assault occasioning actual bodily harm/unlawful and malicious wounding or infliction/cause of grievous bodily harm against Ellie:

- the throwing of the coffee and scalding as a battery occasioning actual bodily harm – more than trivial hurt/injury; intention/recklessness to inflict personal violence (ie battery mens rea)
- the throwing of the coffee and scalding as grievous bodily harm or (possibly) wounding – (really) serious personal injury/break in both layers of skin; intention/recklessness to inflict some personal injury (s20) or intention to cause serious personal injury (s18).

Sound: grievous bodily harm/wounding (s20 + s18)(discussion of abh enhances)
Clear: actual bodily harm or grievous bodily harm/wounding (s20)
Weak clear: grievous bodily harm/wounding (s18)

(C) Beth’s possible defence of self-defence (common law + Criminal Justice and Immigration Act 2008 s76):

- necessity to use force – imminence of anticipated attack; relevance of Beth’s mistake; perception of possible alternatives to use of force; pre-emptive strike
- proportion in force used – facts as mistakenly perceived by Beth; harm anticipated compared (loosely) with harm inflicted; inability to judge response to a nicety etc.

Sound: necessity + proportion
Clear: necessity or proportion
Discuss Chris’s criminal liability for the murder of Dave. [25 marks]

Potential content

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

- actus reus – particular reference to causation aspect and role of medical treatment (apparent brain-stem death prior to termination of life support)
- mens rea – direct/indirect (oblique) intention to kill/cause grievous bodily harm (particular reference to use of weapon, target area of body, implications of Chris’s statement).

 Sound both elements
 Clear mens rea fully developed
 Weak clear actus reus fully developed

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

- abnormality of mental functioning based on Chris’s depression/suspicion
- possible substantial impairment of ability to form a rational judgment or exercise self-control
- abnormality explains (causes/makes a significant contribution to) Chris’s conduct in killing Dave.

 Sound all elements
 Clear ‘explains conduct’ omitted

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

- loss of self-control (not ‘considered desire for revenge’)
- qualifying trigger – sexual infidelity (exclusion) and Dave’s scornful/disdainful conduct as evidence of circumstances of an extremely grave character giving Chris a justifiable sense of being seriously wronged
- reaction of person of a normal degree of tolerance and self-restraint – characteristics included/excluded, admissibility of sexual infidelity.

 Sound all elements
 Clear qualifying trigger + one other element
Consider what criticisms may be made of the current law on murder and voluntary manslaughter. Suggest possible reforms to deal with those criticisms. [25 marks]

Potential content

(A) Criticisms of the law of murder:

1. implications of mandatory life sentence, eg. no distinctions for motive (eg mercy v serial killer); no distinction between pre-meditated and spontaneous; partial defences structure
2. no distinction between intent to kill and intent to cause gbh of any kind
3. actus reus issues eg. unborn child, establishing death
4. mens rea issues – meaning of intention (direct/oblique)
5. excessive self-defence
6. exclusion of the defence of duress
7. any other relevant criticism

Sound three elements or two very well developed
Clear two elements

(B) Criticisms of the defence of loss of control and/or of the defence of diminished responsibility:

1. scope of coverage of diminished responsibility, including developmental immaturity, the causal requirement
2. burden of proof
3. relationship with other defences, eg. intoxication, insanity
4. issues relating to stigma
5. general structure of loss of control (revenge/loss of control, self-induced/loss of control; fear/loss of control)
6. subjective and objective tests in the fear and anger triggers in loss of control
7. the sexual infidelity exclusion
8. the comparison with a person of normal degree of tolerance and self-restraint
9. any other relevant criticism

Sound any 3 elements (from either or both – a little more detail required if from one only)
Clear any two elements

(C) Appropriate suggestions for reform in the light of the criticisms presented in (A) and (B):

1. proposals in relation to murder, eg. abandonment of mandatory sentence; adoption of tiers/degrees of homicide; restriction of the scope of intention to cause serious injury as mens rea for murder
2. proposals in relation to diminished responsibility, eg. amendment of burden of proof in diminished responsibility; modification of diminished responsibility to produce greater clarity in relationships between the defence and intoxication/insanity
3. proposals in relation to loss of control, eg. amendment of the loss of control defence to eliminate confusion about revenge/fear and loss of control; amendment of the loss of control defence to eliminate confusion about the meaning and scope of ‘sexual infidelity’

continued on page 10
Give credit to any other relevant proposals.

**Sound** proposals from 1. and 2. or 3.

**Clear** proposals from any of 1.- 3.
Scenario 2

Discuss Franco’s criminal liability for the injuries to Gianni and to Harriet.

[25 marks + 5 marks for A03]

REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

Potential content

(A) Franco’s possible liability for unlawful and malicious infliction/causing of grievous bodily harm against Gianni:

- the actus reus of s20/s18 as inflicting/causing serious injury
- the mens rea as intention or recklessness as to some personal injury (s20) or intention as to serious injury (s18) (relevance of indirect/oblique intention)

Sound s20 + s18
Clear s20 or s18
Weak clear actual bodily harm
Some battery

(B) Franco’s possible liability for assault (battery) occasioning actual bodily harm/unlawful and malicious wounding (s20) against Harriet:

- the cuts as a battery occasioning actual bodily harm – more than trivial hurt/injury; causation issues (with specific reference to the victim contributing to the seriousness of their own injury); indirect battery; recklessness as to infliction of personal violence (ie battery mens rea)
- the cuts as wounding – break in both layers of skin; recklessness as to infliction of some personal injury (s20)
- *as an alternative route to mens rea in either of the above* – malice derived from the mens rea in (A) transferred to the injury inflicted on Harriet

Sound actual bodily harm or wounding (s20)

(C1) Franco’s possible defence of consent in relation to the injuries to Gianni:

- the basic principle that consent is not available to harm amounting at least to actual bodily harm
- the recognition of exceptions – here, ‘rough undisciplined play’
- the issue of the scope of any consent (to what risks, if any, did Franco and Gianni consent)

Sound all elements
Clear no reference to the basic principle

continued on page 12
(C2) **Franco’s possible plea of intoxication in relation to the injuries to Gianni and Harriet:**

- the meaning of voluntary intoxication
- the meaning of specific and basic intent
- the effect in specific and basic intent offences

**Sound** all elements  
**Clear** no discussion of the meaning of voluntary intoxication

Students may deal with either C1 or C2. Where *both* are dealt with, less detail of either or both is required.

Discussion of intoxication in the context of consent only, enhances consent.
Discuss Isaac's criminal liability for involuntary manslaughter in relation to the death of Joan. [25 marks]

Potential content

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

- the unlawful act as an assault (causing fear of immediate unlawful personal violence)
- the mens rea associated with the unlawful act
- dangerousness (objective Church test – significance of Joan’s age, propensity to heart attack)
- causation – take your victim (distinct from the ‘dangerousness issue/test); the removal of the car as possible novus actus interveniens.

Sound all elements
Clear no discussion of causation
Weak clear no discussion of dangerousness

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

- the requirement for a duty (based here on the creation of a dangerous situation)
- breach (was the initial failure to summon the emergency services redeemed by Isaac’s subsequent anonymous call)
- did the breach (if any) create a serious risk of death
- did the breach cause the death (would Joan have survived if Isaac had acted more promptly; was the delay caused by the removal of the car a novus actus interveniens – reliance may be placed on any earlier discussion, and vice versa)
- did the breach (if any) amount to ‘gross’ negligence (“so bad in all the circumstances …”).

Sound all elements
Clear no discussion of causation
Weak sound no discussion of ‘gross’ negligence
Consider what criticisms may be made of the current law on murder and voluntary manslaughter. Suggest possible reforms to deal with those criticisms. [25 marks]

Potential content

(A) Criticisms of the law of murder:
1. implications of mandatory life sentence, eg. no distinctions for motive (eg mercy v serial killer); no distinction between pre-meditated and spontaneous; partial defences structure
2. no distinction between intent to kill and intent to cause gbh of any kind
3. actus reus issues eg.unborn child, establishing death
4. mens rea issues – meaning of intention (direct/oblique)
5. excessive self-defence
6. exclusion of the defence of duress
7. any other relevant criticism

Sound three elements or two very well developed
Clear two elements

(B) Criticisms of the defence of loss of control and/or of the defence of diminished responsibility:
1. scope of coverage of diminished responsibility, including developmental immaturity, the causal requirement
2. burden of proof
3. relationship with other defences, eg. intoxication, insanity
4. issues relating to stigma
5. general structure of loss of control (revenge/loss of control, self-induced/loss of control; fear/loss of control)
6. subjective and objective tests in the fear and anger triggers in loss of control
7. the sexual infidelity exclusion
8. the comparison with a person of normal degree of tolerance and self-restraint
9. any other relevant criticism

Sound any 3 elements (from either or both – a little more detail required if from one only)
Clear any two elements

(C) Appropriate suggestions for reform in the light of the criticisms presented in (A) and (B):
1. proposals in relation to murder, eg.abandonment of mandatory sentence; adoption of tiers/degrees of homicide; restriction of the scope of intention to cause serious injury as mens rea for murder
2. proposals in relation to diminished responsibility, eg. amendment of burden of proof in diminished responsibility; modification of diminished responsibility to produce greater clarity in relationships between the defence and intoxication/insanity
3. proposals in relation to loss of control, eg. amendment of the loss of control defence to eliminate confusion about revenge/fear and loss of control; amendment of the loss of control defence to eliminate confusion about the meaning and scope of ‘sexual infidelity’

continued on page 15
Give credit to any other relevant proposals.

**Sound** proposals from 1. and 2. or 3.

**Clear** proposals from any of 1.- 3.
Scenario 3

07 Discuss Baljeet’s possible rights and remedies against Angela. Discuss Dan’s possible rights and remedies against Angela.  

[25 marks + 5 marks for A03]

REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

Potential content

(A) Baljeet’s possible rights and remedies against Angela (offer and acceptance):

- Angela’s initial text as offer or invitation to treat
- Baljeet’s reply as counter-offer or request for further information
- Angela’s further reply as offer or acceptance – depending on the analysis
- Baljeet’s action for damages if there has been a breach of contract.

Sound all elements
Weak sound no remedies
Weak clear only one line of analysis developed

(B) Dan’s possible rights and remedies against Angela (intent to create legal relations/consideration):

- the issue of intention to create legal relations – the requirement for an intention to create legal relations as an additional element to agreement; presumptions in the case of commercial/social relations
- the issue of consideration – the requirement for consideration; the notion of sufficiency of consideration; past consideration as insufficient; exceptions to past consideration
- Dan’s action for damages if there is a breach of contract.

Sound intent to create legal relations + consideration
Weak sound no remedies
Clear intent to create legal relations or consideration
Weak clear intent to create legal relations (no remedy) or consideration (no remedy)
Discuss Angela’s possible rights and remedies against Eryk. Discuss Angela’s possible rights and remedies against Woodblock.

[25 marks]

Potential content

(A) Angela’s possible rights and remedies against Eryk (misrepresentation):

- actionable misrepresentation – nature of misrepresentation as statement of fact; falsity; inducement and reliance
- kinds of misrepresentation – fraudulent, negligent, innocent (fraudulent, here)
- remedies in rescission and damages.

Sound all elements
Clear no remedies

(B) Angela’s possible rights and remedies against Woodblock (Consumer Rights Act 2015):

- trader/consumer relationship
- terms relating to satisfactory quality and fitness for purpose
- statutory remedies – short-term right of rejection; repair or replacement; price reduction or final rejection
- common law remedy of damages in respect of consequent damage.

Sound all elements
Clear no common law remedy of damages
Some no remedies
Consider what criticisms may be made of the current law on formation of contract. Suggest possible reforms to deal with those criticisms. [25 marks]

Potential content

(A) **Issues concerning agreement** (offer and acceptance and related rules):

- positive aspects – well-established; developed in response to specific cases and pragmatic in application
- problems of offer – distinction from invitation to treat, statements of price; electronic communication; revocation
- problems of acceptance – distinction from requests for further information, counter-offer; modes of acceptance eg postal rule and electronic communication.

*Note (1)* – ‘positive aspects’ are fully creditworthy though not required

*Note (2)* – these issues can be dealt with by alternative routes, such as ‘battle of the forms’

(B) **Issues concerning intent to create legal relations and consideration**:

- the need for an additional element (intent) when there is agreement and consideration
- the operation of the presumptions and distinctions between commercial, domestic and social relationships
- the approach to adequacy of consideration
- the approach to sufficiency of consideration.

(C) **Suggestions for reform**:

- proposals on agreement in relation to specific criticisms identified above
- more general proposals developed from a broader perspective, such as adaptation to modern commerce and communication
- proposals about the need for intent to create legal relations as a separate requirement from consideration
- proposals about presumptions in intent to create legal relations
- proposals about aspects of adequacy and sufficiency of consideration.
Scenario 4

Discuss whether Fawaz had the right to ‘cancel’ the contract with Guy. Discuss Fawaz’s rights and remedies against Hakan. Discuss Fawaz’s rights and remedies against Irene’s Power Tools.

[25 marks + 5 marks for A03]

REMEMBER TO ALLOCATE MARKS FOR AO3 SEPARATELY

Potential content

(A) Fawaz’s right to ‘cancel’ the contract with Guy (Consumer Rights Act 2015):

- trader/consumer contract to supply a service
- right to performance within a reasonable time (s52)
- remedy of reduction in price for breach of s52 (s56)
- right to treat the contract as at an end dependent upon breach of condition (time of the essence).

Sound  all elements
Clear  no discussion of statutory remedy of price reduction
Weak clear  no discussion of common law (equitable) rights of rescission

(B) Fawaz’s rights and remedies against Hakan (Consumer Rights Act 2015):

- trader/consumer contract to supply a service
- right to performance with reasonable care and skill (s49)
- remedy of repeat performance (s55)
- dependent remedy of price reduction (s56)
- right to treat the contract as at an end dependent upon breach of condition.

Sound  all elements
Weak sound  no discussion of common law (equitable) rights of rescission
Clear  remedy of repeat performance or of price reduction

(C) Fawaz’s rights and remedies against Irene’s Power Tools (Consumer Rights Act 2015):

- trader/consumer contract to supply goods
- right to goods of satisfactory quality (s9)/fitness for purpose (s10)
- remedy of repair or replacement (s23)
- remedy of price reduction or final rejection (s20 and s24)
- non-excludability/modification of s9/s10 rights and remedies.

Sound  all elements
Clear  no reference to non-excludability of rights and remedies
Weak clear  no remedies

Note – In discussing remedies in (A)–(C), reliance may be placed on explanations developed in any of (A)–(C)
Discuss the effect of the destruction of Fawaz’s old car on the contractual rights and remedies between Fawaz and PGW, if Fawaz no longer wishes to buy the car from PGW.

[25 marks]

Potential content

(A) The nature of any termination of the contract between Fawaz and PGW (frustration and breach):

- the issue of frustration or breach
- frustrating events – destruction of subject matter/frustration of common venture
- relevance of possible fault
- nature of possible breach.

**Sound** frustration + breach
**Clear** frustration
**Weak clear** breach

(B) The remedies available consequent on termination by frustration or breach:

- operation of the Law Reform (Frustrated Contracts) Act 1943 s1(2) and s1(3)
- remedies of rescission and damages in relation to breach – measure of damages; anticipatory and actual breach.

**Sound** frustration + breach
**Clear** frustration
**Weak clear** breach
Consider what criticisms may be made of the current law on formation of contract. Suggest possible reforms to deal with those criticisms. [25 marks]

Potential content

(A) Issues concerning agreement (offer and acceptance and related rules):

- positive aspects – well-established; developed in response to specific cases and pragmatic in application
- problems of offer – distinction from invitation to treat, statements of price; electronic communication; revocation
- problems of acceptance – distinction from requests for further information, counter-offer; modes of acceptance eg postal rule and electronic communication.

Note (1) – ‘positive aspects’ are fully creditworthy though not required

Note (2) – these issues can be dealt with by alternative routes, such as ‘battle of the forms’

(B) Issues concerning intent to create legal relations and consideration:

- the need for an additional element (intent) when there is agreement and consideration
- the operation of the presumptions and distinctions between commercial, domestic and social relationships
- the approach to adequacy of consideration
- the approach to sufficiency of consideration.

(C) Suggestions for reform:

- proposals on agreement in relation to specific criticisms identified above
- more general proposals developed from a broader perspective, such as adaptation to modern commerce and communication
- proposals about the need for intent to create legal relations as a separate requirement from consideration
- proposals about presumptions in intent to create legal relations
- proposals about aspects of adequacy and sufficiency of consideration.
# ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

A Level Law (LAW03)

*(One question to be answered from 4)*

<table>
<thead>
<tr>
<th>UNIT 3</th>
<th>AO1</th>
<th>AO2</th>
<th>AO3</th>
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