



GCE

Law

H015/01: The legal system and criminal law

Advanced Subsidiary GCE

Mark Scheme for June 2019

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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SUBJECT–SPECIFIC MARKING INSTRUCTIONS**Introduction**

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with examples of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates might use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be

confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles and concepts.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a best-fit approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following: Descriptor	Award mark
On the borderline of this level and the one below	At the bottom level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**

Questions 1-3

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
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Question 4

Assessment Objective:	AO3 1b: Analyse and evaluate legal principles. 10 marks
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Section B

Question 5

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
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Questions 6 and 7















Assessment Objective:	AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 10 marks
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Question 8*

Assessment Objective:	AO3 1a: Analyse and evaluate legal principles. 10 marks
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Questions that have an asterisk (*) assess the quality of a candidate's extended response. Level descriptors are identified in the AO3 column in italics.

Annotations

Annotation	Meaning
	Very well developed point (WDP)
	Unclear
	Applied point
	Developed point (DP)
	Well developed point (WDP)
	Not answered question
	Not Relevant
	Point
	Repetition
	Sort of
	Point has been noted, but no credit has been given / blank page has been checked for response
	Correct
	Applied
	Spare 1

Answer	Marks	Guidance
<p>1 Explain the differences between civil and criminal law.</p> <p>Answers may include the following:</p> <p>Civil Law:</p> <ul style="list-style-type: none"> • Civil law is about private disputes between individuals or businesses • The purpose of civil law is to uphold the rights of individual or businesses • In civil cases, a court can order a remedy or compensation to be paid in order that the injured party can, where possible, be put back to the position they would have been in if there had not be a breach of civil law • The person starting a civil case is called the claimant and will be the party that has suffered because of a breach of civil law • The claimant must prove their case • A civil case takes place in either the County or High Court • The case will be heard by a District Judge, Circuit Judge Recorder or High Court Judge • The standard of proof in civil cases is ‘on the balance of probabilities’ • At the end of the case the defendant will be found liable or not liable • If liability established the judge will order the defendant put right the matter as far as is possible • The remedies available are: <ul style="list-style-type: none"> ○ Damages ○ Injunctions ○ Specific performance <p>Criminal Law:</p> <ul style="list-style-type: none"> • Criminal law sets out the types of behaviour which are forbidden 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent knowledge and understanding of the English Legal System, rules and principles. The response is accurate, fully developed and detailed.</p> <p>Level 3 (6-8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places.</p> <p>Level 2 (3-5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<ul style="list-style-type: none"> • The purpose of criminal law is to maintain law and order and to protect society • When a person has been found guilty of committing a crime they will be punished • Most criminal cases are brought on behalf of the state by the Crown Prosecution Service. There are other agencies which may prosecute • Criminal cases will be tried in either the Magistrates' Courts or the Crown Court • The case will be presided over by Lay Magistrates, a Recorder, District Judge. Circuit Judge or High Court Judge • A jury will be used for trial in the Crown Court • The standard of proof in criminal cases is 'beyond reasonable' doubt • The defendant may plead guilty, be found guilty or acquitted • A penalty/sentence will be passed. The range of sentences include: <ul style="list-style-type: none"> ○ Custodial ○ Community ○ Fines ○ Other <p>Credit any other relevant point(s)</p>		

Answer	Marks	Guidance
<p>2 Describe the roles of superior and inferior judges in civil cases.</p> <p>Answers may include the following:</p> <p>Role of Superior Judges Justices of the Supreme Court</p> <ul style="list-style-type: none"> • Hear appeals from the Court of Appeal Civil Division and the High Court • Hear appeals on points of law of general public and constitutional importance • They listen to legal arguments from both parties • Their decisions become precedents <p>Lord Justices of Appeal</p> <ul style="list-style-type: none"> • Hear appeals from the High Court, County Court and certain tribunals • They hear appeals against the finding of liability or about the remedy awarded <p>High Court Judges</p> <ul style="list-style-type: none"> • High Court hears cases of first instance and appeals • In first instance cases, the judges will hear evidence from witnesses, decide what the law is and make a decision as to liability • High Court judges heard case stated appeal from the Magistrates Court <p>Role of inferior Judges Circuit Judges, District Judges and Recorders</p> <ul style="list-style-type: none"> • Hear cases of first instance and decide the law and facts • Allocate cases to correct track • Hear some track appeals • Make the decision and state the remedy • Case manage cases and set strict time limits 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent knowledge and understanding of the English Legal System, rules and principles. The response is accurate, fully developed and detailed.</p> <p>Level 3 (6-8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places.</p> <p>Level 2 (3-5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	<ul style="list-style-type: none">• Ensure the hearing is carried out fairly and preside over the court <p>Credit any other relevant point(s)</p>		
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Answer	Marks	Guidance
<p>3 Describe how a jury is selected for a criminal trial.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Selection is random and undertaken by the Jury Central Summoning Bureau from the electoral registers for a court area • Summons are sent out electronically and the person has 7 days to respond • Juries Act 1974 (as amended) states those eligible to serve on a jury must be: <ul style="list-style-type: none"> ○ Aged between 18-75 ○ Registered on parliamentary or local government electoral role ○ Resident of the UK, Channel Islands or Isle of Man for at least five consecutive years • Some people might be selected but will be ineligible to serve, for example: <ul style="list-style-type: none"> ○ disqualified - on bail ○ ineligible – mentally disordered or lack of capacity ○ excused – Armed Forces ○ discretionary – exam, pregnancy • A court official will select fifteen people at random from the jury pool to go into the courtroom. A larger number will be selected at this point if the trial is expected to last longer than two weeks as some may not be able to take an extended period from work • Of those fifteen, twelve will be randomly chosen to hear the case • The remaining three stay at the court as reserves in long or important trials • Two types of vetting may be undertaken during selection: <ul style="list-style-type: none"> ○ Routine criminal record check ○ In cases of national security, a wider background check may be undertaken subject to AG’s guidelines • Three types of challenges may take place during the selection period: 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent knowledge and understanding of the English Legal System, rules and principles. The response is accurate, fully developed and detailed.</p> <p>Level 3 (6-8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places.</p> <p>Level 2 (3-5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed.</p> <p>Level 1 (1-2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	<ul style="list-style-type: none">○ For cause – individual challenged available to both the prosecution and the defence○ To the array – whole jury challenged available to both the prosecution and the defence○ Prosecution right to stand by an individual juror <p>Credit any other relevant point(s)</p>		
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Answer	Marks	Guidance
<p data-bbox="114 209 965 240">4 Discuss the advantages of using a jury in criminal cases.</p> <p data-bbox="226 272 685 304">Answers may include the following:</p> <p data-bbox="226 344 495 376">Advantages include:</p> <ul data-bbox="226 384 1122 1270" style="list-style-type: none"> <li data-bbox="226 384 1077 480">• The public have confidence in the jury system – the right to be tried by one’s peers. The jury is regarded as one of the fundamental indicators of a democratic system <li data-bbox="226 488 1010 584">• The jury is selected at random from the electoral role. A representative sample of local area will be selected. This promotes diversity amongst the jury <li data-bbox="226 592 1111 719">• An advantage of using a jury is that the selection process gives the ordinary person the opportunity to take part in the administration of justice and as such provides an open system of justice. Justice is seen to be done <li data-bbox="226 727 1111 823">• Jury equity is a major advantage of using juries. They are not bound by precedents or Acts of Parliament and can instead base their decisions on their own idea of fairness <li data-bbox="226 831 1122 927">• As 12 random people with no connection to the case are selected to sit they are likely to be impartial as they are not connected with anyone involved in the case <li data-bbox="226 935 1122 1094">• Most members of the jury will have no legal qualifications. This means that legal personnel are required to explain matters simply and clearly for the jury. This also means that the defendant is better able to follow the proceedings and they become more accessible to the public <li data-bbox="226 1102 1122 1270">• When jurors retire to discuss the case and reach a verdict they do so in secret. This means that jurors are protected from outside pressures. They are free to bring verdicts that may be unpopular with the public and which they may not be so willing to reach if deliberations were in open court <p data-bbox="226 1310 651 1342">Credit any other relevant point(s)</p>	<p data-bbox="1158 209 1189 240">10</p> <p data-bbox="1158 248 1223 280">AO3</p> <p data-bbox="1158 288 1189 320">1b</p>	<p data-bbox="1279 209 1727 240">Use Levels of Response criteria</p> <p data-bbox="1279 280 1559 312">Level 4 (9-10 marks)</p> <p data-bbox="1279 312 2029 440">Excellent analysis and evaluation of a wide range of legal concepts. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p data-bbox="1279 480 1547 512">Level 3 (6-8 marks)</p> <p data-bbox="1279 512 2110 608">Good analysis and evaluation of a range of legal concepts. The response has a mainly consistent focus on the question. Most of the key points are discussed and well developed.</p> <p data-bbox="1279 647 1547 679">Level 2 (3-5 marks)</p> <p data-bbox="1279 679 2110 775">Basic analysis and evaluation of legal concepts. The response is partially focused on the question. Some of the key points are discussed and partially developed.</p> <p data-bbox="1279 815 1547 847">Level 1 (1-2 marks)</p> <p data-bbox="1279 847 2096 919">Limited analysis of legal concepts. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p data-bbox="1279 959 1514 991">Level 0 (0 marks)</p> <p data-bbox="1279 991 1861 1023">No response or no response worthy of credit.</p>

Section B

	Answer	Marks	Guidance
5	<p>Explain what is meant by the requirement of the <i>coincidence of actus reus and mens rea</i> in criminal law.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Definition of coincidence – principle that the <i>actus reus</i> and <i>mens rea</i> elements of an offence must occur at the same time (contemporaneity rule) • Courts have created two exceptions to this principle and held that the coincidence can be at <i>some</i> point in time. • The two main exceptions to this principle are the continuing act and ‘transaction’ theory. • Continuing act theory is established by superimposing the <i>mens rea</i> upon an existing <i>actus reus</i>; it is not necessary that the <i>mens rea</i> existed at the inception of the <i>actus reus</i>, e.g. <i>Miller</i> (1982), <i>Fagan v. Metropolitan Police Commissioner</i>. • ‘Transaction’ theory is established where the <i>actus reus</i> is part of some larger sequence of events where the <i>mens rea</i> is formed at some point during that sequence, e.g. <i>Thabo Meli</i>, <i>Church</i>, <i>Le Brun</i> (series of acts) <p>Credit any other relevant point(s).</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law.</p> <p>Level 3 (6–8 marks) Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law.</p> <p>Level 2 (3–5 marks) Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to statutes and case law.</p> <p>Level 1 (1–2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
6	<p>Advise how the law relating to non-fatal offences against the person will apply to Mia.</p> <p>Answers may include the following:</p> <p>In the case of Mia shouting at Deborah</p> <ul style="list-style-type: none"> • Identify assault under s39 CJA88 - define <i>actus reus</i> and <i>mens rea</i> • Shouting could put Deborah in fear of immediate and unlawful personal violence/harm. • Mia appears to have intention or at least subjective recklessness. <p>In the case of Mia dropping the weight on Deborah's foot</p> <ul style="list-style-type: none"> • The dropping of the weight on Deborah's foot would amount to a battery • Consider the severity of injury and level of liability • Identify s18 or s.20 OAPA 1861 – define <i>actus reus</i> and <i>mens rea</i> • Broken bones usually constitute GBH making a charge of s18 or s20 likely • Mia acts maliciously and intentionally as she drops the weight on Deborah (this is going to hurt) so s18 applies • Credit also application of s20 with reasons <p>Credit any other relevant point(s).</p>	<p>10 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.</p> <p>Level 3 (6-8 marks) Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.</p> <p>Level 2 (3-5 marks) Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.</p> <p>Level 1 (1-2 marks) Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimum legal terminology is used.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
7	<p>Advise how the law relating to non-fatal offences against the person will apply to Stephanie.</p> <p>Answers may include the following:</p> <p>In the case of Stephanie punching Mia in the mouth</p> <ul style="list-style-type: none"> • Identify that this is a battery • Identify that it is more likely to be s47 OAPA – define <i>actus reus</i> and <i>mens rea</i> • Mia’s broken tooth would be seen as an injury that clearly interferes with her health and comfort. • There is clear evidence that Stephanie acted intentionally as she went to punch Mia in the face and is therefore liable <p>In the case of Stephanie repeatedly asking Ehsan to go for a meal</p> <ul style="list-style-type: none"> • Consider the severity of injury and level of liability • Identify psychological GBH under s20 OAPA1861 – define <i>actus reus</i> and <i>mens rea</i> • Level of harm could satisfy psychological GBH as the severe depression is serious harm • The severe depression was not intentional, but her persistent asking could be seen as reckless • However, as greater offences include the lesser, s47 OAPA1861 will be accepted if reasoned appropriately <p>Credit any other relevant point(s).</p>	<p>10 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.</p> <p>Level 3 (6-8 marks) Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.</p> <p>Level 2 (3-5 marks) Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.</p> <p>Level 1 (1-2 marks) Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimum legal terminology is used.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
8*	<p>Discuss the problems with the offence of battery and the extent to which reform of the law would make it more morally acceptable.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Battery is charged, but not defined, under s39 Criminal Justice Act 1988. • Battery is a rare common law offence, and as such, is defined by the courts and not Parliament - as the intentional or reckless application of unlawful force to another person. • The word <i>force</i> is deceptive, since the amount of force does not need be very high - the simplest touching of another can constitute a battery. • Bizarrely, touching the victim's clothes, could constitute a battery. • There is conflict between the criminal law and civil law as to whether there needs to be any element of hostility in a battery. • Battery is given a very wide definition by the inclusion of the offence in the <i>continuing act</i> theory. • A battery can be inflicted directly or indirectly which provides for a very wide definition. • A battery can be caused by an omission which seems to strain the definition of the 'application' of force. • The maximum sentence of 6 months seems excessive, in simply, for example, pushing, slapping or poking someone. • Battery is a summary offence, dealt with in the magistrates' courts - which have been historically criticised for the geographical variation of sentences for battery for the same injury. 	<p>10 AO3 1a</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9-10 marks) Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well-sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information is presented is relevant and substantiated.</i></p> <p>Level 3 (6-8 marks) Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information is presented is in the most part relevant and supported by some evidence.</i></p> <p>Level 2 (3-5 marks) Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p> <p>Level 1 (1-2 marks) Limited analysis of legal rules and/or principles. The response has limited focus on the question. Discussion of any key points is minimal. <i>The information is limited and communicated in an unstructured way. The information is supported by limited</i></p>

<ul style="list-style-type: none">• Plans to codify and update the law have not been implemented but redrawing the definitions and sentences would make the law more morally acceptable in the 21st century.• Better defined and understandable offences and sentencing would give the criminal justice system greater credibility as it would have a clearer moral basis. <p>Credit any other relevant point(s).</p>		<p><i>evidence and the relationship to the evidence may not be clear.</i></p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>
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