



GCE

Law

H415/01: The legal system and criminal law

Advanced 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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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

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.

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A****Questions 1-2**

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
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Question 3-4

Assessment Objective:	AO3 1b: Analyse and evaluate legal issues. 15 marks
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Section B**Question 5,6,8 and 9**

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
	AO2 1a/1b Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks

Questions 7* and 10*

Assessment Objective:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks
	AO3 1a: Analyse and evaluate legal rules and principles. 15 marks

Questions that have an asterisk (*) assess the quality of a candidate's extended response. Level descriptors are identified in the AO3 column in italics.

Answer	Marks	Guidance
<p>1 <i>Explain the five main aims of sentencing.</i></p> <p>Answers may include the following:</p> <p>S142 Criminal Justice Act 2003 - Purposes of sentencing. Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing-</p> <ul style="list-style-type: none"> • Punishment. Retribution is based on the idea of punishment. The offender deserves to be punished for their wrongdoing. This is society's revenge for the offence and is based on proportionality eg eye for an eye. The judge will pass a sentence that is in proportion to the offence. The punishment should fit the crime. The Tariff sentence are based on the idea of proportionality. • The reduction of crime (including its reduction by deterrence). The aim is to reduce crime by deterring individual offenders from committing the same offence again or similar crimes. This is done by giving an offender a severe penalty. By doing this the individual will think twice about reoffending because of fear of the punishment. The aim is also used to deter society from committing offences. If society sees an offender being given a harsh sentence it is hoped that this will deter others from committing the same offence. • The reform and rehabilitation of offenders. This aim looks to help reform the offender to stop them re-offending. It is an aim that looks at the potential of the offender to reform – it is a forward-looking aim. It aims to rehabilitate offenders by altering their behaviour so that they do not commit crimes in the future. • The protection of the public. The public should be protected from dangerous offenders. There are various ways of protecting the public. A dangerous driver can be given a driving ban. This protect both road users and pedestrians. If the offender presents a significant risk to members of society 	<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> <p>Candidates can be placed in the levels of response in different ways. This may be by covering a range of relevant material or by focusing on a smaller amount of relevant material but dealing with it in greater detail. E.g. must use the proper sentence aim name for full credit.</p>

Answer	Marks	Guidance
<p>then they must be sent to prison to protect the public. This prevents them committing further offences.</p> <ul style="list-style-type: none">• Reparation. The making of reparation by offenders to persons affected by their offences. This aim looks to give something back to the victim. The offender might be ordered to pay compensation to the victim or make restitution. This aim also looks to include making reparation to society. <p>Credit any other relevant point(s)</p>		

Answer	Marks	Guidance
<p>2 <i>Describe the jurisdiction of the three divisions of the High Court.</i></p> <p>Answers may include the following:</p> <p>Queen's Bench Division. This is the largest of the three divisions and has the jurisdiction to hear:</p> <ul style="list-style-type: none"> • contract and tort matters over £100,000 • complex multi-track cases transferred from the County Court <p>Courts of the Queen's Bench Division includes:</p> <ul style="list-style-type: none"> • Administrative court – hears applications for Judicial Review, applications for Habeas Corpus, matter relating to the Planning Court, appeals by way of case stated from criminal cases decided at the Magistrates' Court or Crown Court • Admiralty Court – deals with shipping and maritime disputes • Commercial Court - deals with claims relating to the transactions of trade and commerce for example, insurance, banking and financial matters. • Circuit Commercial Courts (formerly the Mercantile Court) – deals with all types of business disputes which fall outside the remit of the Commercial Court or the Chancery Division • Technology and Construction Court. This is a specialist court dealing with domestic and international disputes in the field of technology, engineering and construction <p>Chancery Division – jurisdiction to deal with the following:</p> <ul style="list-style-type: none"> • Disputes relating to business, property or land • Intellectual property matters • Competition claims under both EU and UK competition law • Disputes over trusts • Contentious probate • Claims relating to partnerships • Professional negligence 	10 AO1	<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> <p>Candidates can be placed in the levels of response in different ways. This may be by covering a range of relevant material or by focusing on a smaller amount of relevant material but dealing with it in greater detail. E.g. all three divisions must be approached for Level 4.</p>

Answer	Marks	Guidance
<p>Courts of the Chancery Division include:</p> <ul style="list-style-type: none">• The Intellectual Property Enterprise Court• The Patents Court• The Insolvency and Companies List <p>Family Division – jurisdiction to hear:</p> <ul style="list-style-type: none">• Cases where a child is made a ward of the court• Cases relating to children under the Children Act 1989• Appeals from family proceedings courts and cases transferred from the county court• Cases of international child abduction under The Hague Convention• Cases about forced marriage, female genital mutilation• Applications for financial relief where a divorce has taken place outside England <p>Credit any other relevant point(s)</p>		

Answer	Marks	Guidance
3	Discuss which sentences achieve the aim of protecting the public.	<p>Answers may include the following:</p> <ul style="list-style-type: none"> The Criminal Justice Act 2003 contains the aims of sentencing and a range of sentences which aim to protect the public. The Legal Aid Sentencing and Punishment of Offenders Act 2012 has brought in new sentences where the main aim is to protect the public. Custodial sentences are reasonably effective at protecting the public whilst the offender is in prison. Whilst they are given as a last resort they protect the public by preventing the offender from re-offending and committing further crimes. Long term custodial sentences appear to be more effective at preventing reoffending than short term custodial sentences. In 2017 approximately 44% of adults who served over 12 months imprisonment reoffended within one year of release. This figure increased to approximately 60% of those serving less than 12 months imprisonment. The Extended Determinate Sentence, introduced by the LASPO (Legal Aid Sentencing and Punishment of Offenders Act) protect the public from offenders who have committed serious sexual or violent offences. The offender will be required to serve a custodial sentence and an extended period on licence. The minimum custodial period is 12 months. Throughout the sentence the offender is being monitored. LASPO introduced a new mandatory life sentence for people convicted of a second very serious sexual or violent crime. This protects the public from offenders who reoffend. They will be removed from society to protect society Community sentences protect the public. A curfew requirement is effective in protecting the public as it removes the offender from the certain areas/places at certain times of the day. This makes certain places/areas safer for the public.

Answer	Marks	Guidance
<p>Further protection is afforded using electronic tags. This allows probation and the police to monitor offenders' location and complain with their curfews. LASPO increased the curfew requirement from 6 to 12 months and increasing the maximum period the offender could be subject to a curfew from 12 to 16 hours per day increasing public protection</p> <ul style="list-style-type: none"> • Community Orders dealing with intoxicating substances (for example, drugs and alcohol) protect the public. This is achieved by helping the offender by offering treatment and education to stop the dependency on or misuse of intoxicating substances. In the long term and if successful, the offender is less likely to offend in the future and as a result the public is protected. • LASPO introduced a maximum of five years custodial sentence for causing serious injury by dangerous driving. This protects the public from those who have caused injury due to dangerous driving. Being in prison prevents them from driving and endangering others. Driving bans also protect the public from careless and dangerous drivers. Banning a person from driving removes them from the road and limits the dangers to the public. • S142 LASPO introduced offences of threatening with article with blade or point or offensive weapon in public or on school premises. These protect the public by targeting those use a bladed or pointed article or offensive weapon in a public place or school to threaten and cause immediate risk of serious physical harm to another. <p>Credit any other relevant point(s)</p>		

Answer	Marks	Guidance
<p>4 <i>Discuss the benefits of using the civil courts to solve a dispute.</i></p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> One of the benefits of using the civil courts is that the matter will be presided over by a qualified judge. Judges are experienced, qualified lawyers who can deal with complex legal matters A benefit of using the civil courts is that a legally binding, enforceable decision will be made. Both parties are guaranteed a resolution at the end of the hearing and a remedy is guaranteed. A benefit of using the civil courts to wider society is that it provides an open system of justice which can stop businesses hiding disputes by using ADR, disputes that the public should be aware of By using the civil courts to solve a dispute the District Judge in the County Court will allocate the matter to the most suitable track/court. The matter will be case managed to minimise delays. Both parties will know, in advance, the number of witnesses required and how long the trial will last A benefit of using the civil courts is the use of precedent. Lawyers can give informed advice to their clients, in advance, as to likely outcomes. A reasoned decision is given. Another benefit of using the civil courts is that, unlike some types of ADR, civil courts have a clear, structured appeal route. Appeals are not limited to just points of law. A benefit of using the civil courts is that for some matters, there is still legal funding available. When using ADR there is no legal funding available. <p>Credit any other relevant point(s)</p>	<p>15 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (12-15 marks) Excellent analysis and evaluation of a wide range of legal concepts and issues. 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>Level 3 (8-11 marks) Good analysis and evaluation of a range of legal concepts and issues. The response has mainly consistent focus on the question. Most of the key points are well discussed and well developed.</p> <p>Level 2 (4-7 marks) Basic analysis and evaluation of legal concepts and issues. The response partially focused on the question. Some of the key points are discussed and partially developed.</p> <p>Level 1 (1-3 marks) Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal. At least one point needs further development</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p> <p>At least one fully developed point for Level 4. At least one developed for Level 3. A list of points will achieve no more than Level 2.</p>

5. Advise whether Hamza is criminally liable for theft.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content. For AO1, candidates can be placed in the levels of response in different ways. This may be by covering a range of relevant material or by focusing on a smaller amount of relevant material but dealing with it in greater detail. For AO1 relevant case law or statute.

AO1 Indicative content

Answers may:

Define and explain theft – charged under Theft Act 1968:

- Section 1 – dishonest appropriation of property belonging to another with intention to deprive other of it
- Section 3 – appropriation – any assumption of any of rights of owner with or without consent – *Gomez, Pitham v Hehl* no need to physically remove the item, only to treat it as his own.
- Section 4 – property – can be tangible or intangible, with examples of what is not property – s4(3)
- Section 5 – belonging to another – ownership, possession or control, obligation under s5(3) *Davidge v Bennett*
- Section 2 – dishonesty
 - 2(1)(a) – defendant not dishonest if honestly believe they have legal right to property – *Turner (No.2)*,
 - 2(1)(b) – defendant not dishonest if honestly believe owner would consent – *Holden*
 - 2(1)(c) – defendant not dishonest if honestly believe owner cannot be found having taken reasonable steps – *Small*
- If none of above apply the jury apply the test of current standards of ordinary, decent people – *Ghosh* and/or *Ivey*
- Section 6 – intention to permanently deprive – to take forever or for period equivalent to outright taking

Credit any other relevant point(s)

AO2 Indicative content

Answers may include:

In the case of Hamza ‘selling’ Sylvia’s laptop computer to Muhammed:

- *Actus reus* exists as Hamza appropriates the laptop by treating it as his own when he sells to his brother. There is no need for him personally to touch the property
- *Mens rea* exists as Hamza is clearly dishonest when he sells the laptop computer to Muhammed when Sylvia is not there.
- He intends permanent deprivation of the laptop

In the case of Hamza removing the plants from the garden and giving them to Mabel:

- *Actus reus* exists as he digs up Freddie’s plants. They can be seen as property under s4(3) as they are not growing ‘wild’ and can be stolen when they are severed from the land. They clearly belong to Freddie.
- *Mens rea* exists as Hamza will be seen to be acting dishonestly when he digs them up. He intends to permanently deprive Freddie of them.

In the case of Hamza taking Taylor’s money for rent instead of paying her gas bill:

- *Actus reus* exists as Hamza has received property under an obligation – s5(3)
- *Mens rea* exists as Hamza is given the money to pay the gas bill and not keep it for rent; could argue s2(1)(a)
- Ordinary decent people would be likely to regard Hamza as dishonest.

Address Hamza’s liability.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	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 case law.	9–10	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.	12–15
Level 3	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 case law.	6–8	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.	8–11
Level 2	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 case law.	3–5	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.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	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. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

6. Advise whether Dean is liable for robbery **and** whether Garry is liable for burglary, including any defences they may raise.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content. For AO1, candidates can be placed in the levels of response in different ways. This may be by covering a range of relevant material or by focusing on a smaller amount of relevant material but dealing with it in greater detail. For AO1 relevant case law or statute.

AO1 Indicative content

Answers may:

Define and explain robbery – section 8 Theft Act 1968:

- *Actus reus* – theft accompanied by use or threat of force immediately before or at time of stealing and in order to steal.
- Level of force need not be substantial *Dawson and James*, but must be more than minimal or trivial - *R v Cludon, DPP v RP* (2012)
- Appropriation may be seen by a jury as a continuing act - *Hale, Lockley*
- *Mens rea* – intention to steal and intention or recklessness as to force.
- Honest belief in a legal right may provide a defence to the theft – *Robinson*
- Offence committed at the time the theft is complete – *Corcoran and Anderton*. Even where the item is not taken away.

Define and explain burglary – section 9 Theft Act 1968:

- Section 9(1)(a) – entry of a building or part of a building as a trespasser with the intention to steal, inflict GBH or cause unlawful damage
- Section 9(1)(b) – having entered as a trespasser the defendant commits or attempts to commit theft or GBH
- Entry – *Ryan* – a matter for the jury
- Building or part of a building – *Walkington*
- Trespasser – *Jones and Smith*
- *Mens rea* needed for trespass and ulterior offence

Address Dean and Garry's liability

Credit any other relevant point(s).

AO2 Indicative content

Answers may include:

In the case of Dean snatching the £5 note from Sophie:

- Theft is complete, although he could argue a belief in a legal right if Sophie owes him the money under s2(1)(a) despite Sophie's protesting
- Force is used in order to steal when he 'grabs' Sophie and 'snatches' the £5 note from Sophie's hand taken together this is likely to be enough for robbery.
- Force is used at the time of the 'theft' and in order to relieve Sophie of the £5 note
- Force used is against Sophie
- Conclude that robbery is/is not likely in the circumstances with the correct justification.

In the case of Garry taking the mobile 'phone:

- Garry must enter a building or part of a building as a trespasser. Garry is not trespassing when he enters the youth club as he has permission to be there
- He does trespass into part of the building when he goes behind the table as he is has no permission to be behind the table
- He would realise that he should not be behind the DJs table so he is either intentional or subjectively reckless as to being a trespasser.
- Garry does not intend to steal when he goes into this area but does commit theft after entry. This would satisfy s9(1)(b), not s9(1)(a)

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	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 case law.	9–10	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.	12–15
Level 3	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 case law.	6–8	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.	8–11
Level 2	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 case law.	3–5	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.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	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. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

7* 'The defence of consent is not fit for purpose in modern times and needs to be reformed urgently.' Discuss the extent to which this statement is accurate.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO3 1a: Analyse and evaluate legal rules and principles. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content. For AO1, candidates can be placed in the levels of response in different ways. This may be by covering a range of relevant material or by focusing on a smaller amount of relevant material but dealing with it in greater detail.

AO1 Indicative content

Discuss the extent to which this statement is accurate.

Answers may:

Define the common law defence – implied agreement to all batteries; for injuries above battery – must be 'a good reason'
Explain that everyday life presupposes some limiting of the defence *Collins v Wilcock*.

Explain the elements of consent:

- Must be real – *Tabassum, Olugboja, Richardson*.
- Must be Informed – *Dica*
- Can be implied – *Wilson v Pringle*
- An adult must have the capacity to consent - *Burrell v Harmer*

Explain offence unless one of certain exceptions or 'good reasons' – surgery, tattooing/piercing, sports, male circumcision - *AG Ref (No 6 of 1980), Brown*

- Can be defence in physical contact sports if within the rules of the game – *Billingshurst, Barnes*
- Influenced by public interest especially sexual activity – *Brown, Wilson, Emmett*
- Horseplay can give rise to defence – *Jones, Aitken*
- No defence in relation to murder/euthanasia – *Pretty, Nicklinson*

Credit any other relevant point(s)

AO3 Indicative content

Answers may:

Discuss any or all of the following areas in the context of suitability in a modern society:

- Difficulties in striking a balance between individual freedom and social paternalism in a changing modern European society
- Does social paternalism go too far and is there a conflict with the Human Rights Act 1998 and the provisions of the ECHR 1950?
- Sport – problems delineating inside and outside the rules of the game and inconsistency in that some sports involve deliberate harm which is allowed and yet in others less than deliberate harm constitutes an offence – compare football with boxing/martial arts
- Social utility issues in surgical operations – what can be consented to? What should be consented to?
- Policy issues involving and changing attitudes towards sexual activity/offences and horseplay – sadomasochism, ‘prank’ TV shows
- Consider and comment upon any law reform proposals and whether Parliament should legislate and, if so, in what form?
- Difficulties surrounding euthanasia

Reach any sensible conclusion

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	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 case law.	9–10	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 presented is relevant and substantiated.</i>	12–15
Level 3	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 case law.	6–8	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 presented is in the most-part relevant and supported by some evidence.</i>	8–11
Level 2	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 case law.	3–5	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>	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	Limited analysis of legal rules and 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 evidence and the relationship to the evidence may not be clear.</i>	1–3
Level 0	No response or no response worthy of credit	0	No response or no response worthy of credit.	0

8. Advise whether Jane is criminally liable for the murder of Susan and the murder of Susan's unborn child.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content. For AO1, candidates can be placed in the levels of response in different ways. This may be by covering a range of relevant material or by focusing on a smaller amount of relevant material but dealing with it in greater detail. For AO1 relevant case law or statute.

AO1 Indicative content

Answers may:

Define and explain the common law offence of murder:

Define the *actus reus* of murder:

- Causing death of a human being
- Under the King or Queen's Peace
- Within any country of the realm
- Causing death in fact and law of a human being

Define the *mens rea* of murder:

- 'Malice aforethought' – either an intent to kill (express malice aforethought); or, an intent to cause grievous bodily harm (implied malice aforethought) - *Moloney*
- Intent - either direct intent – *Mohan*, or, indirect/oblique intent – *Nedrick, Woollin, Matthews and Alleyne*

Define the principle of transferred malice:

- Principle allowing the *mens rea* for an offence to be transferred from one victim to another – *Latimer, Mitchell*
- If the defendant, with the *mens rea* of a specific crime causes the *actus reus* of another crime, the *mens rea* is generally not transferred – *Pemberton, Grant*
- Malice could not be transferred to the foetus *AG Ref (No3 of 1994)[1998] Lord Mustill*.

Credit any other relevant point(s)

AO2 Indicative content

Answers may include:

In the case of Susan's unborn child – ***actus reus***:

The *actus reus* appears unlikely to be proven

- Jane's kick to Susan's stomach is the cause of her unborn child's death both factually and legally
- A foetus that is killed in the womb is not a human being and cannot be a victim of the specific offence of murder; only if it is expelled from the womb and has a separate existence would Susan's child become a 'human being'
- As a musician, Jane is not acting in a military capacity and is therefore under the Queen's Peace
- Jane is 'on tour around the country' so this is clearly within the United Kingdom (UK).

In the case of Susan's unborn child – ***mens rea***:

- It is not possible to have a legal intent to kill or seriously injure a foetus as the foetus has no legal standing.

In the case of transferred malice:

- Jane intended to cause grievous bodily harm by kicking Susan in the stomach, but instead caused the death of her unborn child
- Lord Mustill refused to use transferred malice in *AG Ref (No 3 of 1994)[1998]* to reach a murder verdict in a similar case
- Transferred malice cannot be used in such cases.

In the case of Susan's death – ***actus reus***:

The *actus reus* appears likely to be proven

- Jane hits Susan over the head with the chair which is the cause of Susan's death both factually and legally
- Susan is a human being and 'dies immediately' which clearly means brain death
- As a musician, Jane is not acting in a military capacity and is therefore under the Queen's Peace
- Jane is 'on tour around the country' so this is clearly within the United Kingdom (UK).

In the case of Susan's death – ***mens rea***:

The *mens rea* appears likely to be proven

- While there may not have been an intent to kill Susan, as it may not have been Jane's aim, purpose or desire to kill, or her true desire to bring about the consequences of Susan's death, arguably hitting Susan over the head with a chair is an intent to cause grievous bodily harm (an intent to cause serious harm) and satisfies implied malice aforethought
- In the absence of direct intent, it may be possible to prove indirect/oblique intent – the jury would be entitled to find Jane's intent if death or serious bodily harm had been a virtual certainty and that Jane appreciated that such was the case, based on all the evidence.

Address Jane's liability

Credit any other relevant point(s)

	AO1	Mark	AO2 1a/1b	Mark
Level 4	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 case law.	9–10	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.	12–15
Level 3	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 case law.	6–8	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.	8–11
Level 2	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 case law.	3–5	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.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	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. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

9. Advise whether Kelvin can avoid liability for murder by using the defence of diminished responsibility.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 15 marks.
Additional Guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content. For AO1, candidates can be placed in the levels of response in different ways. This may be by covering a range of relevant material or by focusing on a smaller amount of relevant material but dealing with it in greater detail. For AO1 relevant case law or statute.

AO1 Indicative content

Answers may:

Define and explain voluntary manslaughter – Coroners and Justice Act 2009.

Define and explain defence of diminished responsibility s2 Homicide Act 1957, as amended by s52 Coroners and Justice Act 2009:

- Must be an abnormality of mental functioning – *Byrne*
- Abnormality must arise from defendant's recognised medical condition –
- Recognised conditions have included: depression *Gittens, Dietschmann, Battered Spouses' Syndrome Ahluwalia*,
- Excluded conditions include: acute voluntary intoxication – *Dowds, Developmental Immaturity*.
- Medical evidence will be decisive in determining whether this is the case – *Brennan*
- Defendant to be substantially impaired and unable to: understand the nature of their act, or form a rational judgment or exercise self-control
- Abnormality to provide explanation for defendant's acts and omissions – must be causal link but need not be the only one

Define and explain the relationship between intoxication and diminished responsibility:

- Generally, intoxication cannot support a defence of diminished responsibility *Di Duca*
- CJA09 requires 'an abnormality of mental functioning' to be a 'recognised medical condition' thus limiting jury discretion
- Situation is compounded where D suffers from a 'recognised medical condition' and is intoxicated at the same time – *Dietschmann, Gittens, Robson*
- Test in such a case - despite the drink, would the abnormality still have substantially impaired his mental responsibility?
- Courts take into consideration alcohol dependence syndrome (ADS) as a 'recognised medical condition', whether D could have controlled their actions or whether the ADS 'substantially impaired' D's actions in killing the V – *Tandy, Wood, Stewart*

Credit any other relevant point(s).

AO2 Indicative content

Answers may include:

In the case of defence of diminished responsibility:

- Kalvin being diagnosed with 'mental health conditions brought on by Adriana's behaviour' would suggest battered spouses' syndrome/depression and suggests abnormality of mental function
- Battered spouses' syndrome and depression are both recognised medical conditions
- Having had years of abuse, hearing Adriana's criticism of the breakfast and being slapped in the face may substantially impair Kalvin's ability to understand the nature of conduct, or form a rational judgment, or exercise self-control
- Kalvin's mental state and Adriana's actions provide an explanation for his act.

In the case of Kalvin being intoxicated during the killing:

- If Kalvin is simply intoxicated, then this cannot support a defence of diminished responsibility
- Kalvin is diagnosed as suffering from depression – a recognised 'abnormality of mental functioning' and a 'recognised medical condition'
- Did Kalvin's depression substantially impair his mental responsibility for his acts in carry out the killing
- The courts will take into consideration Kalvin's potential alcohol dependence syndrome (ADS) as a 'recognised medical condition – could he have controlled his act in killing Adriana or whether the ADS 'substantially impaired' his actions in killing her

Address Kalvin's liability

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	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 case law.	9–10	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.	12–15
Level 3	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 case law.	6–8	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.	8–11
Level 2	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 case law.	3–5	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.	4–7
Level 1	Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	1–2	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. Minimal legal terminology is used.	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

10.* 'The defence of consent is not fit for purpose in modern times and needs to be reformed urgently.' Discuss the extent to which this statement is accurate.

See Question 7 on page 21.

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1-2	10	0	0	0	10
3-4	0	0	0	15	15
5 or 8	10	15	0	0	25
6 or 9	10	15	0	0	25
7* or 10*	10	0	15	0	25
Total	40	30	15	15	100

**AO2 elements 1a and 1b will be awarded jointly

OCR (Oxford Cambridge and RSA Examinations)
The Triangle Building
Shaftesbury Road
Cambridge
CB2 8EA

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