

GCE

Law

H415/01: The legal system and criminal law

Advanced GCE

Mark Scheme for November 2020

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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.

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 **1-2**

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 BQuestion **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.

1. Explain the role of judges sitting in the superior courts.

Answer	Marks	Guidance
<p>1 Answers may include the following:</p> <p><u>High Court Judges:</u></p> <ul style="list-style-type: none"> • hear first instances civil cases in one of the three divisions of the High Court • listen to the facts of cases and decide liability • hear appeals including appeals from civil cases tried in the County Court, case state appeals from the Magistrates' and Crown Courts • sit in the Crown Court to hear criminal trials - they decide verdict and sentence <p><u>Lord Justices of Appeal:</u></p> <ul style="list-style-type: none"> • sit in both the Civil Court of Appeal and Criminal Court of Appeal • sit in panels of three or five • hear over 7,000 cases per year • hear cases from the High Court and Crown Court • hear second or further appeals from County Court cases • decisions from the Court of Appeal on points of law bind the lower courts <p><u>Justices of the Supreme Court:</u></p> <ul style="list-style-type: none"> • sit in the Supreme Court • hear appeals from all United Kingdom courts from England, Wales and Northern Ireland • hear approximately 100 cases per year • can hear both criminal and civil appeals on complex or arguable points of law of constitutional or public importance 	<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)</p>

Answer	Marks	Guidance
<ul style="list-style-type: none">• they sit in an uneven number and the minimum sitting must be three• listen to the case then retire, often for several months to consider the case and to write their judgment• their decisions on a point of law become a precedent. <p>Credit any other relevant point(s)</p>		No response or no response worthy of credit.

2. Describe the different sources of civil legal advice.

Answer	Marks	Guidance
<p>2 Answers may include the following:</p> <ul style="list-style-type: none"> • Solicitors firms. High Street firms often offer free initial advice on a range of civil matters • Claims companies offering Conditional Fee agreements (sometimes known as 'no win no fee' deals) will offer certain advice if there is a high chance of the claim succeeding • Public Access allows a person to go directly to a barrister for advice but only if the matter is not publicly funded • Civil Legal Advice helpline offers free telephone advice on a range of civil matter including debt, housing, domestic abuse and family matters • Citizens Advice Bureaux (CAB) in most major towns and cities. Staff can give free legal advice on a variety of issues connected to social welfare problems and debt. Local solicitors and law students volunteer to give this advice. The CAB can also advise on local solicitors offering public funded advice • Law Centres and Local Advice Centres offer free advice and specialise in social welfare law. They tend to be in areas where there is a shortage of Legal practices • Free Representation Units are staffed by volunteer law students and newly qualified professionals under the supervision of case workers. The Units offer free legal advice to those who cannot afford to pay and are unable to obtain legal aid • Bar Pro Bono Unit - situated in London and offers free advice on most areas of law 	<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
<ul style="list-style-type: none">• Legal cover in insurance policies offer legal advice in some cases• There is a range of places to seek advice on the internet. Websites such as Which Magazine and Online Legal Advice provide advice on a range of legal matters• Membership of a Trade Unions allows members to obtain advice on, amongst other matters, employment issues <p>Credit any other relevant point(s)</p>		

3. Discuss whether judges are adequately trained for their role

Answer	Marks	Guidance
<p>3 Answers may include the following:</p> <p><u>Judges are adequately trained:</u></p> <ul style="list-style-type: none"> • The Judicial College established in 2011 is a national training institution offering continuing education, core programmes plus options and lectures ensuring judges are more than adequately training for their role and they are being kept judges up-to-date with changes in the law • Judges are trained in three main elements; knowledge of substantive law, evidence and procedure, the acquisition and improvement of judicial skills and the social context within which judging occurs ensuring judges are more than adequately trained for their role • All judges need to be experienced lawyers meaning that they have and understanding and insight into all the different aspects of the job meaning they are adequately training for their role. However, a lawyer can become a judge with very little court experience, a minimum of five years' experience is required which might not seem long enough • Judge are required to complete a residential induction course as part of their training. The course provides judges with the knowledge and skills they require to undertake their role. <p><u>Judges are not adequately trained:</u></p> <ul style="list-style-type: none"> • To save money many judicial training courses are carried out on-line rather than face-to-face not preparing judges fully for the role they need to undertake when the 	<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.</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 three to five-day induction course is far too short and as a result does not adequately train for the role.• Much of the training is aimed at inferior judges meaning that there is not high-quality training required of all levels of judges. Much of it is not compulsory.• Training does not prepare judges fully for the type of cases they will hear. It is very difficult when a lawyer with a civil law background first sits in a criminal case as a judge <p>Credit any other relevant point(s)</p>		

4. Discuss the problems with government funding of civil cases.

Answer	Marks	Guidance
<p>4 Answers may include the following:</p> <ul style="list-style-type: none"> • There is a set amount of government money given to civil legal aid each year. Austerity has resulted in the amount of money being reduced, substantially on a yearly basis but the number of cases needing legal aid increases. The Bar Council states that such cuts to legal aid represent “a huge threat to access to justice in our country’ • Legal Aid, Sentencing and Punishment of Offenders Act legislates in respect of legal aid. The Lord Chancellor sets the criteria and the criteria has been restricted on a yearly basis • The number of people eligible to access civil legal aid has fallen by approximately 82% since 2010. Family cases have been particularly disadvantaged by the cuts. Only those with very low income/capital are eligible for government funding • Damages for personal injury are excluded from the legal aid scheme regardless of the extent of damage. Victims are required to privately fund their case by using their own funding or a Conditional Fee Agreement, if available leading to ‘advice deserts’. • Different regions are allocated different sums of money and the cuts result in the poorest cities suffering unduly. This means some areas in the country are not being given access to justice • The number of providers of publicly funded services has declined over the year. Solicitors firms providing fixed- 	<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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<p>fee civil legal aid work has dropped from approximately 3,750 to 2,500 in a seven-year period denying many from access to justice. This results in a lack of providers in certain parts of the country leading to 'advice deserts'.</p> <ul style="list-style-type: none">• Means tested eligibility levels are so low that only those on very low levels of income will qualify resulting in only the poorest having access to justice• The only civil cases funded by legal aid will be those in a category recognised in the Act or other regulations. There are very few civil cases now qualifying for legal aid resulting in more and more people representing themselves. This has resulted in, for example, domestic violence victims being cross-questioned by their abuser, or parents giving up custody cases as they do not have the funds to fight the case. <p>Credit any other relevant point(s)</p>		

5. Advise whether Harry is liable for any non-fatal offences against the person against Sally.

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.

AO1 Indicative content

Answers **MAY**:

Define and explain common law assault and battery – charged under section 39 Criminal Justice Act 1988:

- Assault – making V apprehend immediate and unlawful personal force/violence accompanied by intention or subjective recklessness – *Stephens v Myers*, *Venna*, *Wilson*, *Ireland*, *Tuberville v Savage*, *Logden*, *Smith v Woking MPC*
- Battery – application of unlawful personal violence/force accompanied by intention or subjective recklessness – *Collins v Wilcock*, *Thomas*, *DPP v Smith*, *Fagan v MPC*, *Halstead*.

Define and explain assault occasioning actual bodily harm – section 47 Offences Against the Person Act 1861:

- *Actus reus* – common assault which occasions actual bodily harm
- 'Any hurt or injury calculated to interfere with the health or comfort of the victim' *Miller*, *Donovan*,
- Harm can be physical or psychological – *Chan Fook*, *Ireland*, *Burstow*
- Can be direct or indirect - *Martin*, *Halstead*.
- *Mens rea* – intention or subjective recklessness for the battery– D need not foresee the level of injury – *Savage*

Credit any other relevant point(s)

AO2 Indicative content

Answers **MAY**:

In the case of Harry bursting out of the box:

- The act of bursting out and shouting could make Sally apprehend immediate and unlawful personal violence by the use of words suggesting a charge of assault, she is “Shocked...frightened (and) begins to panic.”
- Harry's words may or may not be sufficient for an assault
- Harry is at least subjectively reckless

In the case of Harry pushing the custard pie in Sally's face:

- Pushing the pie in her face is sufficient for battery as an application of unlawful force
- His actions appear to be applying unlawful force intentionally

In the case of Sally being knocked unconscious

- Sally being knocked unconscious for a short period of time is sufficient for section 47 as the battery in pushing the custard pie in her face has occasioned actual bodily harm as this has caused her to trip and fall
- Harm caused by an indirect assault is still covered
- Harry's actions are at least subjectively reckless
- It is irrelevant whether Harry foresees any harm actually caused

Reach a reasoned conclusion in each instance.

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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	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 Mr Smith is liable for any attempted crimes.

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.

AO1 Indicative content

Answers **MAY**:

Define and explain attempted crimes under the Criminal Attempts Act 1981:

Explain *actus reus*:

- Section 1 (1) – doing an act which is more than merely preparatory – *Gullefer, Jones, Campbell, Geddes, Tosti*.
- Tests used in court to explain more than merely preparatory – ‘*in the executory phase*’ – *Geddes, embarking on the crime proper* – *Gullefer*.

Explain *mens rea*:

- Intention – *Widdowson, Whybrow, Mohan, Walker and Hayles*
- Recklessness in relation to consequences – *AG Ref. (No. 3 of 1992)(1994)* • *Conditional intent* – *Hussey, AG Ref. (No. 1 and 2 of 1979)(1979)*.

Explain impossibility:

- Section 1 (2) and section 1 (3) – *Anderton v Ryan, Shivpuri, Taaffe*,.

Credit any other relevant point(s)

AO2 Indicative content

Answers **MAY**:

In the case of the rope hooks:

- Mr Smith's act is one capable of being 'more than merely preparatory' under section 1(1) Criminal Attempts Act
- His act is 'more than merely preparatory' as he actually loosens the hooks
- It is unlikely that his act may be one of mere preparation as he has gone too far and 'crossed the Rubicon.'
- Mr Smith's intent was to commit the full offence – a proof of a decision to bring about the offence no matter whether the accused desired it or not – section 1(1) Criminal Attempts Act

In the case of the rope bridge:

- Mr Smith's act is one capable of being mere preparation and, if so, would not fall under section 1(1) Criminal Attempts Act as he has not 'embarked on the crime proper'
- His act is probably mere preparation as he walked away when he noticed the member of staff nearby
- His act may, although unlikely, be one which is 'more than merely preparatory' since he hadn't got close enough to put his plan into operation
- His intent was to commit the full offence – requiring proof of a decision to bring about the offence no matter whether the accused desired it or not

In the case of the zip wire:

- Mr Smith can still be liable even if the offence is one of attempting the impossible
- His act is one capable of being 'more than merely preparatory' under section 1(1) Criminal Attempts Act 1981 as he has actually cut the wire
- His act is unlikely to be one of 'mere preparation' as he has actually cut the wire
- His intent was to commit the full offence – a proof of a decision to bring about the offence no matter whether the accused desired it or not – *Mohan*

Reach a reasoned conclusion in each instance.

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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	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 *actus reus* of theft is clear and unambiguous'. 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.

AO1 Indicative content

Discuss the extent to which this statement is accurate.

Answers **MAY**:

Define the *actus reus* of theft as stated in section 1 Theft Act 1968

Explain **Appropriation** under section 3:

- Explain appropriation and the rights of an owner – *Pitham, McPherson, Morris, Gomez*
- Can be of any or all of the rights of the owner - *Morris*
- Relevance of consent in appropriation – *Lawrence, Morris, Gomez, Hinks*
- A gift can constitute appropriation – *Hopkins and Kendrick, Hinks*
- Does appropriation takes place at one point in time - *Atakpu* or is it continuing – *Hale*

Explain **Property** under section 4(1):

- Describe what constitutes property – *Kelly, Oxford v Moss*
- Describe exceptions found in sections 4(2), 4(3) and 4(4)

Explain **Belonging** to another under section 5:

- Describe what is meant by basic definition – ownership, possession or control – *Turner, Woodman, Rostron and Collinson*
- Exception in section 5(3) when money is given for a particular purpose – *Davidge v Bunnett, Wain*
- Exception in section 5(4) when property is acquired by mistake – *AG Ref (No. 1 of 1983)(1985), Shadrock-Cigari.*

Credit any other relevant point(s)

AO3 Indicative content

Answers **MAY**:

Discuss any or all of the following areas in the context of clear and unambiguous:

In relation to **Appropriation**:

- Appropriation has an extremely wide definition – ‘a wholly colourless concept’ Lord Hobhouse in Hinks.
- Problems Parliament was trying to solve in consolidating the law in 1968 and the need for a clear, workable law
- Range of ways in which appropriation can occur
- Difficulties of proof for juries
- Problems in relation to consent and overlap with other offences, such as criminal damage and fraud.
- Issues relating to the continuation of an appropriation – conflicting case views
- Conflicts between the civil and criminal law in relation to gifts
- Conflicts between moral and legal issues

In relation to **Property**:

- Items listed in section 4 are generally self-explanatory - money, personal property
- Issues arising from the intricacies of section 4 - items that cannot be stolen and what constitutes real property

In relation to **Belonging to another**:

- Problems due to breadth of definition
- Particular difficulties created subsections

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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	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 Paul will be successful in avoiding a conviction if he raises the defence of voluntary intoxication and whether Anne can raise the defence of duress by threats. **Do not discuss any offences that they could be charged with.**

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

AO1 Indicative content

Answers **MAY**:

Define and explain voluntary intoxication:

- There is a difference between crimes of specific and basic intent - *Majewski*
- Voluntary intoxication can provide evidence of a lack of *mens rea* needed for a specific intent offence – *Beard, Sheehan and Moore, Lipman*
- This is only likely to happen where the intoxication was extreme and rendered the accused incapable of forming the necessary intent – *Gallagher*
- Voluntary intoxication provides evidence of the *mens rea* enough for basic intent crimes - *Majewski*
- A drunken intent is nevertheless intent *Sheehan, Kingston*
- If intoxication is due to 'Dutch courage' this will not provide a defence – *Gallagher*

Define and explain defence of duress:

- Pressure giving rise to complete defence when victim acts under threats *Graham*
- Threat must be of death or serious bodily harm – *Graham, Valderrama-Vega*
- Threat must be to defendant or someone close to them – *Hasan, Wright*
- Threat must generally be immediate or almost immediate – *Hasan*
- Must be sufficient nexus between threat and offence committed – *Cole*
- Limits when voluntary association in criminal enterprise – *Sharp, Shepherd, Heath, Hasan, Rahman, Lal*
- Unavailable for murder, participation in murder or attempted murder – *Howe, Wilson, Gotts*
- Standard test – *Graham, Hasan*
- Self-induced characteristics must be excluded, other characteristics may be excluded – *Bowen, Flatt*.

Credit any other relevant point(s)

AO2 Indicative content

Answers **MAY**:

In the case of Paul consuming an alcoholic drink:

- If Paul is, despite his intoxicated state, still able to form the necessary *mens rea* for the crime, then he will be guilty of the offence; intoxication does not provide a defence – Paul was originally nervous, but it seems that he may have drunk the whiskey to become less nervous and gain ‘Dutch courage’
- Here Paul has intentionally consumed ‘strong whiskey’ and will be deemed voluntarily intoxicated through alcohol.

In the case of Paul threatening the Anne to open the safe:

- Anne must be impelled to act as she did because of her reasonable fear of serious physical injury or death to herself or someone for whom she reasonably feels responsible. Here, Paul has made death threats to one of her customers for whom she may or may not feel reasonably responsible, so the defence could be successful
- Would a sober person of reasonable firmness, sharing Anne’s characteristics, have responded in the same way? It is likely that a sober person sharing her characteristics (an adult female) may not have been able to resist Paul’s threat to kill a customer unless she gave him all of her money.
- The defence only operates if Anne commits a specific crime nominated by Paul while making the threat.
- The threat by Paul must be believed by Anne to be immediate or almost immediate – she has to give him her money ‘now’

Reach a reasoned conclusion in each instance.

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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	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 Heidi is criminally liable for the unlawful act manslaughter of Mark.

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.

AO1 Indicative content

Answers **MAY**:

Define and explain unlawful and dangerous act/constructive manslaughter:

- Requires a positive and unlawful criminal act – *Franklin, Mitchell, Larkin, Lamb*
- Unlawful act should be objectively dangerous – *Church, Dawson, Watson*
- Requires a positive act be done intentionally – *Goodfellow*
- An omission is not enough – *Lowe*
- Requirement that chain of causation be intact and death ensue
- Reasonable man needs to foresee risk of some harm to some other person but not necessarily harm which results – *Church, Newbury & Jones*

Define and explain the role of causation:

- An essential element to establish *actus reus* in result crimes

Explain causation in fact:

- 'but for' test – without defendant's act, the prohibited consequence would not have occurred – *White, Pagett*

Explain causation in law:

- Defendant's act must be more than minimal cause of the harm – *Kimsey*
- Defendants act need not be the only cause of death – *Cheshire*
- Defendant must take victim as they find them – *Holland, Hayward, Dear*

Explain that the chain of causation can be broken by an intervening act:

Thin Skull/'Egg-Shell' Skull Rule – *Blaue, Hayward*

Credit any other relevant point(s)

AO2 Indicative content

Answers **MAY**:

In the case of Heidi pushing Mark:

- Most likely offence is unlawful and dangerous act/constructive manslaughter
- There is an unlawful and positive act when Heidi pushes Mark – this could be a battery or s47 OAPA
- This act is objectively dangerous as they are standing on a stage
- This is done intentionally in order to move him out of the way of the photographer

In the case of Mark's medical condition:

- The chain of causation could remain intact but also credit discussion of possible break due to the 'egg-shell' skull rule
- As the reasonable man needs to foresee some harm but not necessarily the serious harm that results the jury may well find Heidi guilty.

Reach a reasoned conclusion in each instance.

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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	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 *actus reus* of theft is clear and unambiguous'. 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.

AO1 Indicative content

Discuss the extent to which this statement is accurate.

Answers **MAY**:

Define the *actus reus* of theft as stated in section 1 Theft Act 1968

Explain **Appropriation** under section 3:

- Explain appropriation and the rights of an owner – *Pitham, McPherson, Morris, Gomez*
- Can be of any or all of the rights of the owner - *Morris*
- Relevance of consent in appropriation – *Lawrence, Morris, Gomez, Hinks*
- A gift can constitute appropriation – *Hopkins and Kendrick, Hinks*
- Does appropriation takes place at one point in time - *Atakpu* or is it continuing – *Hale*

Explain **Property** under section 4(1):

- Describe what constitutes property – *Kelly, Oxford v Moss*
- Describe exceptions found in sections 4(2), 4(3) and 4(4)

Explain **Belonging** to another under section 5:

- Describe what is meant by basic definition – ownership, possession or control – *Turner, Woodman, Rostron and Collinson*
- Exception in section 5(3) when money is given for a particular purpose – *Davidge v Bunnett, Wain*
- Exception in section 5(4) when property is acquired by mistake – *AG Ref (No. 1 of 1983)(1985), Shadrock-Cigari.*

Credit any other relevant point(s)

AO3 Indicative content

Answers **MAY**:

Discuss any or all of the following areas in the context of clear and unambiguous:

In relation to **Appropriation**:

- Appropriation has an extremely wide definition – ‘a wholly colourless concept’ Lord Hobhouse in Hinks.
- Problems Parliament was trying to solve in consolidating the law in 1968 and the need for a clear, workable law
- Range of ways in which appropriation can occur
- Difficulties of proof for juries
- Problems in relation to consent and overlap with other offences, such as criminal damage and fraud.
- Issues relating to the continuation of an appropriation – conflicting case views
- Conflicts between the civil and criminal law in relation to gifts
- Conflicts between moral and legal issues

In relation to **Property**:

- Items listed in section 4 are generally self-explanatory - money, personal property
- Issues arising from the intricacies of section 4 - items that cannot be stolen and what constitutes real property

In relation to **Belonging to another**:

- Problems due to breadth of definition
- Particular difficulties created subsections

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. Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.	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

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