

GCE

Law

Advanced GCE

Unit **G153**: Criminal Law

Mark Scheme for January 2013

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

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.

OCR will not enter into any discussion or correspondence in connection with this mark scheme.















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G153

Mark Scheme

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Annotations used in the detailed Mark Scheme (to include abbreviations and subject-specific conventions)

Annotation	Meaning
	AO1/Point 1 (Q7–8)
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO2
	Expansion of developed point (replace WDP)
	Case (Q1–6)/ reference to statutory provision
	Point 2 (Q7–8)/ Q1–6 accurate facts of case but no name or incorrect name
	Point 3 (Q7–8)
	Point 4 (Q7–8)
	Point 5 (Q7–8)
	Not relevant
	Alternative reasoning (Q7–8)
	Case-Name only
	Sort of
	AO2+

Before you commence **marking each question** you must ensure that you are familiar with the following:

- the requirements of the specification
- these instructions
- the exam questions (found in the exam paper which will have been emailed to you along with this document)
- levels of assessment criteria *₁ (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column*₂
- question specific guidance given in 'Guidance' column*₃
- the 'practice' scripts*₄ provided in Scoris and accompanying comment (where provided).

- *₁ The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- *₂ The indicative content in the 'Answer' column provides details of points that candidates **may** be likely to make. It is **not** exhaustive or prescriptive and points not included in the indicative content, but which are valid within the context of the question, are to be credited. Similarly, it is possible for candidates to achieve top level marks without citing all the points suggested in the scheme.
- *₃ Included in the 'Guidance' column are the number of marks available for each assessment objective contained within the question. It also includes 'characteristics' which a response in a particular level is **likely** to demonstrate. For example, "a level 4 response is likely to include accurate reference to all 5 stages of x with supporting detail and an accurate link to the source". In some instances an answer may not display all of the 'characteristics' detailed for a level but may still achieve the level nonetheless.
- *₄ The 'practice' scripts are live scripts which have been chosen by the Principal Examiner (and senior examining team). These scripts will represent most types of responses which you will encounter. The marks awarded to them and accompanying commentary (which you can see by changing the view to 'definitive marks') will demonstrate how the levels of assessment criteria and marking guidance should be applied.

As already stated, neither the indicative content, 'characteristics' or practice scripts are prescriptive and/or exhaustive. It is imperative that you remember at all times that a response which:

- differs from examples within the practice scripts; or,
- includes valid points not listed within the indicative content; or,
- does not demonstrate the 'characteristics' for a level

may still achieve the same level and mark as a response which does all or some of this. Where you consider this to be the case you should discuss the candidate's response with your supervisor to ensure consistent application of the mark scheme.

Awarding Assessment Objectives 1 and 2

To award the level for the AO1 or AO2 (some questions may contain both AO1 and AO2 marks) use the levels of assessment criteria **and** the guidance contained within the mark scheme to establish which level the response achieves. As per point 10 of the above marking instructions, when determining which **level** to award start at the **highest*** level and work down until you reach the level that matches the answer.

Once you have established the correct level to award to the response you need to determine the mark within the level. The marks available for each level differ between questions. Details of how many marks are available per level are provided in the Guidance column. Where there is more than one mark available within a level you will need to assess where the response 'sits' within that level. Guidance on how to award marks within a level is provided below, with the key point being that you start at the **middle*** of each level and work outwards until you reach the **mark** that the response achieves.

Answers, which contain no relevant material at all, should receive no marks.

For answers marked by levels of response:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of 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

Awarding Assessment Objective 3

AO3 marks are awarded based on the marks achieved for either AO1, AO2 or in some cases, the total of AO1 and AO2. You must refer to each question's mark scheme for details of how to calculate the AO3 mark.

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Rubric**What to do for the questions the candidate has not answered?**

The rubric for G153 instructs candidates to answer **three** questions; one from Section A, one from Section B and one from Section C. For the questions the candidate has not answered you should record NR (no response) in the mark column on the right-hand side of the screen. Do **not** record a 0.

What to do for the candidate who has not complied with the rubric either by answering more than three questions or by answering more or less Section A, B or C questions than is permitted?

This is a very rare occurrence.

Mark all questions the candidate has answered. Scoris will work out what the overall highest mark the candidate can achieve whilst conforming to the rubric. It will **not** 'violate' the rubric.

Blank pages and missed answers

Sometimes candidates will skip a few pages in their answer booklet and then continue their answer. To be sure you have not missed any candidate response when you come to mark the last question in the script you must check every page of the script and annotate any blank pages with an annotation.

You must also check any additional items eg A, A1 etc. This will demonstrate that every page of a script has been checked.

Question			Answer	Marks	Guidance												
1*			<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define public defence – section 3 Criminal Law Act 1967 – defence for a person who uses force reasonable in the circumstances to prevent crime or to lawfully arrest offenders or suspects or those unlawfully at large.</p> <p>Define common law defence – <i>Whyte, Oatridge</i></p> <ul style="list-style-type: none">• Scope of the defence – normally non fatal offences against the person but can be other crimes such as murder or against property – <i>Hussey</i>• Possibility of retreat – <i>McInnes, Palmer, Bird, Beckford, Re A</i>• Imminence of threat – <i>AG Ref (No 2 of 1983)(1983), Malnik, Rashford</i>• Mistake about need for force – <i>DPP v Morgan, Williams (Gladstone), Beckford, O'Connor, Faraj</i>• Reasonableness of force – <i>Palmer, Whyte, AG for NI Ref (No 1 of 1975)(1977), Scarlett, Owino, Martin</i>• Use of excessive force – <i>Clegg, McKoy</i>• Revenge – <i>Rashford</i>• Intoxication and self-defence, including mistaken self-defence – <i>O'Grady</i>• Pre-emptive strikes – <i>Deana</i>. <p>Define section 76 Criminal Justice and Immigration Act 2008.</p> <p>Define defence of property – section 5 (2) Criminal Damage Act 1971.</p> <p>Define section 55(3) Coroners and Justice Act 2009.</p> <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><tr><td>5</td><td>21–25</td></tr><tr><td>4</td><td>16–20</td></tr><tr><td>3</td><td>11–15</td></tr><tr><td>2</td><td>6–10</td></tr><tr><td>1</td><td>1–5</td></tr></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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Question			Answer	Marks	Guidance												
			Assessment Objective 2 – Analysis, evaluation and application Discuss any or all of the following areas: <ul style="list-style-type: none">• All or nothing approach and harshness in murder cases• Danger of an apparently two tier defence if citizens and those with public duty treated differently• A moral defence can be very difficult to interpret• Could be used to help battered women, as in the USA, but danger of <i>carte blanche</i> for force• Rights of householders hard to balance• Problem of allowing pre-emptive strike?• Is it fair to expect someone feeling vulnerable to only use reasonable force?• Need to discourage vigilante justice• Link to intoxication – is it right to require the mistake to be one the defendant would have made if sober when intoxication probably reason why defendant upset and confused• Link to mistake and problems this can cause• Link to loss of self control and problems this can cause• Reach a sensible conclusion.	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><tr><td>5</td><td>17–20</td></tr><tr><td>4</td><td>13–16</td></tr><tr><td>3</td><td>9–12</td></tr><tr><td>2</td><td>5–8</td></tr><tr><td>1</td><td>1–4</td></tr></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.Level 1 – an awareness of the area of law identified by the question.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><tr><td>37–50</td><td>5</td></tr><tr><td>28–36</td><td>4</td></tr><tr><td>19–27</td><td>3</td></tr><tr><td>10–18</td><td>2</td></tr><tr><td>1–9</td><td>1</td></tr></table>	AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
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2*			<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define involuntary manslaughter – unlawful killing of a human being without the high level of <i>mens rea</i> required for murder. Explain that covers wide range of situations, reflected in the sentencing. Define unlawful act/constructive manslaughter:</p> <ul style="list-style-type: none">• Unlawful act – must be criminal, positive act – <i>Lamb, Lowe, Goodfellow, Newbury and Jones, Watson</i>• Dangerous act – measured by objective test but can be against a person or property and there must be a risk of physical harm – <i>Larkin, Church, Mitchell, Goodfellow, Dawson, Watson, Williams, Lewis</i>• Unlawful act must cause death – <i>Cato, Dalby, Rogers, Kennedy</i>• <i>Mens rea</i> required for initial unlawful act but no need to realise that act is dangerous or unlawful, or to foresee a risk of harm – <i>Newbury and Jones</i>. <p>Define gross negligence manslaughter - <i>Adomako</i>.</p> <ul style="list-style-type: none">• Duty of care to the victim – <i>Singh, Litchfield, Khan and Khan, Wacker</i>• Breach of that duty• Breach of duty must cause death• Failure must be so ‘gross’ in the eyes of the jury as to be criminal and must be risk of death – <i>Bateman, Stone and Dobinson, Adomako, Misra</i>. <p>Define reckless manslaughter: Requirement of subjective recklessness – <i>Lidar</i> Credit any other relevant cases. Credit any other relevant points.</p>	25	<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><tr><td>5</td><td>21–25</td></tr><tr><td>4</td><td>16–20</td></tr><tr><td>3</td><td>11–15</td></tr><tr><td>2</td><td>6–10</td></tr><tr><td>1</td><td>1–5</td></tr></table> <p>To achieve level 5 responses need to cover each type of manslaughter and reform proposals.</p> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Top Level 3 maximum if major focus on causation or omissions.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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Question			Answer	Marks	Guidance												
			<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following areas:</p> <ul style="list-style-type: none">• Involuntary manslaughter unwieldy as covers huge range of situations• In unlawful act manslaughter death may have been unexpected but if occurs liability increases significantly whilst objective test creates liability even if risk of injury not foreseen• Law Commission recommended abolition in 1996 but then in <i>Murder, Manslaughter and Infanticide 2006</i> proposed new offence of criminal manslaughter – suggests uncertainty• Problematic circular test leads to inconsistent jury verdicts in gross negligence manslaughter• Problematic using a word which comes from civil law• Law Commission 1996 proposed killing by gross carelessness but not enacted and by 2006 proposed largely keeping present law on gross negligence manslaughter – again uncertain• Law Commission 2006 proposal to abolish reckless manslaughter and to rely on second degree murder and gross negligence manslaughter – not happened and criticised• Reach a sensible conclusion.	20	<table><tr><th>AO2 level</th><th>AO2 Marks</th></tr><tr><td>5</td><td>17–20</td></tr><tr><td>4</td><td>13–16</td></tr><tr><td>3</td><td>9–12</td></tr><tr><td>2</td><td>5–8</td></tr><tr><td>1</td><td>1–4</td></tr></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases.</p> <p>Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p>Level 3 – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered.</p> <p>Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p> <p>For Level 5 there should be a reference to reforms.</p>	AO2 level	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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3*			<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain strict liability:</p> <ul style="list-style-type: none">No need to prove <i>mens rea</i> in relation to at least one element of the actus reus – <i>Callow v Tillstone, Storkwain</i>Distinguished from absolute liability – <i>Larsonneur, Winzar</i>Frequency of occurrence but move away from such liability in areas such as sexual offences – <i>Prince , B v DPP</i>Source of most offences is statutory but limited exceptions – <i>Lemon</i>Statutory interpretation is importantMany offences summary onlyExplain basic principles – <i>Gammon</i>Presumption in favour of <i>mens rea</i> – <i>Sweet v Parsley, M</i>Quasi crimes/regulatory offences – <i>Callow v Tillstone, Cundy v Le Cocq, Shah and Shah, Alphacell v Woodward</i>Issues of social concern – <i>Blake, Shah and Shah</i>Statutory wording – words such as ‘cause’, ‘possession’, ‘knowingly’, ‘wilfully’ etc – <i>Warner, Empress Cars, Sheppard and Sheppard, Wings v Ellis</i>Size of penalty and promotion of the law – <i>Lim Chin Aik</i>. <p>Explain areas in which strict liability is commonly found.</p> <p>Explain absence of mistake as a defence – <i>Cundy v Le Cocq, Sherras v De Rutzen</i>.</p> <p>Explain development of defence of due diligence and its limits – <i>Smedleys v Breed, Shah and Shah, Tesco v Natrass</i>.</p> <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>	25	<p>AMEC decision – review number of cases required for different levels at SSU.</p> <table><thead><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr></thead><tbody><tr><td>5</td><td>21–25</td></tr><tr><td>4</td><td>16–20</td></tr><tr><td>3</td><td>11–15</td></tr><tr><td>2</td><td>6–10</td></tr><tr><td>1</td><td>1–5</td></tr></tbody></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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			Assessment Objective 2 – Analysis, evaluation and application Discuss any or all of the following issues: How law can regulate and protect: <ul style="list-style-type: none">• Deals with policy issues which promote care by businesses and protects citizens• Social utility for businesses and encourages high standards• Can have deterrent value• Easily enforced; court process speedy as <i>mens rea</i> issues avoided• Rarely threat to individual liberty and can be consistent with human rights which protect citizens• Prevents businesses profiting from taking risks. How law does not regulate and protect: <ul style="list-style-type: none">• Does not allocate blame effectively and so does not protect citizens• Does not regulate businesses effectively as those unaware of risks can be guilty• Little administrative or cost advantage• Little evidence that standards improve• Inconsistent for businesses and citizens as relies on interpretation and discretion• Ease of conviction and social stigma• Lack of due diligence defence• Role of Parliament. Proposals for reform and alternative solutions. Reach a sensible conclusion.	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><tr><td>5</td><td>17–20</td></tr><tr><td>4</td><td>13–16</td></tr><tr><td>3</td><td>9–12</td></tr><tr><td>2</td><td>5–8</td></tr><tr><td>1</td><td>1–4</td></tr></table> Responses will be unlikely to achieve the following levels without: Level 5 – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases. Level 4 – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases. Level 3 – a discussion of at least 3 points and making reference to the cases which have been used for the area of law being considered. Level 2 – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case. Level 1 – an awareness of the area of law identified by the question.	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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4*			Potential answers may :	25														
			Assessment Objective 1 – Knowledge and understanding															
			Define and explain non fatal assaults against the person: Explain common law assault and battery – charged under section 39 Criminal Justice Act 1988:															
			<ul style="list-style-type: none">Assault – putting a person in fear of immediate and unlawful personal harm accompanied by intention or subjective recklessness – <i>St George, Stephens v Myers, Cole v Turner, Venna</i>Battery – infliction of unlawful personal harm accompanied by intention or subjective recklessness – <i>Collins v Wilcock, Thomas</i>.															
			Explain assault occasioning actual bodily harm – section 47 Offences Against the Person Act 1861:															
			<ul style="list-style-type: none"><i>Actus reus</i> – assault leading to harm which interferes with health or comfort – <i>Miller</i><i>Mens rea</i> – intention or subjective recklessness – only needed for assault or battery - <i>Roberts, Savage</i>.															
			Explain unlawful and malicious wounding or inflicting grievous bodily harm – section 20 Offences Against the Person Act 1861:															
<ul style="list-style-type: none"><i>Actus reus</i> – infliction of a wound which breaks all layers of skin or really serious harm – <i>Smith, Eisenhower, Wood</i><i>Mens rea</i> – needed for assault or battery and must be foresight of some harm but not necessarily serious harm - <i>Grimshaw, Parmenter</i>.																		
Explain unlawful and malicious wounding or causing grievous bodily harm with intent or with intent to resist arrest – section 18 Offences Against the Person Act 1861:																		
<ul style="list-style-type: none"><i>Actus reus</i> is causing harm as for section 20<i>Mens rea</i> – intention for initial assault or battery and serious harm caused – <i>Morrison</i>.																		
Credit reference to relevant CPS Charging Standards																		
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Question			Answer	Marks	Guidance												
			<p>Define and explain the defence of consent in sport:</p> <ul style="list-style-type: none">Consent can be a complete defence but only within rules of game – <i>AG Ref (No 6 of 1980), Billingham, Barnes, Ciccarelli</i>. <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>														
			<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify common law assault and battery</p> <p>Identify section 47 OAPA 1861</p> <p>Identify section 20 OAPA 1861</p> <p>Identify section 18 OAPA 1861</p> <p>Identify the defence of consent</p> <p>In the case of Jonty hitting Patrick across the back of the head:</p> <ul style="list-style-type: none">Level of harm could satisfy section 18 since it bleeds and therefore all layers of skin are broken; alternatively section 47Jonty is malicious and acts intentionally making a charge of section 18 or section 47 possibleCredit charge of section 20 on the basis that Jonty intends some harm when he hits Patrick hardCredit reference to lack of an assault since Jonty goes up behind PatrickCredit reference to a battery when Jonty hits PatrickNo defence of consent available. <p>In the case of Patrick swearing at, and threatening, Jonty:</p> <ul style="list-style-type: none">Swearing could be putting a person in fear of immediate and unlawful personal violence by the use of words suggesting a charge of assaultWords give context that Patrick has intention or at least subjective recklessnessCredit alternative view that such words might be common between professionals and so may be defence of consent as Patrick has no mens rea and Jonty is not scared.	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><tr><td>5</td><td>17–20</td></tr><tr><td>4</td><td>13–16</td></tr><tr><td>3</td><td>9–12</td></tr><tr><td>2</td><td>5–8</td></tr><tr><td>1</td><td>1–4</td></tr></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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Question			Answer	Marks	Guidance													
			<p>In the case of Patrick’s sprained wrist:</p> <ul style="list-style-type: none">• Kicking Patrick is likely to be hostile touching suggesting battery• Could be that resultant sprained wrist is sufficient for section 47• Jonty appears to be at least subjectively reckless for the initial kick making either charge viable• Consider possibility of ‘sporting’ consent as a defence. <p>In the case of Jonty grabbing the official by his jacket:</p> <ul style="list-style-type: none">• Grabbing hold of jacket is sufficient for battery and words used sufficient for assault• However, words negative assault• Actions appear to be done intentionally. <p>In the case of Jonty breaking Patrick’s ankle:</p> <ul style="list-style-type: none">• Broken bones usually constitute GBH making a charge of section 18 or section 20 likely• Malicious and intentional act by Jonty as he has to go back to Patrick• Reach a sensible conclusion.															
			<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</p>	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><tr><td>37–50</td><td>5</td></tr><tr><td>28–36</td><td>4</td></tr><tr><td>19–27</td><td>3</td></tr><tr><td>10–18</td><td>2</td></tr><tr><td>1–9</td><td>1</td></tr></table>		AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
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5*		Potential answers may:	25											
		<p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain murder – unlawful killing of a human being with an intention to kill/inflict GBH or foresight of death/GBH as a virtually certain risk along with an appreciation of the risk and no intention to rescue – <i>Woollin</i></p> <p>Define and explain causation:</p> <ul style="list-style-type: none">• Causation in fact – ‘but for’ test – <i>Roberts</i>• Causation in law – operative and substantial test – <i>Cheshire</i> <p>Define and explain <i>mens rea</i> of murder:</p> <ul style="list-style-type: none">• Direct intent – death/GBH is the defendant’s purpose and they set out to bring it about – <i>Mohan</i>• Oblique intent – foresight of consequences – <i>Hyam, Moloney, Hancock and Shankland, Nedrick, Woollin, Matthews and Alleyne</i>• Section 8 Criminal Justice Act 1967 – subjective test and foresight only part of evidence from which intention inferred <p>Define and explain attempts using the Criminal Attempts Act 1981:</p> <ul style="list-style-type: none">• <i>Actus reus</i> – section 1 (1) CAA 1981 – doing an act which is more than merely preparatory – <i>Gullefer, Jones, Campbell, Geddes, Tosti and White</i>• <i>Mens rea</i>: Intention – <i>Widdowson, Whybrow, Mohan, Walker and Hayles</i> <p>Define and explain defence of intoxication:</p> <ul style="list-style-type: none">• Intoxication means defendant does not form <i>mens rea</i> – <i>Beard, Sheehan and Moore, Heard</i>• If crime requires specific intent voluntary intoxication acts as partial defence – <i>Lipman, Heard, Carroll v DPP</i>• If crime one of basic intent voluntary intoxication is usually no defence – <i>Majewski, Richardson and Irwin</i>• If voluntary intoxication due to ‘Dutch courage’ then no defence – <i>Gallagher</i>		<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><tr><td>5</td><td>21–25</td></tr><tr><td>4</td><td>16–20</td></tr><tr><td>3</td><td>11–15</td></tr><tr><td>2</td><td>6–10</td></tr><tr><td>1</td><td>1–5</td></tr></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p>Top Level 3 maximum if causation is major focus.</p>		AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2
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			<p>Define and explain defence of mistake:</p> <ul style="list-style-type: none">Can be a defence if honest – <i>Williams (Gladstone), Beckford</i>Will not be a defence if induced by intoxication – <i>O’Grady, Fotheringham</i>. <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>														
			<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify defence of intoxication</p> <p>Identify defence of mistake</p> <p>In the case of Tanya putting poison in the biscuits:</p> <p>Possibility of attempted murder as there is an <i>actus reus</i> of doing an act which is more than merely preparatory</p> <ul style="list-style-type: none">Evidence of intention as this was a calculated act on the part of TanyaDeal with issue of impossibility when Tanya thinks she has put poison in the biscuits but it is in fact sugar. <p>In the case of Tanya putting the newspaper through letterbox and death of Arthur:</p> <ul style="list-style-type: none">Possibility of murder as there is unlawful killing of a human being<i>Mens rea</i> more problematic as Tanya has intention to frighten but could well be oblique intentPossible defence of intoxication as Tanya has drunk three glasses of winePossible fall back charge of manslaughter to which Tanya will have no defenceIf drinking seen as Dutch Courage then Tanya will have no defenceReach a sensible conclusion.	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><tr><td>5</td><td>17–20</td></tr><tr><td>4</td><td>13–16</td></tr><tr><td>3</td><td>9–12</td></tr><tr><td>2</td><td>5–8</td></tr><tr><td>1</td><td>1–4</td></tr></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><tr><td>37–50</td><td>5</td></tr><tr><td>28–36</td><td>4</td></tr><tr><td>19–27</td><td>3</td></tr><tr><td>10–18</td><td>2</td></tr><tr><td>1–9</td><td>1</td></tr></table>		AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
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6*			Potential answers may:	25									
			<p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain theft – section 1 Theft Act 1968. Explain the <i>actus reus</i> of theft:</p> <ul style="list-style-type: none">• Section 3 – appropriation – any interference with any of owner’s rights with or without consent – <i>McPherson, Lawrence, Morris, Gomez</i>• Section 4 – property – this must be tangible – <i>Oxford v Moss</i>• Section 5 – belonging to another – ownership, possession or control – <i>Turner</i> <p>Explain the <i>mens rea</i> of theft:</p> <ul style="list-style-type: none">• Section 2 – dishonesty – no statutory definition but• Section 2 (1) (a) – defendant not dishonest if honestly believe have legal right to property• Section 2 (1) (b) – defendant not dishonest if honestly believe owner would consent – <i>Holden</i>• Section 2 (1) (c) – defendant not dishonest if honestly believe owner cannot be found by taking reasonable steps• If none of above apply jury apply common sense• If guidance is still needed the jury must decide if the defendant was dishonest by the standards of the reasonable man and, if so, the defendant knew they were dishonest by that standard – <i>Ghosh</i>• Section 6 – intention to permanently deprive – intention to take for ever or for period equivalent to outright taking, even if is intention to return property – <i>Lloyd, Warner</i> <p>Define and explain robbery – charged under section 8 Theft Act 1968</p> <ul style="list-style-type: none">• <i>Actus reus</i> – theft accompanied by use or threat of force before or at time of stealing and in order to steal – <i>Dawson and James, Hale, Lockley</i>• <i>Mens rea</i> – intention to steal and intention or recklessness as to force – <i>Robinson</i>		<table><tr><th>AO1 Levels</th><th>AO1 Marks</th></tr><tr><td>5</td><td>21–25</td></tr><tr><td>4</td><td>16–20</td></tr><tr><td>3</td><td>11–15</td></tr><tr><td>2</td><td>6–10</td></tr><tr><td>1</td><td>1–5</td></tr></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute.</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute.</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute.</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15
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Question			Answer	Marks	Guidance												
			<ul style="list-style-type: none">Offence committed at the time the theft is complete – <i>Corcoran and Anderton</i>. Define and explain burglary – charged under section 9 Theft Act 1968: <ul style="list-style-type: none">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 damageSection 9(1)(b) – having entered as a trespasser the defendant commits or attempts to commit theft or GBH. Credit any other relevant cases. Credit any other relevant points.														
			Assessment Objective 2 – Analysis, evaluation and application Identify theft Identify robbery Identify burglary In the case of Carlos using Pierre’s stapler : <ul style="list-style-type: none">Completed appropriation of property belonging to anotherHard to prove dishonesty as Carlos could honestly believe that Pierre would not mind him using the stapler. A jury might be unlikely to see such behaviour as dishonest. In the case of Pierre taking £20 from Carlos’s pocket : <ul style="list-style-type: none"><i>Actus reus</i> complete as there is clear appropriation of property belonging to another<i>Mens rea</i> also present as Pierre is dishonest, not likely to be able to come within any of exceptions and as he is short of money seems as though he intends to keep the money. In the case of Katy taking and photocopying the exam paper : <ul style="list-style-type: none">Is appropriation but question whether information is property. Does belong to another and paper on which it is copied is property.	20	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><tr><td>5</td><td>17–20</td></tr><tr><td>4</td><td>13–16</td></tr><tr><td>3</td><td>9–12</td></tr><tr><td>2</td><td>5–8</td></tr><tr><td>1</td><td>1–4</td></tr></table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion.</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion.</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion.</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion.</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			<ul style="list-style-type: none"><i>Mens rea</i> present as she is dishonest by waiting for room to be empty but problem in that puts exam paper back and so may not have an intention to permanently deprive – again could be theft of copy paper.Consider burglary section 9(1)(a) and section 9(1)(b) as she fulfils their requirements <p>In the case of Katy shoving Carlos:</p> <ul style="list-style-type: none"><i>Actus reus</i> of theft and force but theft has been completed before force used. Credit argument that this could be seen as a continuing act and therefore robbery.Evidence of <i>mens rea</i> as Katy is dishonest and also at least subjectively reckless when she shoves CarlosCredit application of s9(1)(b)Reach a sensible conclusion.		Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach.												
			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.	5	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Mark</th></tr><tr><td>37–50</td><td>5</td></tr><tr><td>28–36</td><td>4</td></tr><tr><td>19–27</td><td>3</td></tr><tr><td>10–18</td><td>2</td></tr><tr><td>1–9</td><td>1</td></tr></table>	AO1 + AO2 Marks	AO3 Mark	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
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Question			Answer	Marks	Guidance												
7			Potential answers may : Assessment Objective 2 – Analysis, evaluation and application														
	(a)		P1 Reason that Sarah must have done an involuntary act P2 Reason that Sarah still has some control because she is driving voluntarily P3 Reason that there must be an external factor P4 Reason that Sarah forgetting to take her insulin is not an external factor P5 Conclude that the statement is inaccurate.	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><tr><td>5</td><td>5</td></tr><tr><td>4</td><td>4</td></tr><tr><td>3</td><td>3</td></tr><tr><td>2</td><td>2</td></tr><tr><td>1</td><td>1</td></tr></table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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	(b)		P1 Reason that Sarah must be acting involuntarily P2 Reason that swerving may be a reflex action P3 Reason that Sarah’s condition must be due to an external factor P4 Reason that Sarah might argue that the spider is an external factor P5 Conclude that the statement is accurate.	5													
	(c)		P1 Reason that there must be an external factor P2 Reason that Sarah’s drinking is an external factor P3 Reason that Sarah must be acting involuntarily P4 Reason that although Sarah’s act is involuntary her voluntary intoxication is likely to negative the defence P5 Conclude that the statement is accurate.	5													
	(d)		P1 Reason that Sarah would need to show a defect of reason from a disease of the mind P2 Reason that Sarah’s diabetes is a disease of the mind which affects her reasoning because it is an internal factor P3 Reason that Sarah should not know the nature and quality of her act or that it is legally wrong P4 Reason that Sarah does not know the nature and quality of her act or that it is legally wrong as she does not know where she is and attacks what she thinks is an alien P5 Conclude that the statement is accurate.	5													

Question			Answer	Marks	Guidance												
8			Potential answers may : Assessment Objective 2 – Analysis, evaluation and application														
	(a)		P1 Reason that there must be a loss of control/self control P2 Reason that Evgeny loses control/self control when he punches Marianna several times P3 Reason that the loss of self control need not be sudden P4 Reason that it does not matter that Evgeny waits until the end of the class to attack Marianna P5 Conclude that the statement is inaccurate. <u>OR</u> P4a Reason that there is revenge and planning in the way Evgeny attacks Marianna P5a Conclude that the statement is accurate.	5	<table><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr><tr><td>5</td><td>5</td></tr><tr><td>4</td><td>4</td></tr><tr><td>3</td><td>3</td></tr><tr><td>2</td><td>2</td></tr><tr><td>1</td><td>1</td></tr></table>	AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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	(b)		P1 Reason that a qualifying trigger can be things said done or said P2 Here Marianna has laughed at Evgeny repeatedly P3 Reason that this must constitute circumstances of an extremely grave character and cause the defendant to have a justifiable sense of being seriously wronged and/or giving rise to a fear of serious violence P4 Reason that although Marianna makes Evgeny upset this is not enough to be a qualifying trigger P5 Conclude that the statement is accurate.	5													
	(c)		P1 Reason that defence is applied to a person of defendant’s age and sex with a normal degree of tolerance and self restraint P2 Reason that as Evgeny is having counselling he may not be able to show a normal degree of tolerance or self restraint P3 Reason that defence is available if a person in Evgeny’s circumstances might have reacted in same or similar way P4 Reason that Evgeny’s state of mind is such that it affects his ability to keep control or show self restraint but he behaves in a way that might not be same as a reasonable man of same age and with same permanent characteristics P5 Conclude that statement is inaccurate.	5													

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Question		Answer	Marks	Guidance
	(d)	<p>P1 Reason that there must be an abnormality of mental functioning arising from a recognised medical condition</p> <p>P2 Reason that Evgeny has a recognised medical condition because he is sent for counselling</p> <p>P3 Reason that this must substantially impair the defendant's ability to understand the nature of their conduct or form a rational judgment or exercise self control</p> <p>P4 Reason that Evgeny is substantially impaired because he is unable to form a rational judgement or exercise self control when he punches Marianna several times</p> <p>P5 Conclude that the statement is accurate.</p> <p><u>OR</u></p> <p>P4a reason that Evgeny is not substantially impaired because he is only suffering from depression</p> <p>P5a Conclude that the statement is inaccurate.</p>		

APPENDIX 1

Advanced GCE Law Levels of Assessment

There are **five** levels of assessment of AOs 1 and 2 in the A2 units. The first four levels are very similar to the four levels for AS units. The addition of a fifth level reflects the expectation of higher achievement by candidates at the end of a two-year course of study. There are **four** levels of assessment of AO3 in the A2 units. The requirements and number of levels differ between AS and A2 units to reflect the expectation of higher achievement by candidates at the end of a two-year course of study.

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism, showing good understanding of current debate and proposals for reform, or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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