



GCE

Law

Unit **G153**: Criminal Law

Advanced GCE

Mark Scheme for June 2014

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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Annotations

Annotation	Meaning
	Blank Page – this annotation must be used on all blank pages within an answer booklet (structured or unstructured) and on each page of an additional object where there is no candidate response.
	AO2+
	Point 2 (Q7-8)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6) / reference to statutory provisions
	Expansion of developed point (Q1-Q6)
	Case - name only
	Not relevant
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO1 / Point 1 (Q7-8)
	Sort of; accurate facts but wrong case name or no name (Q1-Q6)

Comment [U1]: Annotations agreed with PE and Ops 22/11/13

Subject-specific marking instructions

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 commentaries

- *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 in point 10 of the above marking instructions, 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.

*** Remember: when awarding the level you work from top downwards, when awarding the mark you work from the middle outwards.**

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.

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 the following annotation:

BP

Blank Page – this annotation **must** be used on all blank pages within an answer booklet (structured or unstructured) and on each page of an additional object where there is no candidate response

Question	Indicative Content	Mark	Guidance												
1*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define and explain the <i>actus reus</i> of murder:</p> <ul style="list-style-type: none">Causing death under Queen’s Peace in any country of realmThe death must be unlawful – credit illustrative cases in self defence –<i>Beckford, Clegg, Martin</i> - credit <i>Criminal Justice & Immigration Act 2008, Coroners & Justice Act 2009</i>Of a human being – beginning and end of life debate – <i>AG Ref</i> <p>Define and explain causation (outline only):</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>Take your victim as you find them – thin skull test – <i>Blaue</i> <p>Define and explain <i>mens rea</i> of murder:</p> <ul style="list-style-type: none">Direct intent – death/GBH is defendant’s purpose and 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>Explain proposals for change:</p> <ul style="list-style-type: none">Draft Criminal Code 1989 would have created offence based solely on intentionLaw Commission – <i>A New Homicide Act for England</i>	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, where appropriate. To reach L5 candidates should address issues relating to both <i>actus reus</i> and <i>mens rea</i>.</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, where appropriate</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, where appropriate</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, where appropriate</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references 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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			<p><i>and Wales?</i> (2005) led to Murder, <i>Manslaughter and Infanticide</i> (2006) – 3 new offences:</p> <ul style="list-style-type: none">▪ 1st degree murder – mandatory life – would need to be intent to kill or do GBH and awareness that conduct posed serious risk of death▪ 2nd degree murder – discretionary life - intent for 1st degree but covered by partial defence, intent to do serious injury but no awareness of serious risk of death, awareness of serious risk of death and intent to cause some injury, a fear of injury or a risk of injury▪ Manslaughter – fixed term maximum – covers what is presently reckless manslaughter▪ Use any other relevant cases. <p>Credit any other relevant point. Credit any other relevant cases.</p>																
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Discuss any or all of following areas:</p> <ul style="list-style-type: none">▪ Problems of start and end of life need to be resolved▪ Importance of intention as murder/manslaughter distinction▪ Practical difficulties of test application for juries▪ Problems of proving what was in a defendant's mind▪ Difficulties relating to probability and its meaning▪ Sentencing concerns and stigma means juries may be reticent▪ Credit discussion of problems for judges arising from mandatory life sentence▪ Intention often based on common sense – is this suitable test for such a serious situation?▪ Emotive cases on eg offences involving sexual violence, offences against children, involving torture etc can colour juries' thoughts▪ Academic criticism of reforms picked up on lack of	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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4		
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			<p>clear definitions, lack of fairness due to limited range of defences and application only to 1st degree murder, difference between 2nd degree murder and manslaughter appeared to be moral only</p> <ul style="list-style-type: none">Proposed 1st degree murder broader than originally intended – concern to apply it to more people?Planned aggravated murder dropped – fear of sensationalising cases?Reckless manslaughter upgraded to murder – stigma effect might impact on jury willingness to convict?Effective codification of <i>Woollin</i> – but still counter to CJA 1967Duress as defence still unresolvedCredit reference to on-going euthanasia debate - <i>Nicklinson/Lamb</i> <p>Reach any sensible conclusion Credit any other relevant comment.</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 Credit discussion of self defence if raised in the context of issues in the law of murder.</p>													
			<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, spelling and punctuation.</p>	5	<table><tr><th>AO1+AO2 marks</th><th>AO3 mark</th></tr><tr><td>37–45</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	37–45	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 and explain defence of insanity using M'Naghten</p> <p>Rules 1843:</p> <ul style="list-style-type: none">Defence must prove defendant insane on balance of probabilitiesRequires defect of reason - no reasoning at all rather than just reasoning imperfectly – <i>Clarke</i>Caused by disease of mind induced by internal factor – <i>Kemp, Bratty, Quick and Paddison, Sullivan, Hennessy, Burgess</i>Defendant does not know nature and quality of their act or that it is legally wrong – <i>Codere, Windle, Johnson</i>Successfully raising the defence can lead to a range of conclusions up to and including committal to a mental hospital by use of special verdict and the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and section 24 Domestic Violence, Crime and Victims Act 2004. <p>Define and explain the defence of automatism:</p> <ul style="list-style-type: none">Need for involuntary act over which body has no control – <i>Bratty, T, Falconer, Parks, Rabey, Watmore v Jenkins, Isitt, AG Ref (No 2 of 1992)(1993)</i>Covers reflex actions, spasms, convulsions – <i>Hill v Baxter, Whoolley</i>Act must be induced by an external factor – <i>Quick and Paddison</i>Must not be self induced – <i>Lipman, Kay v Butterworth, C, Clarke</i>	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, where appropriate</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, where appropriate</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, where appropriate</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, where appropriate</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references 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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			<ul style="list-style-type: none">Defendant incapable of <i>mens rea</i>Complete defence so leads to acquittal Credit any other relevant point. Credit any other relevant cases.															
			Assessment Objective 2 - Analysis, evaluation and application Discuss any or all of the following areas: <ul style="list-style-type: none">Lack of clarity - law outdated and never been reformed by ParliamentDifficulties of deciding what is a defect of reasonInappropriateness of words, especially insanityProblems of defining disease of the mind especially for epileptics and diabeticsRelies on legal and not medical testLack of irresistible impulse defenceTest can fail to identify those who need help or are dangerousTest can also be broad and encompass too manyFine dividing line between insanity and automatism - problematic given consequences – acquittal or range of sentencing and significant stigmaConflicts between continuing danger theory and external cause theoryParticular problems relating to sleepwalkersExperiences of other jurisdictions such as Canada and AustraliaPolicy restrictions which affect defences – especially automatism in driving offencesProblems with disposals in insanity despite some statutory developmentRelevance of Law Commission proposals for verdict of mental disorder	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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4	<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. <i>Responses are unable to achieve Level 5 without a discussion of both clarity and fairness.</i></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>
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			<ul style="list-style-type: none">Relevance of Law Commission proposals to include sleepwalkers in a new automatism defence <p>Reach any sensible conclusion. Credit any other relevant comment.</p>																
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3*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define <i>actus reus</i> – conduct element which requires positive, voluntary act</p> <p>Define and explain omission – failure to act when duty to do so <i>Khan and Khan</i>:</p> <ul style="list-style-type: none">Statutory duty – Parliament acting to protect – section 1 Children and Young Persons Act 1933, section 5 Domestic Violence, Crime and Victims Act 2004, <i>Greener</i>Contractual duty – created by contract of employment <i>Pittwood, Adomako</i>Duty based on official position - usually related to public office <i>Dytham</i>Duty based on relationship – usually parent and child – <i>Gibbins and Proctor</i>Duty undertaken voluntarily – based on reliance – <i>Instan, Stone and Dobinson</i>Duty based on creation of a dangerous situation and need to act reasonably – <i>Miller, Santana-Bermudez, Evans</i>Possible end of duty by release or cessation – <i>Smith, Re B, Bland</i> <p>Credit any other relevant point. Credit any other relevant cases.</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, where appropriate</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, where appropriate</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, where appropriate</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, where appropriate</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references 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			Indicative Content	Mark	Guidance													
			Assessment Objective 2 - Analysis, evaluation and application Discuss any or all of the following areas: <ul style="list-style-type: none">Relationship between legal principles which require positive act and public policy to create behaviour standardsPolicy means that some crimes committed by omission are strict liability – is this fair?Difficulty in defining a duty and whether a person can be absolved after assuming a dutyFairness of expecting those under contracts of employment to act if there is personal riskFairness of expecting more of those who hold public office?Should there be a duty to act/Good Samaritan law and what limits would it have?Can people be forced to take care of each other?Problem that acting might make things worseProblem that rescue might expose rescuer to great riskHow many people would be liable in large scale situation?Policy issues relating to doctorsProblem when those assuming duties are incapable of fulfilling them Reach any sensible conclusion. Credit any other relevant comment.	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. Responses are unlikely to achieve Level 5 without a discussion of both appropriation and dishonesty.</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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4	
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SECTION B

Question	Indicative Content	Mark	Guidance												
4*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define and explain theft - charged under Theft Act 1968:</p> <ul style="list-style-type: none">Section 1 – dishonest appropriation of property belonging to another with intention to deprive other of itSection 3 – appropriation – any assumption of any of rights of owner with or without consent – <i>McPherson, Lawrence, Morris, Gomez, Hinks</i>Section 4 – property – can be tangible or intangibleSection 5 – belonging to another – ownership, possession or control – <i>Turner</i>; s5(3) – property given for a specific purpose – <i>Davidge v Bunnett (1984)</i>; s5(4) – property acquired by mistake but with a legal obligation to return it - <i>A-Gs ref (No 1 of 1983)(1985)</i>, <i>Shadrock-Cigari (1988)</i>Section 2 – dishonesty – 2 (1) (a) – defendant not dishonest if honestly believe they have legal right to property, 2 (1) (b) – defendant not dishonest if honestly believe owner would consent – <i>Holden</i>, 2 (1) (c) – defendant not dishonest if honestly believe owner cannot be found having taken reasonable steps – <i>Small</i>; if none of above apply the jury apply common sense view <i>Feeley</i> or <i>Ghosh if needed</i> – was defendant dishonest by standards of reasonable man and, if so, did defendant know dishonest by that standard?Section 6 – intention to permanently deprive – to take forever or to be equivalent to outright taking – <i>Velumyl Lloyd</i> <p>Credit any other relevant point. Credit any other relevant cases.</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 statutes or references 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			Indicative Content	Mark	Guidance														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Identify theft</p> <p>Tony selling Madge's pictures:</p> <ul style="list-style-type: none">▪ Would be <i>actus reus</i> as he treats her pictures as his own▪ He has <i>mens rea</i> as he sells them when she is in hospital and keeps the money for himself <p>Tony taking the £20 from Madge's purse:</p> <ul style="list-style-type: none">▪ Actus reus is complete as money is property and Madge's consent is not relevant - <i>Lawrence, Hinks</i>▪ <i>Mens rea</i> complete as he is dishonest and appears to intend to permanently deprive <p>Tony using the bicycle:</p> <ul style="list-style-type: none">▪ Would appear to be <i>actus reus</i> as the bicycle is in someone's garden and so he interferes with a right of owner▪ Tony might say he is not dishonest as covered by section 2(1)(c) – could be argued either way as long as reasoning logically followed through <p>Tony paying the electricity bill:</p> <ul style="list-style-type: none">▪ Could be <i>actus reus</i> as he was given money to use for a specific purpose as in s5(3) and he cannot pay with original notes Madge gave him▪ <i>Mens rea</i> could be problem as Tony might argue Madge would consent under section 2(1)(b) but this is debateable given their relationship – could be argued either way as long as reasoning logically followed through	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. Responses are unlikely to reach level 5 without a discussion of all aspects of the scenario</p> <p>Level 4 – identification of the main 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			Indicative Content	Mark	Guidance														
			<p>Tony being given too much change:</p> <ul style="list-style-type: none">▪ <i>Actus reus</i> covered by section 5(4)▪ <i>Mens rea</i> present as Tony sees what has happened and says nothing <p>Tony taking flowers:</p> <ul style="list-style-type: none">▪ <i>Actus reus</i> as flowers are property belonging to another and Tony has taken them▪ <i>Mens rea</i> complete using <i>Ghosh</i> test and there is intention to permanently deprive as he gives them to Madge <p>Credit any other relevant comment.</p>																
			<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, spelling and punctuation.</p>	5	<table><tr><th>AO1+AO2 marks</th><th>AO3 mark</th></tr><tr><td>37–45</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	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1		
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5*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define and explain defence of loss of self-control section 54 and section 55 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none">▪ Section 54 (1) (a) requires a loss of self-control▪ Section 54 (2) says it does not need to be sudden and is a jury question▪ Section 55 requires one or both of two qualifying triggers to exist▪ Section 55(3) qualifying trigger of fear of serious violence▪ Section 55(4) qualifying trigger of a thing or things done or said which constitute circumstances of an extremely grave character and cause D to have a justifiable sense of being seriously wronged▪ Section 55(6) – disregard fear of serious violence which self-induced, sense of being seriously wronged if self-induced, sexual infidelity - <i>Clinton</i>▪ Section 54(3) normal person test – takes into account age, sex and circumstances of defendant but a normal degree of tolerance and self-restraint is expected; all characteristics are relevant other than those which bear on general capacity for tolerance or self-restraint <p>Define and explain defence of diminished responsibility as amended by section 52 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none">▪ Must be an abnormality of mental functioning – <i>Byrne</i>▪ Defendant must have a recognised medical condition – <i>Dietschmann, Jama, Seers, Brown</i>▪ Defendant must have been substantially impaired and unable to: understand nature of their act, or form a rational judgment or exercise self-control▪ Abnormality must provide an explanation for defendant’s acts and omissions – must be causal link	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 statutes or references 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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			<p>but need not be only one</p> <ul style="list-style-type: none">▪ Role of intoxication – <i>Fenton, Gittens, Egan, Dietschmann, Hendy, Robson, Swan</i>▪ Role of alcoholism/Alcohol Dependency Syndrome – <i>Tandy, Inseal, Wood, Stewart</i> <p>Credit any other relevant point. Credit any other relevant cases.</p>		Candidates are unlikely to access L4 without making specific reference to relevant statutory sections.														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>In the case of defence of loss of self-control:</p> <ul style="list-style-type: none">▪ There has been an act since Duane has seen pictures of Florence and she has confirmed she is seeing someone who makes her happy▪ In addition Florence laughs at Duane when he has the knife▪ Loss of self control does not need to be sudden and could be linked to Florence’s words or actions – timescale in which events happen appears to be short▪ Qualifying trigger could be when Florence shoves Duane since it is hard▪ Alternatively it could be the combination of Florence’s words and actions▪ Sexual infidelity alone is excluded as a qualifying trigger unless combined with another factor▪ However, not unrealistic for Duane to behave as he does given their relationship, his stress and way Florence behaves▪ Successfully raising the defence would reduce a conviction to voluntary manslaughter. <p>In the case of defence of diminished responsibility:</p> <ul style="list-style-type: none">• Fact that Duane has been prescribed tranquilisers likely to be enough to suggest an abnormality of mental function, especially since medication is a result of depression	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 the main 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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			<ul style="list-style-type: none">• Duane may be unable to form a rational judgment or to exercise self control, especially when Florence tells him about her new man, she shoves him and laughs at him• Duane has taken medication and alcohol – something he was told not to do and intoxication must be ignored• Likely that Duane’s depression may still be enough given he and Florence have been married for 8 years• Successfully raising the defence would reduce a conviction to voluntary manslaughter <p>Credit application of intoxication in the context of DR only.</p> <p>Credit any other relevant comment.</p>															
			Assessment Objective 3 - Communication and presentation <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table><tr><th>AO1+AO2 marks</th><th>AO3 mark</th></tr><tr><td>37–45</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	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1	
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6*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define three types of involuntary manslaughter:</p> <ul style="list-style-type: none">▪ Unlawful act/constructive▪ Gross negligence▪ Subjective reckless manslaughter. <p>Define and explain unlawful and dangerous act/constructive manslaughter:</p> <ul style="list-style-type: none">▪ Requires a positive and unlawful act – <i>Franklin Mitchell, Larkin, Church</i>▪ Unlawful act should be objectively dangerous – <i>Dawson, Watson</i>▪ Positive act be done intentionally – <i>Goodfellow, Newbury and Jones</i>▪ 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. <p>Define and explain gross negligence manslaughter – <i>Bateman, Andrews, Adomako, Wacker</i>:</p> <ul style="list-style-type: none">▪ Needs to be duty to care▪ Duty to care must be breached▪ Must be risk of death and death occurs▪ Defendant's negligence must be so gross that criminal in eyes of jury <p>Define and explain subjective reckless manslaughter:</p> <ul style="list-style-type: none">▪ Was there risk of death or serious harm to the victim?▪ Did defendant see risk and decide to run it? – <i>Lidar</i>. <p>Explain the role of causation:</p> <ul style="list-style-type: none">▪ Essential element to establish <i>actus reus</i> in result crimes <p>Explain causation in fact:</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 statutes or references 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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			<ul style="list-style-type: none">▪ 'but for' test – without defendant's act prohibited consequence would not have occurred – <i>White, Pagett</i> Explain causation in law: <ul style="list-style-type: none">▪ Defendant's act must be more than minimal cause of the harm – <i>Kimsey</i>▪ Defendants act need not be the only cause of death - <i>Cheshire</i>▪ Defendant must take victim as they find them – <i>Holland, Hayward, Dear</i> Explain that the chain of causation can be broken by an intervening act: <ul style="list-style-type: none">▪ Victim's own act– <i>Roberts, Williams and Davis, Marjoram, Corbett, Kennedy No2</i> Credit any other relevant point. Credit any other relevant cases.																
			Assessment Objective 2 - Analysis, evaluation and application Identify unlawful and dangerous act/constructive manslaughter Identify gross negligence manslaughter Identify subjective reckless manslaughter Identify causation In the case of the death of Shannon: <ul style="list-style-type: none">▪ Most likely offence is unlawful and dangerous act/constructive manslaughter▪ There is an unlawful and positive act when Robert pushes Shannon towards Nick▪ This act is objectively dangerous as Nick has a knife▪ Robert's pushing of Shannon is intentional to protect himself▪ The chain of causation could remain intact▪ Reasonable man needs to foresee some harm but not necessarily serious harm that results which would be case here	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 the main 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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4		
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Question			Indicative Content	Mark	Guidance														
			<ul style="list-style-type: none">Robert likely to be liable <p>In the case of the death of Nick:</p> <ul style="list-style-type: none">Most likely offence is unlawful and dangerous act/constructive manslaughterThere is an unlawful and positive act when Robert stabs NickThis act is objectively dangerousThis act would appear to be intentionalReasonable man needs to foresee some harm but not necessarily serious harm that results which would be case hereThe chain of causation would remain intact <ul style="list-style-type: none">Credit discussion of gross negligence manslaughterRobert may have a duty based on being Nick's supplierDuty may be breached if Robert knows the strength and purity of the heroinDeath is causedMay be seen as grossly negligent and therefore criminalAlternatively argue that charge unlikely to succeed based on relationship between Robert and Nick. <p>Credit discussion of subjective reckless manslaughter for which Robert is likely to be liable</p> <p>Reach a sensible conclusion.</p> <p>Credit any other relevant comment.</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>														
			<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, spelling and punctuation.</p>	5	<table><tr><th>AO1+AO2 marks</th><th>AO3 mark</th></tr><tr><td>37–45</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	37–45	5	28–36	4	19–27	3	10–18	2	1–9	1		
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Question		Indicative Content	Mark	Guidance	
7	(a)	Potential answers may:	5	AO2 Levels	AO2 Marks
		Assessment Objective 2 – Analysis, evaluation and application		5	5
				4	4
				3	3
				2	2
				1	1
(b)	P1 Reason that voluntary actus reus needs to be proven in SL crimes OR that it is an SL offence to sell alcohol to an on duty police officer P2 Reason that Thomas commits the AR when he serves the on duty plain-clothes police officer with alcohol P3 Reason that a SL offence requires no proof of MR or genuine mistake may be a defence P4 Reason that there is no sign of the man being a police officer and that Thomas has no reason to ask if he is one P5 Conclude that the statement is inaccurate	5			

Question		Indicative Content	Mark	Guidance
	(c)	<p>P1 Reason that voluntary actus reus needs to be proven in SL crimes OR that it is a strict liability offence to sell/provide unfit meat</p> <p>P2 Reason that by not checking the fridge/storing the food in a warm fridge, Martin commits the AR</p> <p>P3 Reason that a SL requires no proof of MR and/or that there is no defence of due diligence unless stated in statute</p> <p>P4 Reason that it does not matter that Martin is unaware of the problem</p> <p>P5 Conclude that the statement is accurate</p>		
	(d)	<p>P1 Reason that SL offences are usually regulatory/quasi crimes not true crimes</p> <p>P2 Reason that as this is a true crime (Martin could face a potential prison sentence) it is unlikely to be a crime of SL</p> <p>P3 Reason that for true crimes MR is needed</p> <p>P4 Reason that there is no evidence of MR as Martin has no way of knowing the cannabis plants are being grown</p> <p>P5 Conclude that the statement is accurate.</p>	5	

Question		Indicative Content	Mark	Guidance	
8	(a)	Potential answers may:	5	AO2 Levels	AO2 Marks
		5		5	
		4		4	
		3		3	
		2		2	
		1		1	
	(b)	P1 Reason that there must be a theft P2 Reason that the theft is complete when Paul picks up the bag P3 Reason that for robbery there must be the use or threat of force at the time or immediately before stealing and in order to steal P4 Reason that Paul uses a threat of force when he pretends that his fingers in his pocket are a gun just before he picks up the bag Samantha drops P5 Conclude that the statement is accurate.	5		

Question			Indicative Content	Mark	Guidance
	(c)		<p>P1 Reason that there needs to be entry (of a building or part of a building) as a trespasser</p> <p>P2 Reason that Paul has exceeded his permission to be in the flat and is a trespasser</p> <p>P3 Reason that there must be intention/recklessness as to trespass and/or intent for one of the ulterior offences at the time of entry</p> <p>P4 Reason that Paul intends to sell his fathers laptop which is an intent to steal</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	
	(d)		<p>P1 Reason that there must have been entry (of a building or part of a building) as a trespasser</p> <p>P2 Reason that as Tom has not been invited to look after the flat or enter it, he is at least subjectively reckless as to being a trespasser</p> <p>P3 Reason that after entry there must be theft/attempted theft or GBH/attempted GBH</p> <p>P4 Reason that by drinking the wine Tom commits theft</p> <p>P5 Reason that the statement is accurate.</p>	5	

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 Responses 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 Responses 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 Responses 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 Responses 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 Responses 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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