



GCE

Law

Unit **G153**: Criminal Law

Advanced GCE

Mark Scheme for June 2015

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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These are the annotations, (including abbreviations), including those used in scoris, which are used when marking

Annotation	Meaning
	AO2+
	Point 2 (Q7-8), Accurate facts but wrong case name or no name (Q1-Q6)
	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

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.

Aw * 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 an annotation.

This will demonstrate that every page of a script has been checked.



You must also check any additional pages eg A, A1 etc, which the candidate has chosen to use. Before you begin marking, use the Linking Tool to 'link' any additional page(s) to the relevant question(s) and mark the response as normal.

SECTION A

Question	Indicative Content	Mark	Guidance												
1*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define consent – defence in non-fatal offences against the person meaning that no offence has taken place</p> <p>Explain that everyday life presupposes some limiting of the defence</p> <p>Explain the elements of consent:</p> <ul style="list-style-type: none">• Must be real – <i>Tabassum, Olugboja, Richardson, Cuerrier, Dica, Burrell and Harmer, Gillick</i>• Fraud only negatives consent if it deceives as to identity of defendant or as to nature and quality of act – <i>Clarence, Bolduc and Bird, Richardson, Tabassum, Cuerrier, Dica, Konzani</i>• Not always available in non-fatal sexual offences but is sometimes available• Can be implied – <i>Wilson v Pringle</i>• An adult must have the capacity to consent• Limited nature of defence – does not normally apply to any offence under OAPA 1861 unless one of certain exceptions – <i>Brown, AG Ref (No 6 of 1980)</i>• Can be defence in physical contact sports if within the rules of the game – <i>Coney, Billingshurst, Barnes, Ciccarelli</i>• Horseplay can give rise to defence - <i>Jones, Aitken</i>• Lawful chastisement – <i>A v UK</i>• Reasonable surgical interference, injections, tattooing and body piercing give rise to consent – <i>Burrell v Harmer</i>• Influenced by public interest – <i>Donovan, Brown, Wilson, Emmett, Slingsby</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.</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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			<ul style="list-style-type: none">An honest but mistaken belief in consent is effective as a defence - <i>Morgan</i>Credit any other relevant case(s)Credit any other relevant point(s).														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Defence is necessary:</p> <ul style="list-style-type: none">Need for a sensible balance between individual freedom and social paternalismSport – need to not criminalise actions unnecessarily as this is bad for activities seen to be socially usefulSurgical operations – need for balance and to look at both physical and psychological benefitsSexual offences – development of informed consent is sensible as people should be able to make their own decisionsHorseplay – too many people might commit offences if the law is not sensibleRole of public interest is important as it is part of law’s role in wider society <p>Defence is flawed:</p> <ul style="list-style-type: none">Balance does not always seem to be sensibleDoes social paternalism go too far and is there a conflict with the Human Rights Act 1998 and the provisions of the ECHR?Sport – can be hard to delineate inside and outside the rules of the game. Inconsistency as some sports involve permissible deliberate harm and in others less than deliberate harm is an offenceSurgical operations – could be danger of the type of procedures people can undergo such as those involving cosmetic surgery	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.</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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			<ul style="list-style-type: none">Sexual offences – not easy to decide on informed consent and cases suggest courts and juries find it hardHorseplay – decisions can seem hard to justify, especially when looked at alongside sexual offencesComment on provisions put forward by the Law Commission and consideration of whether Parliament should legislate and, if so, in what formPublic interest arguments can appear unbalanced and even irrational, they are often misunderstood as interference <p>Credit any other relevant point(s) Reach a sensible conclusion.</p>														
			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, spelling and punctuation.	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>Explain strict liability: No need to prove <i>mens rea</i> in relation to at least one element of the actus reus – <i>Callow v Tillstone</i>, <i>Storkwain</i>, <i>Prince</i>, <i>Hibbert</i> Distinguished from absolute liability – <i>Larsonneur</i>, <i>Winzar</i> Frequency of occurrence but some move away from such liability in areas such as sexual offences – <i>B v DPP</i> However Parliament still creates offences such as in Sexual Offences Act 2003 – <i>R v G (2008)</i> Such offences do not appear to conflict with HRA 1998 Source of most offences is statutory but limited exceptions – <i>Lemon</i> Statutory interpretation is important Many offences summary only Explain basic principles – <i>Gammon</i> Presumption in favour of <i>mens rea</i> – <i>Sweet v Parsley</i> Presumption particularly strong where offence is truly criminal – <i>B v DPP</i>, <i>Kumar</i>, <i>S</i> Quasi crimes/regulatory offences – <i>Callow v Tillstone</i>, <i>Cundy v Le Cocq</i>, <i>Shah and Shah</i>, <i>Alphacell v Woodward</i> Issues of social concern – <i>Blake</i>, <i>Shah and Shah</i> Statutory wording – words such as ‘cause’, ‘possession’, ‘knowingly’, ‘wilfully’ etc – <i>Warner</i>, <i>Empress Cars</i>, <i>Sheppard and Sheppard</i>, <i>Wings v Ellis</i> Size of penalty and promotion of the law – <i>Lim Chin Aik</i> Explain areas in which strict liability is commonly found. Explain absence of mistake as a defence – <i>Cundy v Le Cocq</i>, <i>Sherras v De Rutzen</i> Explain development of defence of due diligence and its limits – <i>Callow v Tillstone</i>, <i>Smedleys v Breed</i>, <i>Shah and</i></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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			<i>Shah, Tesco v Natrass</i> Credit any other relevant case(s) Credit any other relevant point(s).														
			Assessment Objective 2 - Analysis, evaluation and application Discuss any or all of the following issues: Basic premise that offences should require <i>mens rea</i> : <ul style="list-style-type: none">• Fundamental legal principle• Indicates blameworthiness• Links to sentencing and gives it cogency• Sends a message to society Problems with not requiring <i>mens rea</i> : <ul style="list-style-type: none">• Denial of defences runs counter to basic principles• Possible lack of awareness of commission of offences troubling basis for criminal liability due to sentences and stigma• Criminal law not targeting right people• Criminal law lacks credibility Public protection arguments: Can deal with policy issues and so promote care by businesses Encourages high standards among businesses based on social utility Offences can have deterrent value Offences can target vulnerable groups such as the young In areas such as food it is impossible for the public to do all their own checks Offences can be dealt with cheaply, speedily and efficiently as <i>mens rea</i> issues avoided Often supported by regulatory bodies whose role is to ensure offences do not occur in first place Sentences are rarely a threat to individual liberty, making	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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	<p>them consistent with human rights which is good for public protection</p> <p>Offences can prevent businesses profiting from taking risks</p> <p>Extent to which not good reason for existence:</p> <p>Offences do not necessarily allocate blame effectively and so do not offer public protection</p> <p>Problematic as those unaware of a risk can be guilty which does not necessarily lead to effective regulation</p> <p>The time taken by administrative systems is not necessarily beneficial for public protection</p> <p>The cheapness of court procedures can be more than offset by the cost of regulatory systems</p> <p>These systems can also be inconsistent in their application which does not offer good public protection</p> <p>There is little hard evidence that standards improve</p> <p>Sometimes conviction is too easy</p> <p>There can be a disproportionate social stigma effect which penalises small businesses and does not protect public as against big businesses</p> <p>A lack of due diligence defence and fair application of mistake defence is problematic</p> <p>Changing trend in some offences suggests that other methods are better to deal with such offences</p> <p>Creation of offences does not necessarily protect as there is not always good publicity from Parliament</p> <p>Other methods such as moving strict liability to administrative law might be fairer and protect better</p> <ul style="list-style-type: none"> • Credit any other relevant point(s) • Reach a sensible conclusion. 		

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3*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define and explain defence of loss of control section 54 and 55 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none">• Provocation abolished by section 56 (1) – <i>Clinton</i>• Section 54 (1) (a) requires a loss of self-control• Section 54 (1) (b) requires a qualifying trigger• Section 54 (2) says loss no need to be sudden and is a jury question• Section 54 (4) if a person has acted out of revenge the defence will fail• Section 55 requires one or both of two qualifying triggers to exist• Section 55 (1) (c) – person of D’s age and sex with a normal degree of tolerance and self-restraint and in circumstances of D may have reacted in the same or similar way – <i>Jewell, Workman, Barnesdale-Queane</i>• Section 55 (3) - qualifying trigger of fear of serious violence and need not be from victim• Section 55 (4) - qualifying trigger of a thing or things done or said circumstances of an extremely grave character and a justifiable sense of being seriously wronged – <i>Asmelash, Dawes</i>• Section 55 (5) – combination of (3) and (4)• Section 55 (6) – sexual infidelity or incitement• Objective element as circumstances whose only relevance to D’s conduct is that they bear on the general capacity for tolerance or self-restraint are excluded – <i>Clinton, Parker, Evans, Zebedee</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.</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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			<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, Brennan</i>• Defendant must have a recognised medical condition – <i>Dietschmann, Jama, Seers, Dowds</i>• Defendant must have been rendered unable to: understand the 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 but need not be the only one - <i>Brown</i>• Role of intoxication – <i>Fenton, Gittens, Egan, Dietschmann, Hendy, Robson, Swan, Dowds</i>• Role of alcoholism/Alcohol Dependency Syndrome – <i>Tandy, Inseal, Wood, Stewart</i> <p>Credit any other relevant case(s) Credit any other relevant point(s).</p>														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Discuss any or all of the following areas: Loss of control:</p> <ul style="list-style-type: none">• Old law confusing amalgam of common law and statute and seemed out of date• Apparent bias in favour of men• Confusion in definition of concepts such as immediacy• Reasonable man test appeared contradictory and created injustice• Old law did not give effect to Parliament's intention• New law tries to re-calibrate law but complex• Loss of control is wider and therefore fairer as it no longer needs to be sudden	20	<table border="1"><thead><tr><th>AO2 Levels</th><th>AO2 Marks</th></tr></thead><tbody><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></tbody></table> <p>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.</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"> • Now includes a fear of serious violence which covers situations in which people previously had no defence but it may be hard to prove • Defence now narrower as sexual infidelity excluded even though this was one of original reasons for creating provocation • Defence now more tightly controlled as things said or done must be of an extremely grave character which has both positive and negative implications • Defence more restrictive as things said and/or done need to cause a justifiable sense of being seriously wronged – again this can be both positive and negative • Policy decisions by judges can be seen as ‘raising the bar’ • Can be seen as a compromise solution as Law Commission had suggested removing any need for loss of self-control when women kill abusive partners • Still seems to be debate among judges – does this law give effect to Parliament’s intentions? <p>Diminished Responsibility:</p> <ul style="list-style-type: none"> • Old DR law problematic to what conditions sufficient • Now more medical approach as takes account of modern medical knowledge and ‘recognised medical condition’ allows for flexibility and development • Now clearer about aspects of mental functioning to be taken into account • However issues about medical evidence and believability of expert witnesses can remain controversial and testing for juries • DR now more coherent defence due to loss of control • More of a stand-alone defence than just a catch-all • Burden of proof still lies on the defendant which could be a breach of Article 6 ECHR 		<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>Candidates are unlikely to reach level 5 without dealing with both defences.</p>

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			<ul style="list-style-type: none">Not all changes occurred - Law Commission proposed including developmental immaturity but rejected as conditions such as autism and learning difficulties could come under 'recognised medical conditions'Difficult overlaps remain with defences such as insanity and intoxication but clearer lines relating to those who drink or are alcoholicsJury reaction and policy issues can still be influential which may not be fairCredit any other relevant point(s)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, spelling and punctuation.</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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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 – s1 Theft Act 1968</p> <p>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 – tangible/intangible - money• Section 5 – belonging to another – ownership, possession or control – <i>Turner</i>• Section 5 (3) – property given for specific purpose must be used in particular way – <i>Hall, Davidge v Bunnett, Wain</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 having taken reasonable steps to do so – <i>Small</i>• 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>Feely, Ghosh</i>• Section 6 – intention to permanently deprive – intention to take for ever or for period equivalent to outright taking, even if intention is to return property	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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			<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>• Offence committed at the time the theft is complete – <i>Corcoran and Anderton</i> <p>Define and explain burglary – charged under section 9 Theft Act 1968:</p> <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 damage• Section 9(1)(b) – having entered as a trespasser the defendant commits or attempts to commit theft or GBH• Entry – <i>Brown, Ryan</i>• Building or part of a building – <i>Walkington</i>• Trespasser – <i>Collins, Jones and Smith</i>• Credit any other relevant case(s).• Credit any other relevant point(s).														
			<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Identify theft Identify robbery Identify burglary</p> <p>In the case of Imran and the £50:</p> <ul style="list-style-type: none">• Section 5(3) – Imran has been given money for a specific purpose and buys something different• Section 2(1)(b) – Imran might argue he is not dishonest as his mother would not mind him spending	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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>the money on aftershave. A jury might be unlikely to see such behaviour as dishonest, especially if <i>Ghosh</i> test is used</p> <p>In the case of Imran and the jeans:</p> <ul style="list-style-type: none"> • <i>Actus reus</i> complete as there is clear appropriation of property belonging to another. The fact that Imran puts them back does not matter in law • <i>Mens rea</i> also present as Imran is dishonest, not likely to be able to come within any of exceptions, he has already spent his money and is looking to hide the jeans which is evidence of his intention to permanently deprive <p>In the case of Imran and the bracelet:</p> <ul style="list-style-type: none"> • <i>Actus reus</i> of theft complete as there is appropriation of property belonging to another • <i>Mens rea</i> as Imran is clearly dishonest <p>In the case of Jamal and the shoes:</p> <ul style="list-style-type: none"> • Section 9(1)(a) – Jamal enters the store as a trespasser given his intention to steal and the offence is complete at the time of entry <p>In the case of Ahmed and the watch:</p> <ul style="list-style-type: none"> • Section 9(1)(b) – Ahmed becomes a trespasser when he goes into a part of the building. He then completes theft as he picks up the watch and tries to leave where he has no permission to be with the watch he has picked up • Section 8 - robbery – elements of theft appear to be complete. Force is used as part of the ongoing process of theft and before Ahmed has left the building <p>Credit any other relevant point(s). Reach a sensible conclusion.</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>Candidates are unlikely to access level 5 without considering all relevant offences</p>

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			<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>37–50</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*	<p>Potential answers may:</p> <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>White, Pagett</i>• Causation in law – operative and substantial test – <i>Cheshire, Kimsey</i> (slight or trifling link)• No break in chain of causation <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• Duty based on relationship – usually parent and child – <i>Gibbins and Proctor</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>Nedrick, Woollin</i>• Section 8 Criminal Justice Act 1967 – subjective test and foresight only part of evidence from which intention inferred• Transferred malice - <i>Latimer</i> <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>	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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			<ul style="list-style-type: none"><i>Mens rea</i>: Intention – <i>Widdowson, Whybrow, Mohan, Walker and Hayles</i>Credit any other relevant case(s).Credit any other relevant point(s).														
			<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In the case of Tyrone’s attack on Gary: Possibility of attempted murder</p> <ul style="list-style-type: none">There is an <i>actus reus</i> of doing an act which is more than merely preparatory as Tyrone has beaten Gary up very badlyClear link in terms of causation between Tyrone and GaryEvidence of intention as this was a calculated act on Tyrone’s part because of his anger and what Shona said about how she was feeling <p>In the case of the death of Raymond: Possibility of murder</p> <ul style="list-style-type: none">There is <i>actus reus</i> of unlawful killing of a human beingCausation for Tyrone based on stabbing man multiple times<i>Mens rea</i> – stabbing man multiple times could be direct intent but also credit oblique intent as not clear where man was stabbedNo defence for killing Raymond instead of Gary as transferred malice would apply	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.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p> <p>Candidates are unlikely to access level 5 without a consideration of all issues including omissions</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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			<p>In the case of the death of Shona: Possibility of murder</p> <ul style="list-style-type: none">• There is <i>actus reus</i> as the police find Shona dead• Tyrone has a statutory duty as a father to care for his daughter• Tyrone has a duty based on relationship and he deliberately locks her in her room, does not feed her and does not get a doctor• <i>Mens rea</i> – intention provided by Tyrone not doing his duty and not seeking medical help <p>Credit any other relevant point(s). Reach a sensible conclusion.</p>														
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6*	<p>Potential answers may:</p> <p>Assessment Objective 1 - Knowledge and understanding</p> <p>Define and explain defence of automatism:</p> <ul style="list-style-type: none">• Involuntary act without bodily control – <i>Bratty, T, Falconer, Parks, Rabey, Watmore v Jenkins, Isitt, AG Ref (No 2 of 1992)(1993)</i>• Such as reflex action, spasm or convulsion – <i>Hill v Baxter, Whoolley</i>• Induced by external factor – <i>Quick and Paddison</i>• Must not be self induced – <i>Lipman, Kay v Butterworth, C, Bailey</i>• Results in inability to form <i>mens rea</i>• Successful defence leads to acquittal <p>Define and explain defence of insanity using M’Naghten Rules 1843:</p> <ul style="list-style-type: none">• Results in inability to form <i>mens rea</i>• Defence must prove defendant insane on balance of probabilities• Requires a defect of reason – lack of reasoning 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>• So defendant does not know nature and quality of act or that legally wrong – <i>Codere, Windle, Johnson</i>• Successfully raising the defence can lead to special verdict• Successfully raising the defence can lead to range of conclusions up to and including committal to a mental hospital	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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	<p>Define and explain defence of duress:</p> <ul style="list-style-type: none"> • Pressure • Requires threat of death or serious bodily harm – <i>Valderrama-Vega</i> • To defendant or someone close to them – <i>Hasan, Wright</i> • Generally threat immediate or almost immediate – <i>Hudson and Taylor, Hasan</i> • Defendant judged by their perception of threat – <i>Safi</i> • Need <i>nexus</i> between threat and offence committed – <i>Cole</i> • Limits when voluntary involvement in criminal enterprise – <i>Shepherd, Hasan</i> • Standard test – <i>Graham, Hasan</i> <p>Define and explain common law defence of self-defence:</p> <ul style="list-style-type: none"> • Normally applies to non fatal offences against the person – <i>Whyte, Oatridge</i> • Possibility of retreat – <i>McInnes, Palmer, Bird, Beckford, Re A</i> • Imminence of threat – <i>AG Ref (No 2 of 1983)(1983), Malnik</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> • Pre-emptive strikes – <i>Dean</i> • Section 76 Criminal Justice and Immigration Act 2008 • Section 43 Crime and Court Act 2013 • Credit any other relevant case(s). • Credit any other relevant point(s). 		

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	<p>Assessment Objective 2 - Analysis, evaluation and application</p> <p>Identify automatism Identify insanity Identify duress Identify self-defence</p> <p>In the case of Margaret and the milk:</p> <ul style="list-style-type: none">• Defence Margaret likely to choose is automatism• There is an external factor as she has been hit on the head• Her conduct would appear to be involuntary by putting the milk in her own bag• May or may not be able to show total destruction of voluntary control as she has managed to get to the shop• Although she is a diabetic no evidence that this has had any effect• Defence may or may not succeed depending on reasoning <p>In the case of Margaret attacking the waiter:</p> <ul style="list-style-type: none">• Defence Margaret would want to choose is automatism but more likely to be insanity• She has not taken her medication and is feeling dizzy which suggests she is not able to reason at all• Attacking the waiter likely to be seen as operation of the disease itself• There is nothing to suggest that she knows what she is doing or that it is wrong in law• Defence of insanity likely to be successful and Margaret may choose not to run a defence at all	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.</p> <p>Level 1 – an awareness of the area of law identified by the question.</p> <p>Candidates are unlikely to reach level 5 without consideration of all relevant defences</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<p>In the case of Colin robbing the petrol station:</p> <ul style="list-style-type: none"> • Defence Colin would choose is duress • Defence may fail as Colin is associating with a gangster, Bill • Has to be threat to him or someone close to Colin, here it is his wife • Has to be threat of death or GBH and Margaret not being able to play hockey again could be sufficient • Has to be nexus and here Bill does not tell Colin how to pay the money • Colin does not know when Bill will carry out his threat so he could get help • Defence unlikely to succeed <p>In the case of Colin shooting Margaret:</p> <ul style="list-style-type: none"> • Defence Colin would choose is self-defence • His mistake as to identity needs to be based subjectively and he is frightened • There is no clear threat as Colin only sees a shape • There is no action by the shape so Colin's force could be disproportionate and defence will fail • Credit counter-argument based on householder attacking someone in their own home as long as well reasoned <p>Credit any other relevant point(s). Reach a sensible conclusion.</p>		

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SECTION C

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7			Assessment Objective 2 - Analysis, evaluation and application		<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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	(a)		P1 Reason that battery is unlawful touching/force P2 Reason that Elliot slapping Juan is unlawful touching/force P3 Reason that Elliot must have intention or subjective recklessness for touching/force P4 Reason that Elliot appears to act intentionally as he goes over to Juan in response to his laughing P5 Conclude that statement is accurate.	5														
	(b)		P1 Reason that Section 47 requires ABH which is hurt or injury which interferes with health or comfort P2 Reason that a bad bruise will interfere with health or comfort P3 Reason that Juan must have intention or subjective recklessness for the common assault but not for the harm that follows P4 P4 Reason that Juan swinging a punch would be subjectively reckless if not intentional P5 Conclude that the statement is inaccurate.	5														
	(c)		P1 Reason that this offence requires infliction of a wound or GBH P2 Reason that a bleeding eyebrow can be a wound OR P2a Reason that the cut is unlikely to be classed as a wound P3 Reason that Elliot must act maliciously and have intention or subjective recklessness to cause some harm	5														

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			<p>P4 Reason that Elliot hurling a golf club at Juan would appear to suggest he is likely to be subjectively reckless as to the causing of some harm</p> <p>P5 Conclude that statement is accurate</p> <p><u>OR</u></p> <p>P5a Conclude that the statement is inaccurate.</p>		
	(d)		<p>P1 Reason that Juan must wound or cause GBH</p> <p>P2 Reason that a broken leg would be enough for GBH</p> <p>P3 Reason that Juan must have intention for the serious harm caused</p> <p>P4 Reason that when Juan runs at Elliot from behind this is evidence of intention of serious harm</p> <p><u>OR</u></p> <p>P4a Reason that when Juan runs at Elliot from behind this is not evidence of intention for serious harm</p> <p>P5 Conclude that statement is inaccurate</p> <p><u>OR</u></p> <p>P5a Conclude that the statement is accurate.</p>	5	

Question			Indicative Content	Mark	Guidance	
8			Assessment Objective 2 - Analysis, evaluation and application		AO2 Levels	AO2 Marks
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					2	2
					1	1
	(a)		<p>P1 Reason that there must be an act which causes death</p> <p>P2 Reason that when Ben's car hits Jack he is the cause of death</p> <p>P3 Reason that Ben must see a risk of death/serious injury and decide to run it</p> <p>P4 Reason that by speeding Ben has seen a risk of death/serious injury and decided to run it</p> <p>P5 Conclude that the statement is accurate.</p> <p>OR</p> <p>P4a Reason that Ben does not foresee the risk of death/serious injury</p> <p>P5a Conclude that the statement is inaccurate.</p>	5		
	(b)		<p>P1 Reason that there must be an unlawful and dangerous act which causes death</p> <p>P2 Reason that this occurs when Ben shoves the man who falls into Christine who he needs to take as he finds her</p> <p>P3 Reason that there must be mens rea for the initial unlawful act</p> <p>P4 Reason that Ben would appear to shove the man intentionally</p> <p>P5 Conclude that the statement is inaccurate.</p>	5		
	(c)		<p>P1 Reason that there must be an unlawful and dangerous act which causes death</p> <p>P2 Reason that this occurs when Ben shoves the man which leads to Christine dropping Toby</p>	5		

Question			Indicative Content	Mark	Guidance
			<p><u>OR</u> P2a Reason that although there is an unlawful and dangerous act the chain of causation is broken by Doctor Brown P3 Reason that there must be mens rea for the initial unlawful act P4 Reason that Ben would appear to shove the man intentionally P5 Conclude that the statement is accurate <u>OR</u> P5a Conclude that the statement is inaccurate.</p>		
	(d)		<p>P1 Reason that there must be a duty to act and a breach of that duty which causes death P2 Reason that Doctor Brown breaches his duty when he fails to examine Toby for six hours P3 Reason that having regard to the risk of death the failure to act is so bad it is criminal in the eyes of the jury P4 Reason Doctor Brown sleeping off a hangover would be bad enough to be deemed criminal and therefore grossly negligent P5 Conclude that the statement is inaccurate.</p>	5	

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