



**GCE**

**Law**

Unit **G154**: Criminal Law Special Study

Advanced GCE

**Mark Scheme for June 2016**

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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

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## Annotations

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

Question		Answer	Marks	Guidance												
1*		<p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 2</b> (Analysis, evaluation and application)</p> <p><b>CP</b> The Court of Appeal held that a victim can consent to the risk of contracting HIV and that this would provide a defence under s.20 OAPA. The Court of Appeal overruled the decision in <i>Clarence</i> as being an 'outdated restriction'. The Court of Appeal decided that when a defendant knowing that they were infected with HIV had unprotected sex with a victim and failed to reveal this fact, that whether the defendant was reckless was a matter for the jury to decide and not a matter of law for the judge to decide.</p> <p><b>1</b> The defendant, knowing that he was infected with HIV, had unprotected sex with two female partners on several occasions infecting them with the disease. Neither victim was aware, at the time, he was carrying the disease. He was convicted by a jury of two counts of inflicting 'biological' GBH contrary to s.20 OAPA</p> <p><b>2</b> At the trial the Prosecution argued that he had been reckless as to whether the victim's might become infected with the disease and if they had known of his condition they would not have consented. The trial judge stated that the decision in <i>Clarence</i> had been 'undermined' and that it was open to the jury to convict despite the decision in <i>Clarence</i>. He also stated that the decision in <i>Brown</i> removed the victim's legal capacity to consent to such serious harm and withdrew the issue of consent from the jury.</p> <p><b>3</b> The defendant appealed against conviction. The Court of Appeal quashed his conviction because of the misdirection at trial in removing the issue of consent from the jury. Instead, a retrial was ordered where the defendant was again convicted by a different jury of inflicting 'biological' GBH contrary to s.20 OAPA</p> <p><b>4</b> The case introduced the doctrine of informed consent fully into English criminal law. The Court of Appeal stated that while the victims had consented to the 'nature' of the act they had not consented to the 'quality' of the act. The Court stated that consent to unprotected sex does not automatically give their consent to the risk of infection and that the defendant must inform a potential victim of the disease so they can make</p>	12	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11-12</td> </tr> <tr> <td>4</td> <td>9-10</td> </tr> <tr> <td>3</td> <td>7-8</td> </tr> <tr> <td>2</td> <td>4-6</td> </tr> <tr> <td>1</td> <td>1-3</td> </tr> </tbody> </table> <p>Marks should be awarded as follows:</p> <ul style="list-style-type: none"> <li>Max 3 marks for the Critical Point (C)</li> <li>Max 6 marks for Analytical Points (1-6)</li> <li>Max 3 marks for a relevant Linked Case(s) (LNK)</li> </ul> <p><b>Level 5</b></p> <p>Responses are unlikely to achieve Level 5 without discussing a Critical Point, without using a Linked Case for the purpose of showing development, without making two Analytical Points and discussing the relevance of the case.</p> <p><b>Re: Analytical Point 6</b></p> <p>Please note credit can only be given for comment that has direct relevance to <i>Dica</i>. Hence any generic comment should not be credited.</p> <p><b>Re: Linked Case</b></p> <p>Please note credit can only be given for the link case where there is a specific link to <i>Dica</i>.</p>	AO2 Level	AO2 marks	5	11-12	4	9-10	3	7-8	2	4-6	1	1-3
AO2 Level	AO2 marks															
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Question	Answer	Marks	Guidance										
	<p>an informed decision whether to have unprotected sex.</p> <p><b>5</b> Discuss the Court of Appeal's reference to s.18 in these circumstances. That the Court of Appeal stated that Brown would apply here and that there would be no defence of consent to a s.18 offence in these circumstances. Discuss that the Court's consideration of s.18 was <i>obiter dicta</i>.</p> <p><b>6</b> Discuss any other relevant analytical comment to <i>Dica</i>. For example: the defendant did appeal unsuccessfully to the Court of Appeal against the conviction in his second trial; the case 'filled a gap' in the common law in the absence of statutory guidance</p> <p><b>LNK</b> Link to any <b>relevant</b> case to <i>Dica</i> for example: <i>Clarence, Konzani, Brown, Currier</i>.</p>												
	<p><b>Assessment Objective 3</b> (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>	4	<table border="1"> <thead> <tr> <th>AO2 marks</th> <th>AO3 marks</th> </tr> </thead> <tbody> <tr> <td>10-12</td> <td>4</td> </tr> <tr> <td>7-9</td> <td>3</td> </tr> <tr> <td>4-6</td> <td>2</td> </tr> <tr> <td>1-3</td> <td>1</td> </tr> </tbody> </table>	AO2 marks	AO3 marks	10-12	4	7-9	3	4-6	2	1-3	1
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2*		<p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1</b> (Demonstrate knowledge and understanding)</p> <p>Explain the area of non-fatal offences against the person as being where consent plays a significant role</p> <p>Explain that the burden of proof is on the CPS to disprove consent</p> <p>Explain the limited nature of the defence in that consent does not normally apply to section 47 OAPA 1861 and above <i>Attorney General's Reference (No 6 of 1980)</i></p> <p>Explain that everyday life presupposes some limiting of the defence in that consent can be either expressed by the parties or implied through custom</p> <p>Explain that an adult must have the valid capacity to consent</p> <p>Explain, however, that consent can lead to difficulties when applied to the young or to the mentally disordered for who special rules often apply Lord Goff in <i>Re F</i></p> <p>Explain that people who cannot understand the nature of the act they are consenting to, cannot generally consent <i>Burrell v Harmer, Gillick</i></p> <p>Explain the elements of consent state that it must be real and valid <i>Tabassum, Richardson, Dica</i></p> <p>Explain that consent is not generally removed by fraud except if the fraud is as to the nature or quality of the act or to the identity of the accused <i>Tabassum, Dica, Richardson</i></p> <p>Explain the doctrine of informed consent <i>Cuerrier, Dica</i>,</p> <p>Explain that there are certain types of behaviour which the law has had to consider with respect to the defence of consent.</p>	16	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14-16</td> </tr> <tr> <td>4</td> <td>11-13</td> </tr> <tr> <td>3</td> <td>8-10</td> </tr> <tr> <td>2</td> <td>5-7</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p><b>Level 5</b> Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include statutory/common law provisions where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed. Responses are likely to use material both from within the pre-release materials and from beyond the pre-release materials which have a specific link to the area of law.</p> <p><b>Level 4</b> Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed.</p> <p><b>Level 3</b> Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this</p>	AO1 Level	AO1 marks	5	14-16	4	11-13	3	8-10	2	5-7	1	1-4
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Question	Answer	Marks	Guidance
	<p>For example:</p> <ul style="list-style-type: none"> <li>• Consensual sexual activity whether vigorous or not <i>Emmett</i></li> <li>• Prize fighting <i>Coney</i></li> <li>• Sado-masochistic activities for sexual pleasure <i>Brown</i> – this tends to reiterate the position in <i>Donovan</i> on inflicting harm for sexual purposes</li> <li>• Consent to childish 'horseplay' has been accepted for some time <i>Jones</i> this principle has also been extended to adult horseplay <i>Aitken</i></li> <li>• The position on transmission of a sexual disease <i>Clarence, Dica, Konzani, Golding</i> (2014), <i>Mason</i> (2014)</li> <li>• Surgery – therapeutic or cosmetic</li> <li>• Ritual circumcision/body piercing/tattooing <i>Wilson</i></li> <li>• Contact sports including boxing, wrestling, martial arts, football, rugby etc... <i>Barnes, Billinghurst</i></li> <li>• Lawful chastisement and the impact of the Children Act 2004</li> <li>• Euthanasia and death – <i>Pretty, Leach</i></li> </ul> <p>Explain the potential implications of the European Convention on Human Rights and the Human Rights Act</p> <p>Credit any other relevant point of knowledge and understanding.</p>		<p>area of law to include statutory/common law provisions where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed.</p> <p><b>Level 2</b> Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without two relevant cases, neither of which are required to be developed.</p> <p><b>Level 1</b> Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p>

Question		Answer	Marks	Guidance												
2*		<p><b>Assessment Objective 2</b> (Analysis, evaluation and application)</p> <p>Discuss the difficulties in striking a balance between individual freedom and social paternalism/public policy and the right to autonomy under the Human Rights Act 1998 and the provisions of the European Convention on Human Rights <i>Pretty</i></p> <p>Discuss the fact that in <i>Brown</i> Lord Templeman stated that in some circumstances the accused would be entitled to an acquittal although the activity resulted in the infliction of some injury:</p> <ul style="list-style-type: none"> <li>• Surgery involves intentional violence resulting in actual or sometimes serious bodily harm. However, surgery is a lawful activity and is seen as having a social utility.</li> <li>• Tattooing and body piercings.</li> <li>• How to define what is within the rules or outside of the rules in contact sports.</li> </ul> <p>Discuss the contrast in the decision in <i>Brown</i> with that of <i>Wilson</i> which concerned with the consensual activities of adults in private (<i>Emmett, Meachen</i>)</p> <p>Discuss the importance of 'what is in the public interest'</p> <p>Discuss where the courts have 'drawn the line'</p> <p>Discuss the modern influence, and clear modern contradiction of the traditional common law, by TV shows like <i>Jackass</i> and <i>Dirty Sanchez</i> etc.</p> <p>Discuss the Government's or Law Commission's suggested reforms</p> <p>Discuss any other relevant analytical comment</p> <p>Reach any sensible conclusion.</p>	14	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>AO2 marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13-14</td> </tr> <tr> <td>4</td> <td>10-12</td> </tr> <tr> <td>3</td> <td>7-9</td> </tr> <tr> <td>2</td> <td>4-6</td> </tr> <tr> <td>1</td> <td>1-3</td> </tr> </tbody> </table> <p><b>Level 5</b> Responses are unlikely to achieve Level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion with some synoptic content.</p> <p><b>Level 4</b> Responses are unlikely to achieve Level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote.</p> <p><b>Level 3</b> Responses are unlikely to achieve Level 3 without adequate analytical evaluation of the relevant areas of law and some focus on the quote.</p> <p><b>Level 2</b> Responses are unlikely to achieve Level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p><b>Level 1</b> Responses are unlikely to achieve Level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p>	AO2 Level	AO2 marks	5	13-14	4	10-12	3	7-9	2	4-6	1	1-3
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3		<p>Potential answers <b>MAY</b>:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain consent is a common law 'defence' which provides an excuse, in certain limited situations, to a defendant who had carried out a potential offence</p> <p>Explain that this is because the defendant has a legitimate reason and the full permission of the 'victim'</p> <p>Explain that the common law looks for certain elements of the potential consent before establishing whether the defence will succeed:</p> <ul style="list-style-type: none"> <li>• There must be <u>valid</u> consent. The victim must have had the mental capacity to understand the act against them <i>Gillick, Burrell v. Harmer</i></li> <li>• The consent must be <u>true</u> consent. Here the victim must have the ability to completely understand the actual act that was to take place and any consequences <i>Clarence</i></li> <li>• The consent must have been obtained without fraud. The defence would not operate if the 'victim' was deceived as to the nature and quality of the act and/or the identity of the defendant <i>Richardson, Tabassum</i></li> </ul> <p>Explain that the common law and statute has established limited categories, or species, of acceptable consent e.g. surgery, sexual activity <i>Dica, Konzani</i>, sport <i>Barnes</i>.</p>	10	<table border="1"> <thead> <tr> <th>Level</th> <th>AO1</th> <th>AO2</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>7-8</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>5-6</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>3-4</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-2</td> <td>1-4</td> </tr> </tbody> </table> <p><b>Marks should be awarded (per scenario) as follows:</b></p> <table border="1"> <thead> <tr> <th>Level</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> </tr> <tr> <td>4</td> <td>7-8</td> </tr> <tr> <td>3</td> <td>5-6</td> </tr> <tr> <td>2</td> <td>3-4</td> </tr> <tr> <td>1</td> <td>1-2</td> </tr> </tbody> </table> <p><b>A maximum of 3 marks can be allocated for AO1 for each part question.</b></p> <ul style="list-style-type: none"> <li>• <b>Max 3 marks for the Critical Point (C)</b></li> <li>• <b>Max 6 marks for Applied Points (1-4/5)</b></li> <li>• <b>Max 1 mark for a logical conclusion/assessment of the most likely outcome in terms of liability (CON)</b></li> </ul>	Level	AO1	AO2	5	9-10	17-20	4	7-8	13-16	3	5-6	9-12	2	3-4	5-8	1	1-2	1-4	Level	(a), (b) or (c)	5	9-10	4	7-8	3	5-6	2	3-4	1	1-2
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Question	Answer	Marks	Guidance
	<p><b>Assessment Objective 2</b> (Analysis, evaluation and application)</p> <p><b>In the case of (a):</b></p> <p><b>C</b> Identify Hope's consent must have been obtained without fraud. It is unlikely that the defence would operate here, although she was not deceived as to the nature of the act, the tattoo, she was deceived as to the quality of the act by misspelling the word 'Mother' and to the identity of Chris since he was not qualified to tattoo Hope. <i>Tabassum</i></p> <p><b>1</b> Hope can consent to assault and battery but for any non-fatal offence above these, here a wound or ABH, consent is only valid here if there is a legally recognised 'good reason'</p> <p><b>2</b> Identify that Hope must be capable of giving valid/legal consent. Hope must have the mental capacity to understand the act against her and since she is only 14 years old it is unlikely that she has the ability to fully understand the process of tattooing. <i>Gillick</i></p> <p><b>3</b> Identify Hope must be capable of giving true consent. Here Hope must have the ability to completely understand the actual act of tattooing, what it entails and any consequences of the tattoo, for example, pain or care of the tattoo which for a 14 year old is unlikely. <i>Clarence</i></p> <p><b>4</b> Identify that tattooing can be a recognised 'good reason' to allow consent as a defence. Bodily adornments, in this form, have been acceptable for hundreds of years. <i>Burrell v Harmer</i></p> <p><b>CON</b> Reach a sensible conclusion regarding consent.</p>	20	<p>In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a logical conclusion.</p>

Question		Answer	Marks	Guidance
		<p><b>In the case of (b)</b></p> <p><b>C</b> Identify that sport, including ice hockey, is a recognised 'good reason' to allow consent as a defence to injuries caused. The 'off-the-ball' pulling of Ian's helmet off and seriously injuring him is highly unlikely to afford Boris the defence of consent as it would not be a 'good reason' or 'within the rules'. <i>Barnes, Billinghamurst</i></p> <p><b>1</b> Ian can consent to assault and battery but for any non-fatal offence above these, consent is only valid if there is a legally recognised 'good reason'</p> <p><b>2</b> Identify that Ian must be capable of giving valid consent. Ian must have the mental capacity to understand the act against him and since he is playing a professional match that would suggest he is an adult and is likely that he has the ability to fully understand the injuries associated and allowed within the rules of ice hockey</p> <p><b>3</b> Identify Ian must be capable of giving true consent. Here Ian must have the ability to completely understand what participating in ice hockey involves within the rules of the game, in particular, any injury associated <i>Ciccarelli</i></p> <p><b>4</b> Identify Ian's consent must have been obtained without fraud. There is no fraud or deception here since Ian was aware of the nature and quality of the act of playing ice hockey and of the identity of Boris who was playing for the other side <i>Tabassum</i></p> <p><b>CON</b> Reach a sensible conclusion regarding consent.</p>		

Question		Answer	Marks	Guidance
		<p><b>In the case of (c):</b></p> <p><b>C</b> Identify that horseplay has been recognised as a 'good reason' to allow consent as a defence. Despite the fact that the injury is very serious, due to case law that it is possible that Daryl can give consent to the injury due to the exceptional circumstances of the horseplay <i>Jones</i></p> <p><b>1</b> Daryl can consent to assault and battery but for any non-fatal offence above these, consent is only valid if there is a legally recognised 'good reason' <i>Aitkin</i></p> <p><b>2</b> Identify that Daryl must be capable of giving valid consent. Depending upon his age, Daryl may have the mental capacity to understand the act against him and since they have both 'playing darts' they could potentially fully understand the injuries associated with his act. <i>Gillick, Burrell v Harmer</i></p> <p><b>3</b> Identify Daryl must be capable of giving true consent. Here Daryl must have the ability to completely understand what participating in this dangerous act of throwing darts at each other could involve <i>Aitkin</i></p> <p><b>4</b> Identify Daryl's consent must have been obtained without fraud. There would only be fraud or deception herein relation to the nature, quality and/or identity. Daryl may have been aware of the potential nature (playing human darts) and quality (potential act of serious injury) of the horseplay and of the identity of Roger who is his best friend <i>Tabassum</i></p> <p><b>CON</b> Reach a sensible conclusion regarding consent.</p>		

## APPENDIX 1

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

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

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