OCR
Oxford Cambridge and RSA

GCE

Law

Unit **G153:** Criminal Law

Advanced GCE

Mark Scheme for June 2017

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.

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.

<table>
<tr><th colspan="3">Question</th><th>Answer</th><th>Marks</th><th>Guidance</th></tr>
<tr><td>1*</td><td></td><td></td><td>Potential answers may include:

Assessment Objective 1 – Knowledge and understanding

Explain the role of causation:
Essential element when looking to establish actus reus in result crimes
Must be evidence to show defendant caused the consequence both factually and legally

Explain causation in fact:
‘But for’ test – without the defendant’s act the prohibited consequence would not have occurred – White, Roberts, Pagett

Explain causation in law:
Is D is blameworthy based on the significance of their reaction?
Can the result fairly be said to be imputable to the defendant?
D’s act must be more than a minimal cause of the harm (De minimis principle) - Kimsey (more than a slight or trifling link), R v Marchant and Muntz, Cheshire, Mellor, (contribute significantly), Hughes (significant means more than minimal)
Defendant must not accelerate the victim’s death – Adams
Defendant must take the victim as they find them –Blaue, Hayward

Explain intervening acts which may break the chain of causation (novus actus interveniens):
Medical treatment – Smith (if wounds are still operating & substantial medical treatment will not break the chain), Cheshire (medical treatment must be so potent and independent from D’s acts), Jordan (medical treatment must</td><td>25</td><td><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>
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Level 1 – some accurate statements of fact but there may not be any reference</td></tr>
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<td>be palpably wrong)
Life support machines – Malcherek and Steele
Victim's own act and 'daftness' – Roberts, Williams and Davis, Marjoram
Victim's own act and self-neglect – Holland, Dear
Victim's own act of self-injecting drugs provided by D - Kennedy, Evans
Free voluntary and informed action of third parties– Pagett, Hayward
Naturally occurring events - D not liable for a naturally occurring event unless reasonably foreseeable e.g. if the victim had been left on a beach where exposure or the incoming tide was likely to harm the victim

Credit any other relevant case(s)
Credit any other relevant point(s).</td>
<td></td>
<td>to relevant cases or cases may be confused

A candidate is unlikely to gain access to level 5 without considering all three elements of causation – factual, legal and intervening acts</td>
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<td>Assessment Objective 2 – Analysis, evaluation and application

Discuss any or all of the following areas:

Has the law been developed in a way which favours public policy at the expense of fairness to D?
But for test – vagueness of the test & its moral basis - what constitutes more than minimal? Is it always a straightforward test or are the boundaries moved to achieve the most morally acceptable solution? e.g. Pagett – was the decision based on it being morally more acceptable to hold D factually responsible despite a possible lack of foresight (he may have thought that using his girlfriend as a shield would prevent the police from</td>
<td>20</td>
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			shooting) than holding the police responsible? Importance of the test in creating a fair outcome where there is no connection between D's actions and the result despite D's intentions – *White* Role of the jury – is a jury able to remain objective in a case where a result has occurred and D's actions 'set the train in motion'? Legal causation – what is 'more than a slight or trifling link'? Is the test superfluous in the mind of the jury where factual causation has already been established? Is it fair that there need only be more than a slight link between D's act and the result? Does having to prove legal causation achieve a balance between gaining justice for a victim and ensuring that D is only held responsible where there is proof of some level of fault? e.g. *Hughes* – based on the question 'but for D driving on the A69 on that day would V have died'? D would have been guilty. Does the inclusion of the legal test which is based on moral blameworthiness avoid the potential unfairness of the 'but for' test to D? Influence of public policy when doctors and emergency services are involved and potential unfairness on D e.g. *Smith* – intervening medical acts reduced survival chances by 75% and *Cheshire* the original wounds were almost healed. Does the policy of courts uphold the rights of the medical profession to work without fear of prosecution? Is the law unfairly balanced in favour of protecting those in the medical profession at the expense of the defendants' rights? Would it be fairer to hold D responsible for a lesser crime e.g. attempted murder or GBH? What may happen to the medical profession if the rule were changed? Fairness of thin skull test - should D be liable for only the original injuries caused or take full responsibility? Are the legal rulings fair or do they strike an unfair balance between		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

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<td>protecting the public/vulnerable victims and the rights of the defendant? Arguably in Dear D should only have been charged with section 18 OAPA as maximum life sentence suitable punishment whilst recognising contributory acts of V
Problems when victim refuses treatment– if V had been stabbed in a remote place and had died before medical assistance arrived D would certainly be liable. Why should it be any different when V declines medical assistance after D stabs her?
Fairness of daftness test - is it unfair to allow the jury to decide what is reasonably foreseeable when they were not in the position of the defendant at the time? Is it fair that it does not need to be proven that the defendant foresaw the victim's actions or the extent of the injuries that may have been caused?
Life support cases – discuss the public policy behind the decision to allow doctors to withdraw treatment without breaking the chain of causation where D causes the harm requiring life support

Credit any other relevant point(s)
Reach a sensible conclusion.</td>
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Assessment Objective 1 – Knowledge and understanding

Define consent – defence in non-fatal offences against the person meaning that no offence has taken place

Explain the elements of consent:
• Consent must be true
• Fraud may vitiate consent if it deceives as to identity of defendant or as to nature and quality of act – Clarence, Cuerrier, Dica, Konzani, Richardson, Tabassum
• Consent gained under duress vitiates consent–Olugboja
• Consent must be valid
• Age may negate consent – Burrell and Harmer, Gillick
• An adult must have capacity to consent
• Consent can be implied – Wilson v Pringle
• An honest but mistaken belief in consent is effective as a defence – Morgan

Explain the limited nature of the defence:
• V can never consent to their own death - Pretty, Lamb, Nicklinson
• Does not normally apply to any offence under OAPA 1861 unless one of accepted exceptions –AG Ref (No 6 of 1980, Brown
Exceptions:
• Can be defence in physical contact sports if within the rules of the game – Coney, Billingshurst, Barnes, Ciccarelli</td><td>25</td><td><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>
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• Horseplay can give rise to defence - Jones, Aitken
• Lawful chastisement – A v UK
• Reasonable surgical interference, injections, tattooing (or branding) and body piercing give rise to consent – Wilson
• Not always available in non-fatal sexual offences but is sometimes available - Donovan, Brown, Wilson, Emmett, Slingsby

Credit any other relevant case(s)
Credit any other relevant point(s).
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<td>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</td>
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Assessment Objective 2 – Analysis, evaluation and application

Discuss any or all of the following areas:

Discuss the common law nature of the defence i.e. the law has been developed on a case by case basis
Discuss the fact that the list of exceptions given in A-G's Ref (No 6 of 1980) was followed by 'etc'. Argue that this has led to uncertainty as the courts can and have added to the list of exceptions
Discuss the importance that has been placed on public policy considerations when developing the exceptions to the general rule but the undemocratic nature of judges deciding what is and isn't in the public interest
Discuss the potential for individual bias of judges when making these decisions
Discuss potential problems such as retrospective effect of 'new' exceptions
Discuss the need for a sensible balance between individual freedom and social paternalism and whether or not this is achieved in a sensible and unbiased way
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			Discuss the availability of consent to sexual offences and the link to public policy – discuss the public interest arguments in cases such as *Brown* as well as arguments that decisions can appear unbalanced, irrational, and are often misunderstood as interference Discuss the perceived inconsistencies between cases such as *Slingsby, Donovan, Wilson* and *Brown.* Did the decision in *Brown* take social paternalism too far and is there a conflict with the Human Rights Act 1998 and the provisions of the ECHR? Do the decisions reflect judicial bias or genuine public interest? Credit a comparison of majority v dissenting judgements Horseplay - discuss the difficulties in reconciling the decisions in *Aitkins* and *Jones* with those in sexual offences cases in the light of the injuries sustained and the circumstances in which consent was deemed to have been given. Is the public interest test consistently applied? Discuss the inconsistencies in sport cases - some sports involve permissible deliberate harm and in others less than deliberate harm is an offence. Balance with a discussion of the positive social impact of the availability of consent in sport and the difficulties in finding the right balance in such cases Discuss the positive impact of allowing consent as a defence to surgical operations but the potential dangers in relation to the types of operations a person can consent to such as cosmetic surgery Comment on provisions put forward by the Law Commission and consideration of whether Parliament should legislate and, if so, in what form? Credit any other relevant point(s) Reach a sensible conclusion.		**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

			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.	**5**	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Marks</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>

Question			Answer	Marks	Guidance
3*			Potential answers **may** include: **Assessment Objective 1 – Knowledge and understanding** Define involuntary manslaughter – unlawful killing of a human being without the high level of mens rea required for murder Explain that the offence covers wide range of situations which is reflected in sentencing **Define unlawful act/constructive manslaughter:** • Unlawful act – must be criminal, positive act – *Lamb, Lowe, Goodfellow, Newbury and Jones, Watson* • Dangerous act – measured by objective test but can be against a person or property and there must be a risk of physical harm – *Larkin, Church, Mitchell, Goodfellow, Dawson, Watson, Williams, Lewis* • Unlawful act must cause death – *Cato, Dalby, Rogers, Kennedy* • Mens rea required for initial unlawful act but no need to realise that act is dangerous or unlawful, or to foresee a risk of harm – *Newbury and Jones*	**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> Responses will be unlikely to achieve the following levels without: **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 **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 **Level 3** – being able to cite at least 3 relevant cases to support their argument with clear identification and some

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<td>Define gross negligence manslaughter: Adomako
• Duty of care to the victim – Singh, Litchfield, Khan and Khan, Wacker
• Breach of that duty
• Breach of duty must cause death
• Failure must be so ‘gross’ in the eyes of the jury as to be criminal and must be risk of death – Bateman, Stone and Dobinson, Adomako, Misra

Define reckless manslaughter:
Requirement of subjective recklessness – Lidar

Credit any other relevant case(s)
Credit any other relevant point(s).</td>
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<td>relevant facts and make reference to specific sections of the relevant statute
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<td>Assessment Objective 2 – Analysis, evaluation and application
Discuss any or all of the following areas:

• Involuntary manslaughter is unwieldy as it covers a huge range of situations – unlawful conduct, gross negligence and reckless conduct
• Despite being reflected in sentencing the label of ‘manslayer’ is attached to all despite differing levels of blameworthiness and harm caused
• Unlawful act manslaughter requires there to be a risk of some harm whereas gross negligence manslaughter requires a risk of death which is harder to prove
• Smith and Hogan argue that lumping together the different types of behaviour that equals involuntary manslaughter is both unsatisfactory and can cause inconsistency in sentencing</td>
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			Unlawful act manslaughter: • Law commission criticise the fact that a person can be convicted of a serious offence even though he or she was not aware that their criminal act posed a risk of any harm occurring • The mens rea required is intention to do the unlawful act. This means that the mens rea is a differing requirement • Smith and Hogan argue that it is unfortunate that the element of unlawfulness is elusive (undefined) since the offence is one of the most serious and carries a maximum life sentence • *AG's Ref (No3 of 1994)* said that the offence unites a group of crimes which have nothing in common except their name • In some instances if death had not occurred then D would only have been guilty of a trivial offence. Many academics feel that the element of luck is so great that many of them are unhappy that the offender then becomes a manslayer. The law is not harsh to some (those whose actions are a little less than murder) but are harsh to a person who perhaps threw one punch • There is no difference in label given in these scenarios and it is argued that the offence is therefore too wide • Discuss the opposing view – the present law acts as a deterrent to those embarking on dangerous conduct. The result is death so the test needs to provide the greatest measure of deterrence and provide a penalty which is proportionate to D's actions. Knowing the consequences helps control people's actions. If they cross a moral threshold then they cannot complain about the punishment • It is argued that sentencing can make the differentiation between levels of seriousness but this does not remove		**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 Candidates are unlikely to access level 5 without reference to both UAM and GNM. Exclusion of reckless manslaughter does not prevent access to level 5.

			the stigma attached to the label • Law Commission recommended abolition in 1996 but then in Murder, Manslaughter and Infanticide 2006 proposed new offence of criminal manslaughter – suggests uncertainty **Gross Negligence Manslaughter:** • Problematic circular test - the jury is directed to convict of a crime if they think that the conduct was criminal. 'It is a crime because it's criminal.' The starting point is that the defendant's conduct is criminal and the end point is that it is a crime. The problem with this is that it leaves the jury to decide a question of law which is normally the job of the judge and inconsistencies occur • Problems associated with civil law wording • The test for what is gross has been inconsistently developed – *Doherty* (culpable negligence of the gross kind), *Andrews v DPP* (a very high degree of negligence), *Bateman* (negligence which goes beyond a mere matter of compensation and showed such disregard for the life and safety of others), *Stone and Dobinson* (a reckless disregard of danger to the health and welfare of the infirm person), *Adomako* (conduct which departs from the proper standard of care, involving a risk of death) • *Misra* provides clarity (requires gross negligence in circumstances where what is at risk is the life of an individual to whom the defendant owes a duty of care. As such it serves to protect his or her right to life) but the decision of 'grossness' is left to the jury which may lead to inconsistent verdicts • Law Commission 1996 proposed killing by gross carelessness but not enacted and by 2006 proposed largely keeping present law on gross negligence		

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<td>manslaughter – again uncertain
• Law Commission 2006 proposal to abolish reckless manslaughter and to rely on second degree murder and gross negligence manslaughter – not happened and criticised

Credit any other relevant point(s)
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Assessment Objective 1 – Knowledge and understanding

Define and explain defence of duress by threat:
• D commits a crime he otherwise would not have committed in response to a threat made by V
• Requires threat of death or serious bodily harm – Abdul-Husssain, Shayler but threats of death of serious injury need not be the sole reason why the defendant committed the offence Valderrama-Vega
• The threat must be to the defendant or someone for whom they reasonably feel responsible – Conway, Wright, Hasan
• The threat must be capable of being carried out immediately or almost immediately – Hudson and Taylor, Hasan
• Immediacy is judged by D’s perception of threat – Abdul-Hussain, Safi
• There must be no opportunity of escape - Gill, Hudson and Taylor
• Need nexus between threat and offence committed – Cole
• The defence is not available where D foresees (or should have foreseen) the risk of being subjected to the threats due to voluntary association with V. D need not foresee being compelled to commit a crime, only that they would be subjected to threats and compelled to act in some way – Hasan, Sharp, Shepherd
• Resisting the threat – two part standard test – Graham, Hasan:
Was the defendant compelled to act as he did because he reasonably believed he had good cause to fear serious injury or</td><td>25</td><td><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>
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			death? If so, would a sober person of reasonable firmness, sharing the characteristics of the accused have responded in the same way? • The reasonable man shares the same characteristics as the defendant - *Bowen* **Define and explain the defence of voluntary intoxication:** • Used to put doubt into the minds of the jury as to whether D has formed the necessary *mens rea* for the offence committed due to their intoxicated state • May be available for specific intent crimes where it can be proven that D was incapable of forming the *mens rea* due to extreme intoxication – *Beard, Sheehan & Moore* • For most offences it acts as only a partial defence as there are fall-back basic intent crimes – *Lipman.* • The defence will not be successful if D has become intoxicated for the purposes of Dutch courage – *AG for NI v Gallagher* • It provides no defence to crimes of basic intent –*Majewski, Richardson & Irwin* **Define and explain the defence of self-defence/prevention of crime:** • Common law as reiterated by Criminal Justice & Immigration Act 2008 - covers actions needed to defend oneself or others • Statutory defence of prevention of crime under s.3 (1) Criminal Law Act 1967 • Use of some force must be necessary in the circumstances as they appear to the defendant • Mistake as to the need for force in self-defence must be assessed subjectively – *Williams (Gladstone)* s.76(3)& (4)		fact but there may not be any reference to relevant cases or cases may be confused

			Criminal Justice & Immigration Act 2008 • The degree of force used must be reasonable and is judged by what D honestly and instinctively thought was necessary Criminal Justice & Immigration Act 2008, *Palmer, Owino, White* • Evidence of an attempt to retreat or to 'disengage and temporise' is desirable but not essential – *Bird* • Use of excessive force may render the defence unavailable – *Clegg, Martin (Anthony)* • Successfully raising self-defence leads to acquittal as it is a complete defence **Explain the link between intoxication and mistake in self-defence:** If intoxicated mistake is about self-defence or prevention of crime, D will *never have* a defence - *O'Grady, Hatton,* s.76 (5) Criminal Justice and Immigration Act 2008 **Define and explain defence of loss of self-control section 54 and section 55 Coroners and Justice Act 2009:** • 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, *Barnsdale Queane* • Section 55(3) qualifying trigger of fear of serious violence, *Ward* • 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, *Dawes* • 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, *Zebedee* Credit any other relevant case(s) Credit any other relevant point(s).		
			Assessment Objective 2 – Analysis, evaluation and application **Defence against a charge of Burglary** **Identify duress as a potential defence** The threat needs to be of death or serious injury- he threatens to hurt Emma badly which would indicate a threat of serious injury The threat is against Kirsty's daughter whose she would reasonably feel responsible for so satisfies the 'against whom?' test The threat is capable of being carried out immediately or almost immediately as Phil keeps Emma whilst Kirsty goes next door There is no opportunity for Kirsty to call the police as Phil threatens her against doing so and keeps Emma as hostage. Phil has specified that she must be back straight away There is a *nexus* between the offence and the threat as Phil specifically tells her that he wants her to break in next door and steal cash The Graham test would be satisfied as she is compelled to act due to the threats and it is likely that the reasonable person	**20**	**AO2 Levels** / **AO2 Marks** 5 / 17–20 4 / 13–16 3 / 9–12 2 / 5–8 1 / 1–4 Responses will be unlikely to achieve the following levels without: **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 **Level 4** – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion **Level 3** – identification of the main points of law in issue, applying points of law

			would act in a similar way Although Kirsty has voluntarily associated herself with Phil there is no evidence of past criminal or violent behaviour so the defence would not fail on this point. She would not have foreseen being subjected to a threat or being compelled to act On this basis, duress would succeed as a defence **Defences against a charge of murder** **Identify voluntary intoxication as a potential defence** Identify murder as a specific intent crime Identify Kirsty as being voluntarily intoxicated after choosing to idrink half a bottle of vodka Reason that Kirsty would only be able to use the defence if it were proven that she was incapable of forming the *mens rea* for murder Argue that Kirsty has formed the intent to at least cause GBH when she throws the vodka bottle at Phil's head Voluntary intoxication will not be available as a defence against the murder charge **Identify self-defence as a potential defence** Kirsty clearly fears for Emma's safety as he holds a knife to her throat and tells Kirsty that he is going to slash her face The danger is imminent as he is right in front of Kirsty making the threat and has hold of Emma Kirsty would be judged by the circumstances as they appeared to be to her and force would be deemed necessary The degree of force must be reasonable and is judged by what Kirsty honestly and instinctively thought was necessary. The force would be deemed reasonable as she threw the only thing she had to hand to instinctively save her daughter. She only hits him once, not repeatedly Although intoxicated, the danger is real and she is not mistaken in her use of it		mechanically to a given factual situation, and reaching a conclusion **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 **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 For Level 5 responses must identify and address three out of four possible defences. Two may be in more detail than others. For level 4 responses must identify and address 2 of the 4 defences in detail.

			Self-defence will be available as a defence to the murder charge and if successful will result in a full acquittal **Identify loss of control as a potential partial defence** • It is clear that Kirsty loses control when she throws the bottle as hard as she can killing Phil • There is a clear qualifying trigger of threat of threat of serious violence to Emma as he is holding a knife to her throat • It is clear that there are things being said and done by Phil which are grave in character • A reasonable person is likely to act in the same way • Kirsty would successfully plead loss of control Credit any other relevant point(s) Reach a sensible conclusion.		
			Assessment Objective 3 – Communication and presentation Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.	**5**	<table><tr><th>AO1 + AO2 Marks</th><th>AO3 Marks</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>

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<tr><td>5*</td><td></td><td></td><td>Potential answers may include:

Assessment Objective 1 – Knowledge and understanding

Define and explain murder

The unlawful killing of a human being under the Queen’s peace with malice aforethought (express of implied)

Define and explain actus reus of murder:
• Unlawful killing - not done in self defence
• Credit reference to causation in fact – ‘but for’ test – Pagett, White, and in law – Kimsey, Cheshire
• Reasonable creature – human being (not a foetus or brain stem dead) Poulton, Enoch, Attorney General's Reference No. 3 of 1994, Malcherek & Steel
• Under the Queen’s Peace – not in a time of war

Define and explain mens rea of murder:
• Direct intent – death/GBH is the defendant’s purpose and they set out to bring it about – Mohan
• Oblique intent – foresight of consequences –Nedrick, Woollin,

Define and explain defence of insanity
• Results in inability to form mens rea
• Defence must prove defendant insane on balance of probabilities
• M’Naghten Rules 1843
• Requires a defect of reason – lack of reasoning rather than</td><td>25</td><td><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>
Responses will be unlikely to achieve the following levels without:
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.
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
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
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
Level 1 – some accurate statements of</td></tr>
</table>

			just reasoning imperfectly – *Clarke* • Caused by disease of mind induced by internal factor – *Kemp, Bratty, Quick and Paddison, Sullivan, Hennessy, Burgess* • So defendant does not know nature and quality of act or that legally wrong – *Codere, Windle, Johnson* • 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 - Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 **Define and explain the defence of automatism:** • Need for involuntary act over which body has no control – *Bratty, T, Falconer, Parks, Rabey, Watmore v Jenkins, Isitt, AG Ref (No 2 of 1992)* • Covers reflex actions, spasms, convulsions – *Hill v Baxter, Whoolley* • Act must be induced by an external factor – *Quick, Paddison* • Must not be self-induced – *Bailey, Lipman, Kay v Butterworth, C, Clarke* • Defendant incapable of *mens rea* • Complete defence so leads to acquittal Credit any other relevant point(s) Credit any other relevant case(s).		fact but there may not be any reference to relevant cases or cases may be confused
			Assessment Objective 2 – Analysis, evaluation and application **Arthur's liability for the murder of the unborn baby** • *Actus reus* is not established - a foetus is not classed as a	**20**	**AO2 Levels** / **AO2 Marks** 5 / 17–20 4 / 13–16 3 / 9–12 2 / 5–8

			human being • Therefore Arthur is not liable for the murder of the unborn child **Arthur's liability for the murder of Debbie** • *Actus reus* is established as Arthur has unlawfully killed Debbie who is a human being under the Queen's peace • *Mens rea* is established as hitting her over the head with a lamp demonstrates at least intent to cause GBH **Identify insanity** • Defect of reason – it is clear that Arthur is unable to reason when he is sleepwalking and believes that Debbie is an enemy soldier • Caused by a disease of the mind (internal factor)– sleepwalking has been categorised by the courts as an internal factor (likely to reoccur and be a continuing danger) and therefore a disease of the mind • D does not know the nature and quality of their act or that it was legally wrong – as Arthur is asleep it is clear that he is unaware of the nature and quality of his act. He believes Debbie is an enemy soldier • The defence of insanity will succeed and result in a 'not guilty by reason of insanity' verdict • Arthur will be committed to a mental hospital **Peter's liability for the murder of PC Smith** • *Actus reus* is established as Peter unlawfully kills PC Smith who is a human being under the Queen's peace • *Mens rea* is established – he at least intends GBH when he hits him violently several times **Identify and apply the law of automatism** • Peter lashes out uncontrollably indicating that he is not acting voluntarily • There is an external cause – insulin – as he fails to eat		1 1–4 Responses will be unlikely to achieve the following levels without: **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 **Level 4** – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion **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 **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 **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

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<td>after taking the drug which causes his blood sugar to become dangerously low
• Peter may be deemed reckless for not eating and the defence may fail due to the automatism being self-induced
• Credit well-reasoned arguments either way

Credit any other relevant point(s).
Reach a sensible conclusion.</td>
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Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</td>
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<tr><td>6*</td><td></td><td></td><td>Potential answers may include:

Assessment Objective 1 – Knowledge and understanding

Define and explain theft – charged under Theft Act 1968

• s.1 – dishonest appropriation of property belonging to another with intention to deprive other of it
• s.3 – appropriation – any assumption of any of rights of owner with or without consent – McPherson, Lawrence, Morris, Gomez, Hinks,
• s.4 – property – can be tangible or intangible
• s.5 – belonging to another – ownership, possession or control – Turner, s5(3) – property given for a specific purpose – Davidge v Bunnett, s5(4) – property acquired by mistake but with a legal obligation to return it - A-Gs ref (No 1 of 1983), Shadrock-Cigari
• s.2 – dishonesty – 2 (1) (a) – defendant not dishonest if honestly believe they have legal right to property, Holden 2 (1) (b) – defendant not dishonest if honestly believe owner would consent – 2 (1) (c) – defendant not dishonest if honestly believe owner cannot be found having taken reasonable steps – Small. If none of above apply the jury apply common sense view Feeley or Ghosh if needed – was defendant dishonest by standards of reasonable man and, if so, did defendant know dishonest by that standard?
• s.6 – intention to permanently deprive – to take forever or to be equivalent to outright taking – Velumyl,</td><td>25</td><td><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>
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Level 1 – some accurate statements of</td></tr>
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			Define and explain robbery with reference to relevant statute and case law Charged under s.8 Theft Act 1968: Explain that there must be a complete theft in order for robbery to be proven - *Robinson , Forrester, Corcoran v Anderton* Explain that theft must be accompanied by the use or threat of force and that force has been widely interpreted by the courts - *Dawson & James, Clouden, B and R v DPP, R v Bentham, RP v DPP* Explain that the force or threat of force must be used or threatened before or at the time of stealing and in order to steal – *Hale, Lockley* Explain that in addition to the *mens rea* requirements of theft (dishonesty & intention to permanently deprive) D must have intention or recklessness as to the force – *Robinson* Explain that robbery is an indictable offence with a maximum sentence of life imprisonment **Define and explain burglary with reference to relevant statute and case law** • 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 – *Collins, Brown, Ryan* • Building or part of a building – *Walkington* • Trespasser – *Jones and Smith* • Credit any other relevant case(s). • Credit any other relevant point(s).		fact but there may not be any reference to relevant cases or cases may be confused

<table>
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Credit any other relevant case(s).</td><td></td><td></td></tr>
<tr><td></td><td></td><td></td><td>Assessment Objective 2 – Analysis, evaluation and application

Identify theft
Daliso taking the beer glasses
• Actus reus is complete as he treats the glasses (personal property) which belong to the pub as his own by taking them home
• Mens rea is incomplete as he is not dishonest under s. 2 (1) (a) as he believes he has a legal right to them (perk of the job) as in Holden
• Not guilty of theft

Daliso keeping the £120 overpayment to purchase the jeans
• Actus reus is complete as the money is the property of his employer and he has an obligation to return it as in A-Gs ref (No 1 of 1983)
• Mens rea is complete as he is dishonest when he finds out about the overpayment and does not return it and he intends to permanently deprive his employer of the money when he buys the jeans
• Guilty of theft

Daliso using the £55 electricity money to purchase the drinks
• Actus reus is complete as the money is the property of his flatmates who gave it to him for a specific purpose as in s.5(3) and he cannot pay with the original notes given to him</td><td>20</td><td><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>
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			• *Mens rea* may be a problem as Daliso may argue his flatmates would consent under s. 2 (1) (b) – could be argued either way as long as reasoning logically followed through **Identify burglary** **Daliso going into Richard's bedroom and taking £20 from the drawer** • *Actus reus* for 9 (1) (a) is complete. Daliso enters as a trespasser into part of a building (the bedroom to which he has no permission to enter) - *Jones and Smith* • *Mens rea* for 9 (1) (a) is complete. Daliso intends to steal when he enters as he does not think £55 will be enough • *Actus reus* for 9 (1) (b) is complete. Daliso enters as a trespasser into part of a building (the bedroom to which he has no permission to enter) - *Jones and Smith* • *Mens rea* for 9 (1) (b) is complete. Daliso goes onto steal – he has appropriated (by taking) the £20 (which is property) with the intent to permanently deprive (evidenced by running off) • Guilty of both 9 (1) (a) and (b) **Identify robbery** **Daliso using force against Richard to steal the £20** • *Actus reus* is complete. There has been a complete theft when he runs off with the £20 belonging to Richard and he uses force against Richard at the time of stealing and in order to steal as the appropriation can be seen as ongoing – *Hale, Lockley* • *Mens rea* is complete. He is dishonest under the *Ghosh* test and intends to permanently deprive Richard of the £20 as he believes he will not notice. He also directly intends to use force i.e. the push of Richard. It does not		ability to apply points of law or to use an uncritical and/or unselective approach

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<tr><td></td><td></td><td></td><td>matter how slight the force
• Guilty of robbery</td><td></td><td></td></tr>
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Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</td><td>5</td><td>
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<tr><td></td><td>(a)</td><td></td><td>P1 Reason that the actus reus of attempted murder requires an act which is more than merely preparatory
P2 Reason that she is merely preparing when she buys the poison. There were too many acts still to be performed
P3 Reason that Imogen needs to have the mens rea of attempted murder - intention to kill
P4 Reason that she has the necessary intent to kill as she wishes to kill him/ intends to put the poison in Brian’s coffee to get rid of him
P5 Conclude that statement A is inaccurate</td><td>5</td><td></td></tr>
<tr><td></td><td>(b)</td><td></td><td>P1 Reason that the actus reus of attempted murder requires an act which was more than merely preparatory
P2 Reason that by pouring the poison into the coffee she has done acts which are more than merely preparatory – she is trying to kill him
P2a Reason that Imogen would need to give the coffee to Brian to commit an act which is more than merely preparatory
P3 Reason that Imogen needs to have the mens rea of attempted murder - intention to kill
P4 Reason that she has the necessary intent as she wishes to kill Brian/ she pours a lethal dose into the coffee to kill him and wants to get rid of him</td><td>5</td><td></td></tr>
</table>

			P5 Conclude that statement B is **accurate** P5a Conclude that statement B is **inaccurate**		
	(c)		P1 Reason that the *actus reus* of attempted murder requires an act which was more than merely preparatory P2 Reason that by wiring the garage door to cause an electric shock he has done an act which is more than merely preparatory P3 Reason that Brian needs to have the *mens rea* for attempted murder – intention to kill P4 Reason that this isn't present as he only intends to 'teach her a lesson' and cause a 'nasty' electric shock, not a fatal electric shock P5 Conclude that statement C is **accurate**	**5**	
	(d)		P1 Reason that the *actus reus* of attempted murder requires an act which was more than merely preparatory despite being impossible P2 Reason that Brian has embarked on the crime proper and done an act which is more than merely preparatory when he stabs Imogen and it does not matter that Imogen is already dead P3 Reason that Brian needs to have the *mens rea* for attempted murder – intention to kill P4 Reason that he has intent to kill when he stabs her P5 Conclude that statement D is **accurate**	**5**	

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<tr><td></td><td>(a)</td><td></td><td>P1 Reason that SL offences require a voluntary act OR that it is a SL offence to sell unfit food
P2 Reason that by serving prawns which are unfit for human consumption Tom has acted voluntarily OR has committed the SL offence of selling unfit food
P3 Reason that SL offences do not require mens rea to be proven OR that there is no defence of due diligence unless provided for in statute
P4 Reason that it does not matter that the seller has told Tom that the prawns are fresh OR that he is unaware of the fact that they are unfit for human consumption
P5 Conclude that statement A is inaccurate</td><td>5</td><td></td></tr>
<tr><td></td><td>(b)</td><td></td><td>P1 Reason that SL offences require a voluntary act OR that it is a SL offence to sell alcohol to a person who is already drunk
P2 Reason that by serving an already drunk customer Tom has acted voluntarily OR has committed the SL offence of selling alcohol to a person who is already drunk
P3 Reason that SL offences do not require mens rea to be proven OR mistake does not usually provide a defence
P4 Reason that it does not matter that Tom is mistaken/unaware about the customer’s level of intoxication
P5 Conclude that statement B is accurate</td><td>5</td><td></td></tr>
</table>

	(c)		P1 Reason that SL offences require a voluntary act OR that it is a SL offence to broadcast music without a licence P2 Reason that James voluntarily broadcasts his music illegally OR has committed the offence of broadcasting music voluntarily P3 Reason that SL offences do not require *mens rea* to be proven OR that an offence is more likely to be a SL offence if it is an issue of social concern P4 Reason that interfering with the emergency services radio frequency is a matter of social concern OR it does not matter that James is unaware P5 Conclude that statement B is **accurate**	**5**	
	(d)		P1 Reason that SL offences require a voluntary act OR that it is a SL offence to allow an underage person to place a bet P2 Reason that as manager Marcus is liable when his employee allows James to place the bet/OR that a SL offence of allowing an underage person to bet has been committed P3 Reason that a SL offence requires no proof of *mens rea* OR that there is no defence of due diligence unless provided for in statute P4 Reason that it is irrelevant that Marcus warns the shop worker not to allow underage gambling OR is unaware that the shop worker has allowed the bet P5 Conclude that statement D is **accurate**		

APPENDIX 1

Advanced GCE Law Levels of Assessment

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

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (*includes QWC)*
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism, showing good understanding of current debate and proposals for reform, **or** identify all of the relevant points of law in issue. A high level of ability to develop arguments **or** apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform **or** identify most of the relevant points of law in issue. Ability to develop clear arguments **or** apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will	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	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal

	be able to elaborate with some citation of relevant statutes and case-law.	to a given factual situation, and reach a conclusion.	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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