



GCE

Law

Unit **G153: Criminal Law**

Advanced GCE

Mark Scheme for June 2018

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.

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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.

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

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 as below.

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.

Question		Answer	Marks	Guidance													
1*		<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define <i>actus reus</i> – conduct element which requires positive, voluntary act</p> <p>Define and explain omission:</p> <ul style="list-style-type: none"> • A failure to act when under a duty to do so • General rule that an omission does not create criminal liability • Compare with 'Good Samaritan Rule' in other countries (France, Germany, Brazil, Canada) • Recognition of limited liability for omissions by the courts where a duty to act can be applied • The list of established duties is non-exhaustive and is decided on a case-by-case basis • The courts may create further duties – <i>Khan and Khan</i> 	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5	
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Question	Answer	Marks	Guidance
	<p>Explain established duties creating liability where D fails to act:</p> <ul style="list-style-type: none"> Statutory duty – Parliament acting to protect – section 1 <i>Children and Young Persons Act 1933</i>, section 5 <i>Domestic Violence, Crime and Victims Act 2004</i>, <i>Greener v DPP</i> Contractual duty – created by contract of employment - <i>Pittwood, Adomako, R v Singh</i> Duty based on official position - usually related to public office - <i>Dytham</i> Duty based on relationship – usually parent and child – <i>Gibbins and Proctor</i>, but can be other relationships – <i>Smith</i> Duty undertaken voluntarily (assumption of care) – based on reliance – <i>Instan, Stone and Dobinson</i> Duty based on creation of a dangerous situation and need to mitigate harm done – <i>Miller, Santana-Bermudez, Evans</i> Possible end of duty by release or cessation – <i>Smith, Re B, Bland</i> Crimes that cannot be committed through an omission – Unlawful Act Manslaughter – <i>R v Lowe</i>, attempted crimes <p>Credit any other relevant case(s) Credit any other relevant point(s).</p>		<p>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>

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	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following areas:</p> <p>The relationship between legal principles which require a positive act and the public policy aim of promoting standards of behaviour</p> <ul style="list-style-type: none"> • To what extent does the law operate fairly and effectively in this regard? <p>Arguments for and against a Good Samaritan Law</p> <ul style="list-style-type: none"> • Benefits – save lives and reduce harm, clear moral expectations, and standardised code of conduct • Drawbacks – strikes at individual freedom to choose how to conduct themselves, practical difficulties of enforcement, an overwhelmed criminal justice system, personal risk, risk of causing more harm <p>The issues related to the non-exhaustive nature of potential duties recognised by the courts as creating liability</p> <ul style="list-style-type: none"> • Creates uncertainty • Creates scope for retrospective law • Goes against Rule of Law and potential breach of Art 6 ECHR <p>The issues related to contractual duties</p> <ul style="list-style-type: none"> • Encourages vigilance and higher standards of practice, protecting those reliant on them fulfilling their duty and allows them to seek justice where there is a failure to fulfil • Is it fair to expect those under contracts of employment to act if there is personal risk? <p>The issues related to duties based on official position</p> <ul style="list-style-type: none"> • Protects those reliant on those in official positions fulfilling their duties and allows them to seek justice where there is a failure to fulfil • Is it fair to expect more of those who hold public office? <p>The issues related to duties based on relationship</p> <ul style="list-style-type: none"> • Protects the vulnerable – usually children • Prevents family members from escaping liability in situations where only one carries out positive acts which harm V 	20	<table border="1" data-bbox="1484 198 1949 446"> <thead> <tr> <th data-bbox="1484 198 1724 230">AO2 Levels</th><th data-bbox="1724 198 1949 230">AO2 Marks</th></tr> </thead> <tbody> <tr> <td data-bbox="1484 230 1724 262">5</td><td data-bbox="1724 230 1949 262">17–20</td></tr> <tr> <td data-bbox="1484 262 1724 293">4</td><td data-bbox="1724 262 1949 293">13–16</td></tr> <tr> <td data-bbox="1484 293 1724 325">3</td><td data-bbox="1724 293 1949 325">9–12</td></tr> <tr> <td data-bbox="1484 325 1724 357">2</td><td data-bbox="1724 325 1949 357">5–8</td></tr> <tr> <td data-bbox="1484 357 1724 389">1</td><td data-bbox="1724 357 1949 389">1–4</td></tr> <tr> <td data-bbox="1484 389 1724 446"></td><td data-bbox="1724 389 1949 446"></td></tr> </tbody> </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>A candidate is unlikely to gain access to level 5 without a balanced argument</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4		
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Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"> Parliament has recognised the importance of parental/familial duty – <i>Domestic Violence Crime and Victims Act 2004</i> Difficulty in defining the duty and its scope – will the courts extend the duty to other relationships? Difficulty in balancing V's freedom to choose and D's duty to act – <i>Smith</i> <p>The issues related to duty undertaken voluntarily (assumption of care)</p> <ul style="list-style-type: none"> Encourages carers to 'do the right thing' by the vulnerable person in their care – they are best placed to ensure that potential harm is avoided Only expects reasonable steps to be taken e.g. seeking help May be unfair to impose a duty in circumstances where an adult would normally be responsible for their own life – compare with ability of mentally capable adult refusing medical treatment Problems occur when those assuming duties are incapable of fulfilling them Can a person ever be released/absolved from a duty assumed? Policy issues relating to doctors who are released from duty when in the best interests of the victim – the difference between withdrawal of treatment and positive acts of accelerating death <p>The issues related to duties based on the creation of a dangerous situation or a duty to mitigate harm done</p> <ul style="list-style-type: none"> Quite rightly puts the onus on the person creating the dangerous situation to minimise the consequential damage of their actions e.g. injury/death of others Only expects reasonable steps to be taken e.g. contacting the emergency services <p>The issues related to attempted crimes not being capable of being committed through an omission</p> <ul style="list-style-type: none"> Scope for blameworthy defendants escaping liability for an attempted crime if the authorities intervene before the full crime is committed e.g. <i>Gibbins and Proctor</i> – if child was found before she dies D's would not have been guilty of attempted murder 		

Question		Answer	Marks	Guidance	
		Discuss reform suggestions Credit any other relevant points(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	AO1 + AO2 Marks	AO3 Marks
		37–50		5	
		28–36		4	
		19–27		3	
		10–18		2	
		1–9		1	

Question		Answer	Marks	Guidance												
2*		<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Explain strict liability:</p> <ul style="list-style-type: none"> • No need to prove <i>mens rea</i> in relation to at least one element of the <i>actus reus</i> – <i>Callow v Tillstone, Storkwain, Prince, Hibbert</i> • Distinguished from absolute liability – <i>Laronneur, Winzar</i> • Source of most offences is statutory but limited exceptions – public nuisance, criminal libel, criminal contempt of court <p>Explain the basic (Gammon) principles – <i>Gammon (Hong Kong) Ltd v AG of Hong Kong</i></p> <ul style="list-style-type: none"> • The presumption in favour of <i>mens rea</i> applies to statutory offences, <i>Sweet v Parsley</i> • The presumption can only be displaced if this is clearly or by necessary implication the effect of the words of the statute. Statutory interpretation is important. <i>Mens rea</i> words such as 'cause', 'possession', 'knowingly', 'wilfully' etc will point to the need to prove <i>mens rea</i> – <i>Warner, Empress Cars, Sheppard and Sheppard, Wings v Ellis</i> • The presumption is particularly strong where the offence is truly criminal in character - <i>B v DPP, Kumar, S</i> • Most strict liability offences are <i>quasi-crimes</i> and regulatory in nature, however Parliament still creates strict liability crimes which may result in harsh outcomes that undermine people's human rights e.g. Sexual Offences Act 2003 <i>R v G</i> and s.8 HRA 1998 • The presumption can only be displaced if the statute is concerned with an issue of social concern such as public safety (regulations covering health and safety matters in relation to food and drink etc) – <i>Blake, Shah and Shah, Callow v Tillstone, Cundy v Le Cocq, Alphacell v Woodward</i> • Strict liability should only apply if it will help enforce the law by encouraging greater vigilance to prevent the commission of the prohibited act – <i>Lim Chin Aik</i> 	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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Question	Answer	Marks	Guidance											
	<ul style="list-style-type: none"> Explain absence of mistake as a defence – <i>Cundy v Le Cocq, Sherras v De Rutzen</i> Explain development of defence of due diligence and its limits – <i>Callow v Tillstone, Smedleys v Breed, Shah and Shah, Tesco v Natrass</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:</p> <p>Discuss the social benefits of strict liability offences:</p> <ul style="list-style-type: none"> Regulatory offences (<i>quasi</i> rather than true crimes): Strict liability offences allow for regulation of behaviour and business activities which affect the public without imposing harsh criminal sentences. Most offences are summary only offences and sentences are rarely a threat to individual liberty, making them consistent with human rights Public policy arguments: the risks of the danger are thought to outweigh D's rights. It is more important to protect the public, even though this may in some cases mean that D has taken every possible care Social utility- offences are more likely to be interpreted as strict liability if they are useful to the public in terms of public protection in areas such as the sale of food, gambling, pollution, possession of firearms, building plans and driving offences. Strict liability offences can protect the vulnerable from unscrupulous business practices Promoting enforcement of the law - strict liability ensures more convictions are secured and does not allow people to escape liability through a fabricated account of their state of mind Deterrence/raising standards - it is often argued that imposing strict liability will lead to people taking more care and act as a deterrent to others 	<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:</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>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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Question	Answer	Marks	Guidance
	<ul style="list-style-type: none"> Easier to administer - it is easier to enforce as there is no need to prove <i>mens rea</i> and it saves court time as more people are likely to plead not guilty. Rather than prosecutions sometimes the HSE will serve improvement notices or prohibition notices. The business owner will need to comply but it will not need a court hearing. Businesses are often supported by regulatory bodies who ensure that the offences do not occur in the first place Due diligence defence - Parliament can provide a due diligence defence where this is thought to be appropriate Sentencing - lack of blameworthiness can be considered when sentencing to avoid unfairness to the defendant <p>Discuss the drawbacks of strict liability offences</p> <ul style="list-style-type: none"> Lack of blameworthiness - offences do not necessarily allocate blame effectively and so do not offer public protection Defence of due diligence – haphazard approach to providing a defence of due diligence. A person may be liable where they are not at fault and have exercised all reasonable care to prevent harm from occurring. This offends the natural sense of justice and runs counter to basic principles Liable despite being unaware of risks – defendants may be liable despite being unaware of the risks – <i>Empress Car Co, Environment Agency v Brook</i> Defence of mistake – inconsistency in the application of the rule that there is no defence of mistake. The lack of a defence runs counter to basic principles Do not necessarily act as a deterrent/improve standards - in order to act as a deterrent, a person must have knowledge that what they are doing is wrong before being able to take steps to prevent it. In many cases the defendant is unaware of the circumstances leading to liability. Speeding, which is arguably a crime that is committed more than any other, is one of strict liability. If strict liability was an effective deterrent, then we would have no speeding cars on the roads. Also, if you are to be liable despite taking reasonable steps they may decide not to take those steps as the cost of the precautions may outweigh the cost of a fine 		<p>Level 1 – an awareness of the area of law identified by the question</p> <p>A candidate is unlikely to gain access to level 5 without a balanced argument which considers both benefits and drawbacks of strict liability offences</p>

Question	Answer	Marks	Guidance												
	<ul style="list-style-type: none"> Contrary to human rights – potential Article 6 infringement. True crimes which are punishable by imprisonment can still be strictly liable despite the principle in <i>Gammon</i> that the presumption of <i>mens rea</i> will be particularly strong for ‘true crimes’ - <i>R v G</i> - the HL decided not a breach of Art 6 presumption of innocence Stigma - offences can be imposed despite creating serious social stigma. Any criminal offence carries a stigma and needs to be declared for employment purposes. It can cause immense damage to a person's or a business' reputation and therefore proof of fault should always be a requirement in establishing criminal liability. Stigma can also be disproportionate, penalising small businesses and not protecting the public against big businesses Time and cost – the regulatory systems in place can often be time consuming, expensive and inconsistent in their application which does not offer good public protection Remove from Criminal Justice System - such offences would be better dealt with outside of the criminal justice system. The existence of strict liability offences reduces the credibility of the criminal law. Lack of publicity of the offences also means that the methods such as moving strict liability to administrative law might be fairer and protect better <p>Credit any other relevant point(s) Reach a sensible conclusion.</p>														
	<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, punctuation and spelling.</p>	5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="1495 1049 1814 1081">AO1 + AO2 Marks</th><th data-bbox="1814 1049 1994 1081">AO3 Marks</th></tr> </thead> <tbody> <tr> <td data-bbox="1495 1081 1814 1113">37–50</td><td data-bbox="1814 1081 1994 1113" style="text-align: center;">5</td></tr> <tr> <td data-bbox="1495 1113 1814 1144">28–36</td><td data-bbox="1814 1113 1994 1144" style="text-align: center;">4</td></tr> <tr> <td data-bbox="1495 1144 1814 1176">19–27</td><td data-bbox="1814 1144 1994 1176" style="text-align: center;">3</td></tr> <tr> <td data-bbox="1495 1176 1814 1208">10–18</td><td data-bbox="1814 1176 1994 1208" style="text-align: center;">2</td></tr> <tr> <td data-bbox="1495 1208 1814 1240">1–9</td><td data-bbox="1814 1208 1994 1240" style="text-align: center;">1</td></tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
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3*	<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain defence of insanity using <i>M'Naghten</i> Rules 1843:</p> <ul style="list-style-type: none"> • Burden of proof is on the defendant to prove they were insane at the time the crime was committed • Standard of proof - on balance of probabilities • Requires defect of reason - no reasoning at all rather than just reasoning imperfectly – <i>Clarke</i> • Caused by disease of mind induced by internal factor – <i>Kemp, Bratty, Quick and Paddison, Sullivan, Hennessy, Burgess, Lowe, Parks, Bilton, Kane, Thomas</i> • Explain the court's application of the internal/external factor theory and the continuing danger theory • Defendant does not know nature and quality of their act or that it is legally wrong – <i>Codere, Windle, Johnson</i> • A successful plea will result in a verdict of 'not guilty by reason of insanity' • Successfully raising the defence can lead to a range of conclusions up to and including committal to a mental hospital (which is mandatory in murder cases) by use of special verdict and the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and section 24 Domestic Violence, Crime and Victims Act 2004 <p>Define and explain the defence of automatism:</p> <ul style="list-style-type: none"> • Need for involuntary act over which body has no control – <i>Bratty, T, Parks</i> • D must have lost total control, partial loss of control will not suffice - AG Ref (No 2 of 1992)(1993) • Covers reflex actions, spasms, convulsions – <i>Hill v Baxter, Whoolley</i> • Act must be induced by an external factor – <i>Quick and Paddison</i> • Must not be self-induced/reference to intoxication – <i>Lipman, Kay v</i> 	25	AO1 Levels	AO1 Marks
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Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused

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	<p><i>Butterworth, C, Clarke, Hardie</i></p> <ul style="list-style-type: none"> Defendant must be incapable of forming the necessary <i>mens rea</i> Successfully raising automatism leads to acquittal as it is a complete defence <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:</p> <p>Arguments for Unfair/Inconsistent Application:</p> <p>Discuss the problems with the burden/standard of proof</p> <ul style="list-style-type: none"> The fact that the burden is on the defendant goes against the rule of law (innocent until proven guilty) It means that someone may be convicted where the jury finds that it is 51% likely that they are sane <p>Discuss the problems with defining disease of the mind for the purposes of distinguishing between sane/insane automatism</p> <ul style="list-style-type: none"> Legal rather than medical definition has caused wide interpretation of what constitutes disease of mind which does not necessarily reflect medical understanding The use of the continuing danger theory has resulted in innocuous categories of defendants who are unlikely to be medically insane and who present little or no threat to society but who fall within the legal definition of insanity When the external factor theory is used in isolation of the continuing danger theory, those who potentially represent a continuing danger to the public are acquitted using the defence of automatism – <i>Quick, Bilton, Ecott</i> – which results in inadequate public protection There has been inconsistent application of the external factor and continuing danger theories to decide what is and what isn't a disease of the mind which has resulted in unreal distinctions being drawn and in turn illogical decisions and hair-splitting distinctions - <i>Quick, Hennessey</i> 	<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:</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"> There is potential for internal and external factors to operate simultaneously e.g. some people may be more susceptible to sleep disorders but there may be an external trigger which plays a part <p>Discuss the problems associated with stigma</p> <ul style="list-style-type: none"> The present test for disease of mind does not relate in any meaningful way to the practice of psychiatry Many other jurisdictions have reformed their tests to address this (Scotland in 2010 and Ireland in 2006) The stigmatising nature of the label given by the special verdict is made worse when given to those with a physical rather than mental illness <p>Discuss the problems with disposal methods</p> <ul style="list-style-type: none"> Prior to the passing of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 a defendant in receipt of the special verdict was subjected to the 'psychiatric equivalent of a life sentence' in the form of an indefinite hospital stay To avoid this many defendants, despite lacking <i>mens rea</i>, would plead guilty Despite changes made in 1991 and 2004 defendants with physical diseases may still choose to plead guilty to avoid the stigma of an insanity verdict and may believe that short term imprisonment is preferable to other disposal methods such as supervision orders <p>Discuss the problems with the meaning of 'wrong'</p> <ul style="list-style-type: none"> Defendants who cannot control their impulses or do not have the capacity to understand the wrongfulness of the act cannot plead the defence despite an obvious 'disease of the mind' such as psychopathy or paranoid schizophrenia This means that defendants who obviously need medical help are lost in the criminal justice system with an increased risk of suicide or self-harm Potential breach of human rights 		

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	<p>Arguments against unfair/inconsistent application:</p> <p>Discuss the justifications for wide interpretation of disease of the mind</p> <ul style="list-style-type: none"> • The continuing danger theory ensures that those with diseases that are prone to reoccur and represent a danger to the public are not simply acquitted • A simple acquittal under the defence of automatism would mean that the special disposal powers which involve treatment and investigation are not available • The courts have recognised the stigmatisation attached to the insanity plea and have therefore used the external factor theory to allow automatism defences where possible <p>Discuss statutory changes to disposal methods</p> <ul style="list-style-type: none"> • Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 as amended by the Domestic Violence, Crime and Victims Act 2004 has given judges various disposal methods from hospital orders to absolute discharges which has reduced the negative impact on those claiming the defence as they will no longer be subject to an indefinite hospital stay on a mandatory basis unless facing a murder charge • This is of particular relevance to those with physical rather than mental disorders • This has resulted in an increase in insanity pleas (although still relatively low) <p>Discuss the potential impact of reform proposals</p> <ul style="list-style-type: none"> • The Law Commission's proposals in the July 2013 discussion paper to abolish the defence and replace with one which focuses on lack of capacity due to recognised medical conditions will solve the problem with stigmatising those with physical conditions who would not, under normal circumstances, be thought of as insane • The renaming of the verdict 'not guilty by reason of recognised medical condition' will keep the law in step with medical understanding • Defendants will be held to be not criminally responsible due to a medical condition which may be physical or psychological • Lawyers and judges will not be as reticent to suggest the defence and 		

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	<p>will have the disposal powers to help treat the case of the automatism rather than just acquit with no treatment</p> <ul style="list-style-type: none"> Automatism caused by medical conditions will no longer come under the defence of automatism but under the 'lack of capacity' defence The proposed new defence of 'not criminally responsible by reason of recognised medical condition' will solve the issue linked to the problem of defining 'wrong'. D will be held to lack the capacity to know that they are doing something wrong which provides a much wider meaning than 'legally wrong' The only burden placed on the defendant is to provide evidence from two expert witnesses relating to the elements of the defence. Once D has done this, it would be for the prosecution to disprove beyond reasonable doubt which would make the law more in line with the principle of innocent until proven guilty. 														
	<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, punctuation and spelling.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <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> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
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4*		<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain non-fatal assaults against the person:</p> <p>Explain common law assault and battery – charged under section 39 Criminal Justice Act 1988:</p> <ul style="list-style-type: none"> Assault – making V apprehend immediate and unlawful personal violence accompanied by intention or subjective recklessness – <i>St George, Stephens v Myers, Cole v Turner, Venna, Wilson, Turberville v Savage, Light</i> Battery – application of unlawful personal violence/force accompanied by intention or subjective recklessness – <i>Collins v Wilcock, Thomas, DPP v Smith</i> <p>Explain assault occasioning actual bodily harm – section 47 Offences Against the Person Act 1861:</p> <p><i>Actus reus</i> – common assault which occasions actual bodily harm (harm which interferes with health or comfort of the victim– <i>Miller</i>) <i>R v T (unconsciousness)</i></p> <ul style="list-style-type: none"> Harm can be physical or psychiatric - <i>Chan Fook, Constanza, Ireland</i> <i>Mens rea</i> – intention or subjective recklessness for the battery – D need not foresee the level of injury - <i>Roberts, Savage</i> <p>Explain unlawful and malicious wounding or inflicting grievous bodily harm – section 20 Offences Against the Person Act 1861:</p> <p><i>Actus reus</i> – infliction of a wound which breaks all layers of skin or serious harm –<i>Saunders, Eisenhower, Wood</i></p> <ul style="list-style-type: none"> Harm may be physical or psychiatric –<i>Burstow, Dhaliwal</i> <i>Mens rea</i> – intention or recklessness as to SOME harm albeit not necessarily serious harm <i>Parmenter</i> 	25	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>21–25</td> </tr> <tr> <td>4</td> <td>16–20</td> </tr> <tr> <td>3</td> <td>11–15</td> </tr> <tr> <td>2</td> <td>6–10</td> </tr> <tr> <td>1</td> <td>1–5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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	<p>Explain unlawful and malicious wounding or causing grievous bodily harm with intent- section 18 Offences Against the Person Act 1861:</p> <ul style="list-style-type: none"> • <i>Actus reus</i> is causing serious harm or wounding as for section 20 • <i>Mens rea</i> –intention to cause serious harm <p>Credit reference to the CPS charging standards</p> <p>Explain the defence of consent:</p> <ul style="list-style-type: none"> • Defence in non-fatal offences against the person meaning that no offence has taken place • Can be a defence against charges of common assault but not normally to offences under OAPA 1861 unless one of the accepted exceptions apply – <i>AG Ref (No 6 of 1980)</i>, <i>Brown</i> • Branding is accepted as personal adornment and an exception – <i>Wilson</i> • Consent must be true and informed • Fraud as to the nature and quality of the act may vitiate consent – <i>Dica</i>, <i>Konzani</i>, <i>Golding</i> • Consent given under duress will vitiate consent – <i>R v Olugboja</i> <p>Explain the defence of self-defence:</p> <ul style="list-style-type: none"> • <i>Can use force to protect self/another, own property or property of another</i> • <i>Common law</i> - <i>Williams</i>, <i>Cleg. Martin, Attorney-General's Reference (No2 of 1983)</i> • <i>Statutory</i> - section 3(1) <i>Criminal Law Act 1967</i>, section 76 <i>Criminal Justice and Immigration Act 2008</i> <p>Credit any other relevant case(s)</p> <p>Credit any other relevant point(s).</p>		

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	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify assault Identify s.47 Identify s.20 Identify s.18 Identify consent Identify self-defence</p> <p>In the case of Joe branding Ann</p> <ul style="list-style-type: none"> Branding with a hot knife would cause Ann discomfort meaning that the <i>actus reus</i> of ABH under s.47 OAPA 1861 would be satisfied Depending on the severity of the injury the burn received may constitute serious harm under s.20 OAPA 1861 Joe clearly intends to apply force to Ann and the extent of the injury does not need to be foreseen by Joe to establish the <i>mens rea</i> of s.47 OAPA 1861 If charged with a s.20 offence Joe was at least reckless as to SOME harm by using a hot knife to brand Ann Under the authority of <i>Wilson</i> it is likely that consent would be an acceptable defence since Ann instigated the branding, she consented 'enthusiastically' and it was intended as an adornment. This would mean an acquittal If consent fails, a s.47 conviction is most likely Maximum 5 years' imprisonment <p>In the case of Joe transmitting HIV to Ann</p> <ul style="list-style-type: none"> Transmission of HIV is biological GBH as it is classed as serious harm. The <i>actus reus</i> of a s.20 and s.18 offence is therefore satisfied Joe is at least reckless as to causing SOME harm to Ann knowing that he has HIV when having unprotected sex with her which would satisfy the <i>mens rea</i> of s.20 If it can be established that he intended serious harm then the <i>mens rea</i> of s.18 would be established 	20	<table border="1" data-bbox="1477 230 2077 444"> <thead> <tr> <th data-bbox="1545 230 1808 262">AO2 Levels</th> <th data-bbox="1808 230 2077 262">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1628 277 1673 309">5</td> <td data-bbox="1875 277 1987 309">17–20</td> </tr> <tr> <td data-bbox="1628 309 1673 341">4</td> <td data-bbox="1875 309 1987 341">13–16</td> </tr> <tr> <td data-bbox="1628 341 1673 373">3</td> <td data-bbox="1875 341 1987 373">9–12</td> </tr> <tr> <td data-bbox="1628 373 1673 404">2</td> <td data-bbox="1875 373 1987 404">5–8</td> </tr> <tr> <td data-bbox="1628 404 1673 436">1</td> <td data-bbox="1875 404 1987 436">1–4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
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	<ul style="list-style-type: none"> Consent will not work as a defence because although Ann consents to sex, she does not consent to the transmission of the disease. It is not true and informed consent because whilst she understands the nature of the act, she does not understand the quality of it Most likely guilty of a s.20 offence Maximum 5 years' imprisonment <p>In the case of Joe harassing Ann via text</p> <ul style="list-style-type: none"> Psychiatric harm has been caused to Ann and since it is clinically diagnosable it will count as actionable harm Since the level of the harm has been classed as 'severe' it would seem that the injury is serious enough to be classed as serious harm for the purposes of satisfying the <i>actus reus</i> of s.20 or s.18 Joe is at least reckless as to SOME harm when he texts her 50 times a day as he would have foreseen the risk of causing her to be afraid or anxious, therefore satisfying the <i>mens rea</i> of s.20 It is unlikely that a s.18 intent to cause serious harm would be established Guilty of s.20 GBH Maximum 5 years' imprisonment <p>In the case of Ruben telling Joe that he will 'teach him a lesson he will never forget'</p> <ul style="list-style-type: none"> Words can amount to an assault Ruben seeks to make Joe apprehend immediate and unlawful personal violence. It does not matter if Joe is apprehensive or not. The <i>actus reus</i> of assault charged under s.39 CJA 1988 is therefore established The words used by Ruben would indicate that he intended to cause Joe to apprehend immediate and unlawful personal violence and so the <i>mens rea</i> of assault is established Guilty of the common law offence of assault Maximum 6 months' imprisonment, £5,000 fine 		

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	<p>In the case of Ruben breaking Joe's jaw</p> <ul style="list-style-type: none"> • A broken jaw would constitute serious harm for the purposes of satisfying the <i>actus reus</i> of s.20 or s.18 • By punching Joe three times Ruben will likely be held to have intended serious harm and therefore the <i>mens rea</i> of s.18 would be established • Consider the possibility of Ruben claiming self-defence on the basis of protecting his sister. Conclude however that the level of force used is neither reasonable or proportionate and that Ann is not in need of immediate protection and the defence is likely to fail • Guilty of s.18 GBH • Maximum life imprisonment <p>Credit any other relevant point(s) Reach a sensible conclusion.</p>														
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5*	<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain theft - charged under Theft Act 1968:</p> <p>Section 1 – definition of theft</p> <ul style="list-style-type: none"> • dishonest appropriation of property belonging to another with intention to permanently deprive the other of it <p>Section 3 – appropriation</p> <ul style="list-style-type: none"> • any assumption of any of the rights of the owner with or without consent – <i>McPherson, Lawrence, Morris, Gomez, Hinks</i> <p>Section 4 – property</p> <ul style="list-style-type: none"> • can be tangible or intangible • describe exceptions found in sections 4(2), 4(3) and 4(4) <p>Section 5 – belonging to another</p> <ul style="list-style-type: none"> • ownership, possession or control – <i>Turner</i> • s5(3) – property given for a specific purpose – <i>Davidge v Bennett (1984)</i> • s5(4) – property acquired by mistake but with a legal obligation to return it - <i>A-Gs Ref (No 1 of 1983)(1985), Shadrock-Cigari (1988), Gilks</i> <p>Section 2 – dishonesty</p> <ul style="list-style-type: none"> • 2 (1)(a) – defendant not dishonest if honestly believe they have legal right to property • 2 (1)(b) – defendant not dishonest if honestly believe owner would consent – <i>Holden</i> • 2 (1)(c) – defendant not dishonest if honestly believe owner cannot be found having taken reasonable steps – <i>Small</i> • If none of above apply the jury apply common sense view <i>Feeley</i> or <i>Ghosh</i> if needed – was defendant dishonest by standards of reasonable man and, if so, did defendant know dishonest by that standard? Credit reference to <i>Ivey v Genting Casino</i> 	25	<table border="1" data-bbox="1484 235 1933 446"> <thead> <tr> <th data-bbox="1484 235 1709 266">AO1 Levels</th><th data-bbox="1709 235 1933 266">AO1 Marks</th></tr> </thead> <tbody> <tr> <td data-bbox="1484 266 1709 298">5</td><td data-bbox="1709 266 1933 298">21–25</td></tr> <tr> <td data-bbox="1484 298 1709 330">4</td><td data-bbox="1709 298 1933 330">16–20</td></tr> <tr> <td data-bbox="1484 330 1709 362">3</td><td data-bbox="1709 330 1933 362">11–15</td></tr> <tr> <td data-bbox="1484 362 1709 393">2</td><td data-bbox="1709 362 1933 393">6–10</td></tr> <tr> <td data-bbox="1484 393 1709 425">1</td><td data-bbox="1709 393 1933 425">1–5</td></tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
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	<p>Section 6 – intention to permanently deprive</p> <ul style="list-style-type: none"> to take forever or to be equivalent to outright taking – <i>Velumyl</i> <p>Define attempt under The Criminal Attempts Act 1981:</p> <ul style="list-style-type: none"> <i>Actus reus</i> of an attempt found in section 1.(1) CAA 1981 – doing an act which is more than merely preparatory - <i>Gullefer, Campbell, Geddes, Jones, Tosti and White</i> <i>Mens rea</i> of an attempt – <i>Widdowson, Whybrow, Mohan, Walker and Hayles</i> Conditional intent – <i>Easom, Hussey, AG Ref. (No. 1 and 2 of 1979)</i>(1979) 														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify theft Identify attempted theft</p> <p>In the case of Anton picking the mushrooms for use in the restaurant</p> <ul style="list-style-type: none"> Anton has appropriated the mushrooms by picking them As they are growing wildly the mushrooms would not usually constitute property under s.4(3) However, Anton has used the for commercial purposes in the restaurant As the mushrooms are growing in the wild they are not under the possession or control of anyone and therefore may not 'belong to another' Anton may claim that he was not dishonest when he picked the mushrooms as he believed he had a legal right to pick them as they were growing in the wild However, he may become dishonest when he uses the mushrooms for reward and for a commercial purpose Anton intends to permanently deprive as the mushrooms will be cooked and eaten Unlikely that Anton will be guilty of theft of the mushrooms 	20	<table border="1" data-bbox="1473 652 1933 870"> <thead> <tr> <th data-bbox="1484 660 1664 692">AO2 Levels</th><th data-bbox="1664 660 1922 692">AO2 Marks</th></tr> </thead> <tbody> <tr> <td data-bbox="1484 692 1664 724">5</td><td data-bbox="1664 692 1922 724">17–20</td></tr> <tr> <td data-bbox="1484 724 1664 755">4</td><td data-bbox="1664 724 1922 755">13–16</td></tr> <tr> <td data-bbox="1484 755 1664 787">3</td><td data-bbox="1664 755 1922 787">9–12</td></tr> <tr> <td data-bbox="1484 787 1664 819">2</td><td data-bbox="1664 787 1922 819">5–8</td></tr> <tr> <td data-bbox="1484 819 1664 851">1</td><td data-bbox="1664 819 1922 851">1–4</td></tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p>	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 Anton switching the labels on the bottled beer</p> <ul style="list-style-type: none"> Anton has appropriated the wine by switching the labels over According to s.3(1) an appropriation is any assumption of the rights of the owner. Anton assumes the right of the restaurant owner who is the only person entitled to determine the price at which his goods are sold The beer is personal (moveable and tangible) property The beer belongs to the restaurant owner Anton may claim that he is not dishonest as he has given some valuable consideration but this will not be effective in the light of his act of knowing deceit Anton intends to permanently deprive the restaurant owner of the beer by paying the lower price Anton is likely to be guilty of theft based on established similar case law (<i>Morris, Lawrence</i>) <p>In the case of looking inside the customer's handbag</p> <ul style="list-style-type: none"> Anton will not be guilty of theft as nothing is stolen but he may be guilty of attempted theft Anton does an act which is more than merely preparatory to stealing when he picks up the handbag and looks inside Conditional intent to steal some or all the contents of the bag is enough for an attempted theft Guilty of attempted theft <p>In the case of taking £200 out of the safe with the intention to replace it</p> <ul style="list-style-type: none"> Anton has appropriated the money by taking it out of the safe The money is property The money belongs to the restaurant owner Anton may claim that he is not dishonest as he would have the owner's consent to take the money as long as he replaced it Anton may claim he did not intend to permanently deprive as he intended to replace the money with his winnings Anton would not be able to replace the actual notes/coins and therefore 		<p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p>

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	<p>has permanently deprived the owner of these</p> <ul style="list-style-type: none"> • Guilty of theft unless consent in relation to dishonesty could be proven <p>In the case of being given £1000 in winnings by mistake</p> <ul style="list-style-type: none"> • Anton has appropriated the money by taking it and using it to repay the £200 and buy a new set of knives • Money is property • The money belongs to the race track. However, s.5(4) does not apply to betting transactions • Anton is dishonest when he realises the mistake and says nothing • Anton permanently deprives when he spends the money • Not guilty of theft due to s.5(4) not applying <p>Credit any other relevant point(s) Reach a sensible conclusion.</p>														
	<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, punctuation and spelling.</p>	5	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <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> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	37–50	5	28–36	4	19–27	3	10–18	2	1–9	1
AO1 + AO2 Marks	AO3 Marks														
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Question	Answer	Marks	Guidance												
6*	<p>Potential answers may include:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain the common law offence of murder: The unlawful killing of a human being under the Queen's peace with malice aforethought (express or implied)</p> <p>Define and explain <i>actus reus</i> of murder:</p> <ul style="list-style-type: none"> • Unlawful killing – not done in self-defence • Credit reference to causation in fact – 'but for' test – <i>Pagett, White</i>, and in law – <i>Kimsey</i> • Human being – not a foetus or brain stem dead – <i>Poulton, Enock, AG's Ref No 3 of 1994, Malcherek & Steel</i> • Under the Queen's Peace – not at a time of war <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> <p>Define and explain defence of loss of control sections 54 and 55 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none"> • Section 54(1)(a) requires a loss of self-control • Section 54(1)(b) requires a qualifying trigger • Section 54(2) says loss of control does not 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 • Section 55(3) - qualifying trigger of fear of serious violence and need not be from victim – <i>Jewell, Workman, Barnesdale-Queane</i> 	25	<table border="1" data-bbox="1484 235 1927 446"> <thead> <tr> <th data-bbox="1484 235 1724 266">AO1 Levels</th><th data-bbox="1724 235 1927 266">AO1 Marks</th></tr> </thead> <tbody> <tr> <td data-bbox="1484 266 1724 298">5</td><td data-bbox="1724 266 1927 298">21–25</td></tr> <tr> <td data-bbox="1484 298 1724 330">4</td><td data-bbox="1724 298 1927 330">16–20</td></tr> <tr> <td data-bbox="1484 330 1724 362">3</td><td data-bbox="1724 330 1927 362">11–15</td></tr> <tr> <td data-bbox="1484 362 1724 393">2</td><td data-bbox="1724 362 1927 393">6–10</td></tr> <tr> <td data-bbox="1484 393 1724 425">1</td><td data-bbox="1724 393 1927 425">1–5</td></tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – being able to cite at least 8 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute.</p> <p>Level 4 – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description and make reference to specific sections of the relevant statute</p> <p>Level 3 – being able to cite at least 3 relevant cases to support their argument with clear identification and some relevant facts and make reference to specific sections of the relevant statute</p> <p>Level 2 – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific sections of the relevant statute</p> <p>Level 1 – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused</p> <p>Candidates are unlikely to access level 5 without consideration of both partial</p>	AO1 Levels	AO1 Marks	5	21–25	4	16–20	3	11–15	2	6–10	1	1–5
AO1 Levels	AO1 Marks														
5	21–25														
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Question	Answer	Marks	Guidance												
	<ul style="list-style-type: none"> 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>Zebedee, Asmelash, Dawes</i> Section 55(5) – combination of (3) and (4) Section 55(6) – sexual infidelity or incitement, <i>Clinton</i> 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> <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 point(s) Credit any other relevant case(s).</p>		defences												
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify murder Identify a loss of control defence Identify a diminished responsibility defence Identify issues related to intoxication and diminished responsibility</p>	20	<table border="1"> <thead> <tr> <th data-bbox="1473 1129 1724 1160">AO2 Levels</th><th data-bbox="1724 1129 1927 1160">AO2 Marks</th></tr> </thead> <tbody> <tr> <td data-bbox="1473 1160 1724 1192">5</td><td data-bbox="1724 1160 1927 1192">17–20</td></tr> <tr> <td data-bbox="1473 1192 1724 1224">4</td><td data-bbox="1724 1192 1927 1224">13–16</td></tr> <tr> <td data-bbox="1473 1224 1724 1256">3</td><td data-bbox="1724 1224 1927 1256">9–12</td></tr> <tr> <td data-bbox="1473 1256 1724 1287">2</td><td data-bbox="1724 1256 1927 1287">5–8</td></tr> <tr> <td data-bbox="1473 1287 1724 1319">1</td><td data-bbox="1724 1287 1927 1319">1–4</td></tr> </tbody> </table>	AO2 Levels	AO2 Marks	5	17–20	4	13–16	3	9–12	2	5–8	1	1–4
AO2 Levels	AO2 Marks														
5	17–20														
4	13–16														
3	9–12														
2	5–8														
1	1–4														

Question	Answer	Marks	Guidance
	<p>In the case of liability for murder</p> <ul style="list-style-type: none"> The <i>actus reus</i> of murder is established as Bobby unlawfully kills Roy (a human being, not at a time of war) The <i>mens rea</i> of murder is present as Bobby hits Roy repeatedly over the head showing a direct intention to at least cause GBH <p>In the case of a plea of loss of control</p> <ul style="list-style-type: none"> Bobby loses control – evidenced by the repeated nature of the attack Roy telling Bobby that he was never good enough, that his daughter would be ashamed of him and that he is an unfit father may be things said which qualify as a qualifying trigger However, a jury may find that these things said are not grave enough to constitute a qualifying trigger They may also find that Bobby incited the things said by Roy by blaming him for his wife's death Bobby's intoxication will not be taken into account when considering whether a person in his circumstances would have done the same thing The defence is likely to fail <p>In the case of a plea of diminished responsibility</p> <ul style="list-style-type: none"> Bobby has depression, a recognised medical condition The loss of his wife and his reactive depression have caused an abnormality in mental functioning which has caused him to lose control and not be able to form a rational judgement There is a causal link between him believing his father-in-law is responsible for his wife's death, his depression and the killing of Roy Bobby is however, also intoxicated (but there is no evidence that he is alcohol dependant as this is a one-off) His intoxication will not deny the defence as long as the jury believe that his diminished responsibility is a significant cause (even if the intoxication is a contributory factor) The defence will be successful if the jury believe this. The defence of diminished responsibility is more likely than that of loss of control. 		<p>Responses will be unlikely to achieve the following levels without:</p> <p>Level 5 – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation, and reaching a cogent, logical and well-informed conclusion</p> <p>Level 4 – identification of most of relevant points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p>Level 3 – identification of the main points of law in issue, applying points of law mechanically to a given factual situation, and reaching a conclusion</p> <p>Level 2 – identification of some of the points of law in issue and applying points of law to a given factual situation but without a clear focus or conclusion</p> <p>Level 1 – identification of at least one of the points of law in issue but with limited ability to apply points of law or to use an uncritical and/or unselective approach</p> <p>Candidates are unlikely to access level 5 without consideration of both partial defences</p>

Question		Answer	Marks	Guidance	
		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	AO1 + AO2 Marks	AO3 Mark
				37–50	5
				28–36	4
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AO2 Levels	AO2 Marks															
5	5															
4	4															
3	3															
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1	1															
	(a)	P1 Reason that there must be an unlawful and dangerous act P2 Reason that Amanda passing the syringe of heroin to Tooba does not amount to an unlawful and dangerous act P3 Reason that the act must cause death P4 Reason that Tooba breaks the chain of causation by self-injecting. Amanda does not cause the death P5 Conclude that statement A is accurate	5													
	(b)	P1 Reason that gross negligence manslaughter requires a duty of care which is breached and causes death P2 Reason that Amanda has a duty to mitigate harm done and save life and that she breaches this by failing to call for help when Tooba shows signs of overdose P3 Reason that having regard to the risk of death the failure to act must be so gross that it is criminal P4 Reason that Amanda covering her with a blanket and hoping she will be OK would be deemed criminal and therefore grossly negligent P5 Conclude that statement B is accurate OR P4a Reason that Zain's actions in driving Tooba to hospital/Doctor Johnson not following standard hospital rules breaks the chain of causation P5a Conclude that statement B is inaccurate	5	P1 is enough with duty and breach												
	(c)	P1 Reason that there must be an act which causes death P2 Reason that when Zain hits George with the car, he is the cause of death P3 Reason that the defendant must foresee a risk of death/serious injury	5													

Question		Answer	Marks	Guidance
		<p>and decide to run it</p> <p>P4 Reason that by speeding, Zain has seen a risk of death/serious injury and decided to run it</p> <p>P5 Conclude that statement C is accurate</p>		
	(d)	<p>P1 Reason that gross negligence manslaughter requires a duty of care which is breached and causes death</p> <p>P2 Reason that Doctor Johnson does owe Tooba a duty of care based on the doctor/patient relationship and breaches it by failing to check for allergies</p> <p>P3 Reason that having regard to the risk of death the failure to act must be so gross that it is criminal</p> <p>P4 Reason that Doctor Johnson's failure to check if Tooba has any allergies is a gross breach</p> <p>P5 Conclude that statement D is inaccurate</p>	5	P1 – enough to have duty and breach

Question		Answer	Marks	Guidance												
8*		Assessment Objective 2 – Analysis, evaluation and application	<table border="1"> <thead> <tr> <th>AO2 Levels</th><th>AO2 Marks</th></tr> </thead> <tbody> <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> </tbody> </table>		AO2 Levels	AO2 Marks	5	5	4	4	3	3	2	2	1	1
AO2 Levels	AO2 Marks															
5	5															
4	4															
3	3															
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1	1															
	(a)	P1 Reason that section 9(1)(a) requires entry into a building or part of a building as a trespasser P2 Reason that Josh does this when he goes beyond the permission given by Mavis P3 Reason that section 9(1)(a) requires an intention to steal, cause GBH or criminal damage upon entry P4 Reason that Josh intends to steal property upon entry P5 Conclude that statement A is inaccurate	5													
	(b)	P1 Reason that section 9(1)(b) requires entry into a building as a trespasser P2 Reason that Josh does this when he goes beyond the permission given by Mavis P3 Reason that Josh must go on to steal, attempt to steal, cause GBH or attempt to cause GBH under section 9(1)(b) P4 Reason that Josh commits theft when he steals the clock from the mantelpiece P5 Conclude that statement B is accurate	5													
	(c)	P1 Reason that section 9(1)(b) requires entry into a building as a trespasser P2 Reason that Josh does this when he goes beyond the permission given by Mavis P3 Reason that Josh must go on to steal, attempt to steal, cause GBH or attempt to cause GBH under section 9(1)(b) P4 Reason that Josh commits criminal damage when he cuts the telephone line and that this is not covered by section 9(1)(b)	5													

Question		Answer	Marks	Guidance
		P5 Conclude that statement C is inaccurate		
(d)		P1 Reason that robbery requires the use or threat of force P2 Reason that Josh tying Mavis up would be sufficient as a 'use of force' P3 Reason that robbery requires the force or threat of force to be used immediately before or at the time of stealing and in order to steal P4 Reason that Josh might argue that the theft is complete when he ties Mavis up but that the doctrine of a 'continuing <i>actus reus</i> ' would mean that he has used force <i>in order</i> to steal P5 Conclude that statement D is inaccurate	5	

APPENDIX 1

Advanced GCE Law Levels of Assessment

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

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

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