



GCE

Law

Unit **G154**: Criminal Law Special Study

Advanced GCE

Mark Scheme for June 2018

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

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

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

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Annotations

Annotation	Meaning
	AO2+
	Point 2 (Q7-8), Accurate facts but wrong case name or no name (Q1-Q6)
	Point 3 (Q7-8)
	Point 4 (Q7-8)
	Point 5 (Q7-8)
	AO2
	Alternative reasoning in Q7-8
	Case (Q1-6) / reference to statutory provisions
	Expansion of developed point (Q1-Q6)
	Case - name only
	Not relevant
	Repetition/or where it refers to a case this indicates that the case has already been noted by examiner
	AO1 / Point 1 (Q7-8)
	Sort of

Question		Answer	Marks	Guidance												
1*		<p>Assessment Objective 2 (Analysis, evaluation and application)</p> <p>Potential Answers MAY include:</p> <p>C Discuss that in the Court of Appeal, in relation to duress by threats, Stuart-Smith L.J. stated that simply having low intelligence, falling short of mental impairment or mental defectiveness, could not make a defendant less courageous and less able to withstand threats and pressure than those of the reasonable man. He stated that a recognised mental illness, such as post-traumatic stress disorder, could be relevant for duress by threats if it could be shown that the defendant, in such a situation, was more susceptible to pressure and threats. Similarly, duress would not be established by simply showing that the defendant was especially pliable, timid, suggestible or vulnerable to threats.</p> <p>1 Identify that the major issue in the case was that the defendant, of low intelligence, claimed to have acted under duress after two men threatened that they would petrol-bomb his family unless he obtained the goods for them. He was convicted of five counts of obtaining property by deception. The trial judge left the jury to consider duress but refused to make mention of the defendant's low intelligence in his summing up to the jury.</p> <p>2 Discuss that the Court of Appeal heard the appeal based on the second 'Graham' test for duress, that of whether '<i>a sober person of reasonable firmness, sharing the characteristics of [the defendant]</i>' would have resisted the threats. The Court said that relevant characteristics could include: age, pregnancy and serious physical disability. The Court stated that reference can be made to the gender of the person coerced, but felt that many women may feel that they had as much moral courage as men to resist threats.</p> <p>3 Discuss that the defendant argued the trial judge had misdirected the jury over the failure to mention his low intelligence as a relevant characteristic to be considered under duress. The Court dismissed his appeal. They stated that his alleged low intelligence was irrelevant and the trial judge was correct in limiting the characteristics to be considered by the jury to be age and gender only.</p> <p>4 Recognise that earlier, in 1993, the Law Commission had proposed that in reforming duress '<i>any of [the defendant's] personal characteristics that affect [the threat's] gravity</i>' could be taken into consideration. This extended subjective test was incorporated into the Law Commission's 1993 draft Criminal Bill. However, in 2006 the Law Commission said, in relation to homicide, that</p>	12	<table border="1"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>11-12</td> </tr> <tr> <td>4</td> <td>9-10</td> </tr> <tr> <td>3</td> <td>7-8</td> </tr> <tr> <td>2</td> <td>4-6</td> </tr> <tr> <td>1</td> <td>1-3</td> </tr> </tbody> </table> <p>Marks should be awarded as follows:</p> <ul style="list-style-type: none"> • Max 3 marks for the Critical Point (C) • Max 6 marks for Analytical Points (1-6) • Max 3 marks for a relevant Linked Case(s) (LNK) <p>Level 5 Responses are unlikely to achieve Level 5 without discussing a Critical Point, without using a Linked Case for the purpose of showing development, without making two Analytical Points and discussing the relevance of the case.</p> <p>Re: Analytical Point 5 Please note credit can only be given for comment that has direct relevance to <i>Bowen</i>. Hence any generic comment should not be credited.</p> <p>Re: Linked Case Please note credit can only be given for the link case where there is a specific link to <i>Bowen</i>.</p>	AO2 Level	AO2 Marks	5	11-12	4	9-10	3	7-8	2	4-6	1	1-3
AO2 Level	AO2 Marks															
5	11-12															
4	9-10															
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Question			Answer	Marks	Guidance										
			<p><i>'all the circumstances of the defendant are relevant, including age, but not any other characteristic affecting his ability to resist duress in relation to homicide'.</i></p> <p>5 Consider any other relevant analytical point in relation to <i>Bowen</i>. For example: the use of medical evidence in the case/judgement; the defendant was told that if he went to the police his family would be attacked; or, that the Court of Appeal stated that self-imposed characteristics as a result of the abuse of alcohol, drugs or sniffing glue would not be relevant; or, that the <i>Graham</i> test may not on its own be helpful to a jury without further explanation by the judge in relation to characteristics.</p> <p>LNK Link any relevant case to <i>Bowen</i> for example: <i>Graham, Howe, Hegarty, Horne, Hurst, Flatt, Emery, Morhall, Rogers</i> (1999).</p>												
Question	Answer			Marks	Guidance										
			<p>Assessment Objective 3 (Communication and presentation)</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"> <thead> <tr> <th>AO3 Level</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>10-12</td> </tr> <tr> <td>3</td> <td>7-9</td> </tr> <tr> <td>2</td> <td>4-6</td> </tr> <tr> <td>1</td> <td>1-3</td> </tr> </tbody> </table>	AO3 Level	AO3 Marks	4	10-12	3	7-9	2	4-6	1	1-3
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Question		Answer	Marks	Guidance												
2		<p>Assessment Objective 1 (Demonstrate knowledge and understanding)</p> <p>Potential Answers MAY include:</p> <p>Explain duress by threats is a complete defence <i>Lynch</i> Explain the defence is found in the common law Explain that the threat must be of death or serious bodily harm (including rape) <i>Howe, Valderrama-Vega, Hasan, A</i> Explain that threats of psychological injury or false imprisonment are unlikely to suffice <i>Baker and Wilkins, Dao</i> Explain that the threat must be to a defendant, their family or persons for whom the defendant reasonably feels responsible <i>Ortiz, Hasan, Wright</i> Explain that the threat must generally be immediate or almost immediate – <i>Hudson and Taylor, Hasan, Gill</i> Explain that the defendant must be judged by their reasonable belief that the threat existed <i>Safi</i> Explain that the defendant's reasonable belief can take into consideration some of their own characteristics such as age and gender <i>Bowen</i> Explain that self-induced characteristics must be excluded and other characteristics may be excluded <i>Bowen, Flatt</i>. Explain that there must be a <i>nexus</i> between the threat and the offence committed <i>Cole</i> Explain that there are limits when the defendant has voluntarily become involved in a criminal enterprise or has associated with criminals <i>Fitzpatrick, Sharp, Shepherd, Heath, Hasan, Rahman, Lal, Ali, Baker and Ward</i> Explain that the defence is available for most crimes but is unavailable for murder and attempted murder <i>Howe, Wilson, Gotts</i> Explain the standard test for duress by threats <i>Graham, Hasan</i> Credit any other relevant point of knowledge and understanding.</p>	16	<table border="1"> <thead> <tr> <th>AO1 Level</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14-16</td> </tr> <tr> <td>4</td> <td>11-13</td> </tr> <tr> <td>3</td> <td>8-10</td> </tr> <tr> <td>2</td> <td>5-7</td> </tr> <tr> <td>1</td> <td>1-4</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include common law provisions where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed. Responses are likely to use material both from within the pre-release materials and from beyond the pre-release materials which have a specific link to the area of law.</p> <p>Level 4 Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include common law provisions where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed.</p>	AO1 Level	AO1 Marks	5	14-16	4	11-13	3	8-10	2	5-7	1	1-4
AO1 Level	AO1 Marks															
5	14-16															
4	11-13															
3	8-10															
2	5-7															
1	1-4															

Question	Answer	Marks	Guidance
			<p>Level 3 Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this area of law to include common law provisions where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed.</p> <p>Level 2 Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without two relevant cases, neither of which are required to be developed.</p> <p>Level 1 Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p>

Question		Answer	Marks	Guidance												
2*		<p>Assessment Objective 2 (Analysis, evaluation and application)</p> <p>Potential Answers MAY include:</p> <p>Discuss that as duress is a complete defence the appellate courts have set understandably strict limitations to the defence</p> <p>Discuss that there can be circumstances where even a person of reasonable fortitude submits to threats, however repugnant the act they are forced to do</p> <p>Discuss that the courts take a limited account of the fact that defendants act differently under extreme pressure</p> <p>Discuss the defence as a 'concession to human frailty' is so limited that the defence does not really fulfil its function</p> <p>Discuss the dilemma facing the appellate courts that doing wrong can arguably never be right</p> <p>Discuss that it is problematic for the appellate courts to apply the defence in terms of the type of threat and its effect</p> <p>Discuss some of the specific limitations, for example:</p> <ul style="list-style-type: none"> • The effect of <i>Howe</i> may be to legally force a person into being a hero • The circle of persons the defendant may feel they have responsibility for, may be narrower than they think • Denying the defence for murder but accepting it for s.18 OAPA is anomalous • The potential unfairness of denying the defence if the threat is not immediate or almost immediate • The effect of those loosely associating with a criminal or not having a choice being denied the defence while the impact of the threat is still very real • Consider why some plausible characteristics are denied such as low intelligence • The requirement to notify the police or authorities where possible despite long-term continuation of the threat 	14	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>AO2 Level</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>13-14</td> </tr> <tr> <td>4</td> <td>10-12</td> </tr> <tr> <td>3</td> <td>7-9</td> </tr> <tr> <td>2</td> <td>4-6</td> </tr> <tr> <td>1</td> <td>1-3</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve Level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion with some synoptic content.</p> <p>Level 4 Responses are unlikely to achieve Level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote.</p> <p>Level 3 Responses are unlikely to achieve Level 3 without adequate analytical evaluation of the relevant areas of law and some focus on the quote.</p> <p>Level 2 Responses are unlikely to achieve Level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p>	AO2 Level	AO2 Marks	5	13-14	4	10-12	3	7-9	2	4-6	1	1-3
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		<p>Discuss the proposals for change, and any impact they may have, if enacted in terms of resolving these problems</p> <p>Credit any other relevant points of analysis, evaluation and application</p> <p>Reach a sensible conclusion in relation to the question.</p>		<p>Level 1 Responses are unlikely to achieve Level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p>										
Question		Answer	Marks	Guidance										
		<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, punctuation and spelling.</p>	4	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>24-30</td> <td>4</td> </tr> <tr> <td>17-23</td> <td>3</td> </tr> <tr> <td>9-16</td> <td>2</td> </tr> <tr> <td>1-8</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	24-30	4	17-23	3	9-16	2	1-8	1
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3		<p>Assessment Objective 1 - Knowledge and understanding</p> <p>Potential Answers MAY include:</p> <p>Explain duress by threats using the <i>Graham</i> test – the threat of death or serious personal injury to defendant, family or close other and a reasonable, firm and sober person would respond in the same manner <i>Valderrama-Vega, Bowen</i></p> <p>Explain the threat must be believed to be immediate or almost immediate <i>Hasan</i></p> <p>Explain the importance of the <i>nexus</i> between the threat and the offence committed by the defendant <i>Cole</i></p> <p>Explain the rules on voluntary association with persons of known violent tendencies <i>Shepherd, Sharp, Hasan</i></p> <p>Explain the unavailability of the defence where there is a safe route of escape or where the police can be alerted <i>Hudson and Taylor, Abdul-Hussain</i></p> <p>Explain the unavailability of the defence where the threat is other than death or serious personal injury to the defendant, family or close other <i>Valderrama-Vega</i></p> <p>Explain that duress can be used as a defence to most crimes, except murder and attempted murder <i>Howe</i>.</p>	10	<table border="1"> <thead> <tr> <th>Level</th> <th>AO1</th> <th>AO2</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> <td>17-20</td> </tr> <tr> <td>4</td> <td>7-8</td> <td>13-16</td> </tr> <tr> <td>3</td> <td>5-6</td> <td>9-12</td> </tr> <tr> <td>2</td> <td>3-4</td> <td>5-8</td> </tr> <tr> <td>1</td> <td>1-2</td> <td>1-4</td> </tr> </tbody> </table> <p>Marks should be awarded (per scenario) as follows</p> <table border="1"> <thead> <tr> <th>Level</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9-10</td> </tr> <tr> <td>4</td> <td>7-8</td> </tr> <tr> <td>3</td> <td>5-6</td> </tr> <tr> <td>2</td> <td>3-4</td> </tr> <tr> <td>1</td> <td>1-2</td> </tr> </tbody> </table> <p>A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none"> • Max 3 marks for the Critical Point (C) • Max 6 marks for Applied Points (1-4) • Max 1 mark for a logical conclusion/assessment of the most likely outcome in terms of liability (CON) <p>In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a logical conclusion.</p>	Level	AO1	AO2	5	9-10	17-20	4	7-8	13-16	3	5-6	9-12	2	3-4	5-8	1	1-2	1-4	Level	(a), (b) or (c)	5	9-10	4	7-8	3	5-6	2	3-4	1	1-2
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Question	Answer	Marks	Guidance
	<p>Assessment Objective 2 (Analysis, evaluation and application)</p> <p>In the case of (a):</p> <p>C Identify that Alison must be impelled to act as she did because of her reasonable fear of serious physical injury or death following threats made by Boris. The threat made by Boris is to reveal her relationship with Lucy to her parents and not threats of death or serious physical injury: <i>Howe, Valderrama-Vega</i>.</p> <p>1 Identify that if the C point above is satisfied the court would ask whether a sober person of reasonable firmness, sharing Alison's characteristics, would have responded in the same way? It is likely that a sober person sharing Alison's characteristics (an adult female aged 35), should have been able to resist Boris' threat to reveal her relationship even if it meant losing her inheritance: <i>Graham, Bowen</i>.</p> <p>2 Identify that the defence only operates if Alison commits a specific crime nominated by Boris. Here, Boris has not told her to commit a crime nor has he nominated any specific crime. Alison has nominated the crime of robbery herself: <i>Cole</i>.</p> <p>3 Identify that the threat by Boris must be believed by Alison to be immediate or almost immediate. Since she has a week to pay the money back this is unlikely to be seen as immediate or almost immediate and she would have had time to contact the police for protection: <i>Hasan, Gill, Hudson and Taylor</i>.</p> <p>4 Identify that duress by threats is a complete defence. It is a defence to most crimes except murder and attempted murder. Since Alison has committed robbery, this crime is covered by the defence: <i>Howe</i>.</p> <p>5 Identify that the threat must be to the defendant or others/people close to the defendant. Here, the threat is to Alison, the defendant. <i>Wright, Ortiz</i>.</p> <p>CON Reach a sensible conclusion regarding duress by threats.</p>		

Question	Answer	Marks	Guidance
	<p>In the case of (b):</p> <p>C Identify that Chantelle must be impelled to act as she did because of her reasonable fear of serious physical injury or death following threats made by David. Here, David has made death threats to one of her pupils for whom she must feel reasonably responsible so the defence could be successful: <i>Hasan</i>.</p> <p>1 Identify that if the C point above is satisfied the court would ask whether a sober person of reasonable firmness, sharing Chantelle's characteristics, would have responded in the same way? It is likely that a sober person sharing her characteristics (an adult female) may <u>not</u> have been able to resist David's threat to stab a pupil to death unless she stole the exam paper: <i>Graham</i>.</p> <p>2 Identify that the defence only operates if Chantelle commits a specific crime nominated by David while making the threat. Here, David has nominated the crime of theft or burglary in order to obtain the exam paper: <i>Cole</i>.</p> <p>3 Identify that the threat by David must be believed by Chantelle to be immediate or almost immediate. As she only has until the 'end of the school day' this would appear immediate or almost immediate unless she had time to notify the police: <i>Hasan</i>.</p> <p>4 Identify that duress by threats is a complete defence. It is a defence to most crimes except murder and attempted murder. Since Chantelle has committed theft or burglary she would be entitled to raise the defence: <i>Howe</i>.</p> <p>5 Identify that the threat must be to the defendant or others/people close to the defendant. Here, the threat is to Alison, the defendant. <i>Wright, Ortiz</i>.</p> <p>CON Reach a sensible conclusion regarding duress by threats.</p>		

Question	Answer	Marks	Guidance
	<p>In the case of (c):</p> <p>C Identify that the voluntary association with criminal gangs or criminals means that Elsie may not have the defence, but only if she foresaw that she may be subjected to duress. As she is a member of a gang with a reputation for criminal activity she is most likely to have known of their tactics and/or that Frank has convictions for violence and the potential of facing threats herself: <i>Hasan, Sharp, Shepherd</i>.</p> <p>1 Identify that if the C point above is satisfied the court would ask whether a sober person of reasonable firmness, sharing Elsie's characteristics, would have responded in the same way? It is unlikely that a sober person sharing her characteristics (a pregnant female likely to be frightened for her unborn child's life), may not have been able to resist Frank's threat to kill the victim: <i>Bowen</i>.</p> <p>2 Identify that the defence only operates if Elsie commits a specific crime nominated by Frank while making the threat. Here, Frank has nominated the crime of murder against the leader of a rival gang, which she carries out: <i>Cole</i>.</p> <p>3 Identify that the threat by Frank must be believed by Elsie to be immediate or almost immediate. Here, there may, or may not have been, sufficient opportunity for an avenue of escape: <i>Hasan</i>.</p> <p>4 Identify that duress by threats is a complete defence. It is a defence to most crimes except murder and attempted murder. Since Elsie has committed murder she would not be entitled to raise the defence: <i>Howe</i>.</p> <p>5 Identify that the threat must be to the defendant or others/people close to the defendant. Here, the threat is to Alison, the defendant. <i>Wright, Ortiz</i>.</p> <p>CON Reach a sensible conclusion regarding duress by threats.</p>		

APPENDIX 1

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

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform 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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