

Mark Scheme for January 2012

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

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

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

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

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Annotations

Annotation	Meaning
R	Repetition
}	Irrelevant (use for more than a couple of lines of text otherwise use the following)
S/O	Sort of
√	Knowledge (AO1)
Def	Definition (AO1)
C1 etc	To indicate cases (AO1)
(C1) etc	To indicate partially accurate/relevant cases (AO1)
n/o	To indicate use of a case but in name only
AO2	To indicate a bold comment
AO2+	To indicate developed comment/discussion
AO2++	Could use AO2++ though rarely

SECTION A

Question	Answer	Marks	Guidance												
1*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define theft as stated in section 1 Theft Act 1968 Define appropriation as found in section 3 Theft Act 1968:</p> <ul style="list-style-type: none"> • Describe appropriation and the rights of an owner – <i>Pitham, McPherson, Skipp, Eddy v Niman, Morris, Gomez, Atakpu</i> • Relevance of consent in appropriation – <i>Lawrence, Morris, Fritschy, Dobson, Gomez, Gallasso, Mazo, Hinks</i> • Difficulties in cases relating to gifts of property – <i>Hopkins and Kendrick, Hinks</i> • Problems of when an appropriation starts and ends, especially in relation to other offences such as robbery and burglary – <i>Hale, Lockley</i> <p>Define property as found in section 4 Theft Act 1968:</p> <ul style="list-style-type: none"> • Describe what constitutes property – <i>Kelly, Oxford v Moss</i> • Describe exceptions found in sections 4 (2), 4 (3) and 4 (4) <p>Define belonging to another as found in section 5 Theft Act 1968:</p> <ul style="list-style-type: none"> • Describe what is meant by basic definition – ownership, possession or control – <i>Turner, Woodman, Rostron and Collinson</i> • Exception in section 5 (3) when money is given for a particular purpose – <i>Hall, Davidge v Bunnett, Wain</i> • Exception in section 5 (4) when property is acquired by mistake – <i>AG Ref (No. 1 of 1983)(1985), Gilks</i> 	25	<table border="1" data-bbox="1348 316 1704 528"> <thead> <tr> <th>AO1 Level</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>All aspects of <i>actus reus</i> of theft must be covered in order to reach level 5</p> <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 where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</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 where appropriate</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 Level	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following areas:</p> <ul style="list-style-type: none"> • Problem Parliament was trying to solve and the need for a clear, workable law • Range of ways in which appropriation can occur • Difficulties of proof for juries • Problems in relation to consent and overlap with other offences • Issues relating to the continuation of an appropriation • Conflicts between the civil and criminal law in relation to gifts • Conflicts between moral and legal issues • Issues arising from the intricacies of section 4 • Problems due to breadth of definition of section 5 • Particular difficulties created by section 5 subsections • Views of academics such as Professors Sir John Smith and Griew • Lack of Parliamentary activity – does this mean the law is good enough? • Appropriation now so wide that it overlaps with offence which was covered by section 15 Theft Act 1968 and now fraud • Breadth of appropriation can also link to issues in dishonesty • Reach any sensible conclusion. 	20	<table border="1"> <thead> <tr> <th data-bbox="1346 220 1518 256">AO2 Level</th> <th data-bbox="1518 220 1704 256">AO2 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1346 256 1518 293">5</td> <td data-bbox="1518 256 1704 293">17-20</td> </tr> <tr> <td data-bbox="1346 293 1518 330">4</td> <td data-bbox="1518 293 1704 330">13-16</td> </tr> <tr> <td data-bbox="1346 330 1518 367">3</td> <td data-bbox="1518 330 1704 367">9-12</td> </tr> <tr> <td data-bbox="1346 367 1518 403">2</td> <td data-bbox="1518 367 1704 403">5-8</td> </tr> <tr> <td data-bbox="1346 403 1518 440">1</td> <td data-bbox="1518 403 1704 440">1-4</td> </tr> </tbody> </table>		AO2 Level	AO2 marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain new defence of loss of self-control section 54 and 55 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none"> • Old defence of provocation abolished by section 56 (1) - <i>Clinton</i> • Section 54 (1) (a) requires a loss of self-control - <i>Ibrams and Gregory, Thornton, Ahluwalia, Humphreys</i> • Section 54 (2) says it does not need to be sudden and is a jury question – <i>Duffy</i> • Section 55 requires one or both of two qualifying triggers to exist • Qualifying trigger of fear of serious violence – section 55 (3) – <i>Pearson</i> • Qualifying trigger of a thing or things done or said circumstances of an extremely grave character and a justifiable sense of being seriously wronged – section 55 (4) – <i>Camplin, Baillie, Morhall, Davies, Humphreys</i> • Normal person test – takes into account age, sex and circumstances of the defendant but a normal degree of tolerance and self-restraint is expected; all characteristics are relevant other than those which bear on general capacity for tolerance or self-restraint – <i>Camplin, Holley</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</i> • Defendant must have a recognised medical condition – <i>Dietschmann, Jama, Seers</i> • Defendant must have been rendered unable to: understand the nature of their act, or form a rational judgment or exercise self-control 	25	<table border="1" data-bbox="1348 247 1704 459"> <thead> <tr> <th>AO1 Level</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>To achieve level 5 candidates need to cover both defences but need make only limited reference to provocation.</p> <p>Candidates 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 where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</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 where appropriate</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 Level	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> • Abnormality must provide an explanation for defendant's acts and omissions – must be causal link but need not be the only one • Role of intoxication – <i>Fenton, Gittens, Egan, Dietschmann, Hendy, Robson, Swan</i> • Role of alcoholism/Alcohol Dependency Syndrome – <i>Tandy, Inseal, Wood, Stewart</i> 														
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following areas:</p> <ul style="list-style-type: none"> • Old law confused and out-of-date • Provocation seemed to be biased towards men • Confusion in definitions about concepts such as immediacy • Debates as to relevant characteristics seemed contradictory and created injustice • Did old law give effect to Parliament's intention? • New law attempts to clarify and re-calibrate law but success uncertain as critics say it is very complex • Still onus on defendant to provide sufficient evidence of a loss of self-control which means that a jury could reasonably conclude the defence might apply – is this fair? • Old DR law problematic as to what conditions sufficient but new law tries to resolve this • New law tries to shift DR to more medical approach • Law should be more coherent and so avoid unequal treatment • Now DR less of catch-all due to changes in provocation/loss of self-control • Now clearer lines relating to those who drink or are alcoholics • Burden of proof remains on the defendant – puts the defendant at a disadvantage and could be breach of Art 6 ECHR • Reliance on medical evidence can be controversial and testing for juries 	20	<table border="1" data-bbox="1346 501 1704 715"> <thead> <tr> <th>AO2 Level</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>	AO2 Level	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"> • Will policy issues still work against defendants? • Reach any sensible conclusion. 															
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3*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define <i>actus reus</i> – the conduct element of a crime and normally requires positive, voluntary act</p> <p>Explain how offences may be brought about by omission – a failure to act when there is a duty to do so:</p> <ul style="list-style-type: none"> • Statutory duty – Parliament acting to protect – section 1 Children and Young Persons Act 1933, section 5 Domestic Violence, Crime and Victims Act 2004, <i>Greener</i> • Contractual duty/duty based on official position – created by a contract of employment or usually related to public office – <i>Pittwood, Adomako, Dytham</i> • Duty based on relationship – usually parent and child – <i>Gibbins and Proctor</i> • Duty undertaken voluntarily – based on reliance – <i>Stone and Dobinson</i> • Duty based on creation of a dangerous situation and need to act reasonably – <i>Miller, Santana-Bermudez</i> <p>Explain particular difficulties relating to involuntary manslaughter and omissions – <i>Lowe, Khan and Khan, Rogers, Kennedy</i></p> <p>Explain particular position relating to doctors – <i>Bland</i></p> <p>Explain proposals for reform by the Law Commission</p>	25	<table border="1" data-bbox="1346 284 1704 496"> <thead> <tr> <th>AO1 Level</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 are expected to deal with all categories of omissions to reach level 5</p> <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 where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</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 where appropriate</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 Level	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Discuss any or all of the following areas:</p> <ul style="list-style-type: none"> • Relationship between legal principles which favour need for positive act and public policy which wants to impose standards of behaviour • Policy dictates that many crimes committed by omission are strict liability • Difficulty in defining a duty and whether a person can be absolved after assuming a duty • Fairness of expecting those under contracts of employment to act if there is personal risk • Fairness of expecting more of those who hold public office? • Should there be a duty to act and is there a difference between breaching a duty and failing to get involved? • Good Samaritan law - should it be introduced and what form would it take? • Policy issues relating to doctors • Overlap between problem of coincidence and creation of dangerous situations • Problems when those assuming duties are incapable of fulfilling them • Reach any sensible conclusion. 	20	<table border="1"> <thead> <tr> <th data-bbox="1346 220 1518 256">AO2 Level</th> <th data-bbox="1518 220 1704 256">AO2 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1346 256 1518 293">5</td> <td data-bbox="1518 256 1704 293">17-20</td> </tr> <tr> <td data-bbox="1346 293 1518 330">4</td> <td data-bbox="1518 293 1704 330">13-16</td> </tr> <tr> <td data-bbox="1346 330 1518 367">3</td> <td data-bbox="1518 330 1704 367">9-12</td> </tr> <tr> <td data-bbox="1346 367 1518 403">2</td> <td data-bbox="1518 367 1704 403">5-8</td> </tr> <tr> <td data-bbox="1346 403 1518 440">1</td> <td data-bbox="1518 403 1704 440">1-4</td> </tr> </tbody> </table>		AO2 Level	AO2 marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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SECTION B

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4*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain non fatal assaults against the person: Explain common law assault and battery – charged under section 39 Criminal Justice Act 1988:</p> <ul style="list-style-type: none"> Assault – putting a person in fear of immediate and unlawful personal harm accompanied by intention or subjective recklessness – <i>St George, Stephens v Myers, Cole v Turner, Venna, Cunningham</i> Battery – infliction of unlawful personal harm accompanied by intention or subjective recklessness – <i>Collins v Wilcock, Thomas</i>, <p>Explain assault occasioning actual bodily harm – section 47 Offences Against the Person Act 1861:</p> <ul style="list-style-type: none"> Actus reus – assault leading to harm which interferes with health or comfort – <i>Miller</i> Mens rea – intention or subjective recklessness – only needed for assault and battery <i>Roberts, Savage</i> <p>Explain unlawful and malicious wounding or inflicting grievous bodily harm – section 20 Offences Against the Person Act 1861:</p> <ul style="list-style-type: none"> Actus reus – infliction of a wound which breaks all layers of skin or really serious harm – <i>Saunders Eisenhower</i> Mens rea – needed for assault and battery and must be foresight of some harm but not necessarily serious harm – <i>Grimshaw, Parmenter</i> <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"> Actus reus is causing harm wounding as for section 20 Mens rea – intention for wound or GBH – <i>Morrison</i> Credit reference to relevant CPS Charging Standards Define and explain the defence of consent in sport: Consent can be a complete defence but only within rules of game – <i>AG Ref (No 6 of 1980), Billingham, Barnes, Ciccarelli</i>. 	25	<table border="1" data-bbox="1377 300 1736 507"> <thead> <tr> <th>AO1 Level</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 are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.</p> <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 where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</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 where appropriate</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 Level	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify common law assault and battery Identify section 47 OAPA 1861 Identify section 20 OAPA 1861 Identify section 18 OAPA 1861 Identify the defence of consent</p> <p>In the case of Ahmed hitting Bob in the face:</p> <ul style="list-style-type: none"> • Level of harm likely to be enough to satisfy section 18 or 20 as all the layers of the skin are broken • Ahmed is malicious and acts intentionally to hit Bob in the face making a charge of section 18 or 20 appropriate • Credit discussion of section 47 based on the cut lip not breaking all layers of the skin • Defence of consent would not be available as such conduct is outside the rules of the game <p>In the case of Bob shouting at Ahmed:</p> <ul style="list-style-type: none"> • Putting a person in fear of immediate and unlawful personal violence by the use of words suggests a charge of assault • Words give context that Bob has intention or at least subjective recklessness <p>In the case of Bob shoving Ahmed:</p> <ul style="list-style-type: none"> • Appears to fall into category of hostile touching as is minimal harm suggesting charge of battery • Bob appears to be at least subjectively reckless confirming battery charge <p>In the case of Craig twisting Ahmed’s ankle:</p> <ul style="list-style-type: none"> • Level of harm likely to be a hurt interfering with health or comfort suggesting a charge of section 47 • Craig’s anger and the context in which harm occurs suggests he intended the unlawful act but may not have foreseen any harm making section 47 the likely charge 	20	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="1379 217 1552 258">AO2 Level</th> <th data-bbox="1552 217 1733 258">AO2 marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1379 258 1552 300" style="text-align: center;">5</td> <td data-bbox="1552 258 1733 300" style="text-align: center;">17-20</td> </tr> <tr> <td data-bbox="1379 300 1552 341" style="text-align: center;">4</td> <td data-bbox="1552 300 1733 341" style="text-align: center;">13-16</td> </tr> <tr> <td data-bbox="1379 341 1552 383" style="text-align: center;">3</td> <td data-bbox="1552 341 1733 383" style="text-align: center;">9-12</td> </tr> <tr> <td data-bbox="1379 383 1552 424" style="text-align: center;">2</td> <td data-bbox="1552 383 1733 424" style="text-align: center;">5-8</td> </tr> <tr> <td data-bbox="1379 424 1552 466" style="text-align: center;">1</td> <td data-bbox="1552 424 1733 466" style="text-align: center;">1-4</td> </tr> </tbody> </table>		AO2 Level	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"> Credit discussion that level of harm to a professional sportsman could constitute a more serious level of harm and a professional could be seen to have a higher level of mens rea making a section 20 charge possible <p>Reach any sensible conclusions.</p>															
	<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	5	<table border="1"> <thead> <tr> <th data-bbox="1375 464 1655 499">AO1 + AO2 marks</th> <th data-bbox="1655 464 1823 499">AO3 mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1375 499 1655 534">37-45</td> <td data-bbox="1655 499 1823 534">5</td> </tr> <tr> <td data-bbox="1375 534 1655 569">28-36</td> <td data-bbox="1655 534 1823 569">4</td> </tr> <tr> <td data-bbox="1375 569 1655 604">19-27</td> <td data-bbox="1655 569 1823 604">3</td> </tr> <tr> <td data-bbox="1375 604 1655 639">10-18</td> <td data-bbox="1655 604 1823 639">2</td> </tr> <tr> <td data-bbox="1375 639 1655 675">1-9</td> <td data-bbox="1655 639 1823 675">1</td> </tr> </tbody> </table>		AO1 + AO2 marks	AO3 mark	37-45	5	28-36	4	19-27	3	10-18	2	1-9	1
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5*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define and explain murder – unlawful killing of a human being with an intention to kill/inflict GBH or foresight of death/GBH as a virtually certain risk along with an appreciation of the risk – <i>Woollin</i> and <i>Matthews</i> and <i>Alleyne</i></p> <p>Define and explain causation:</p> <ul style="list-style-type: none"> • Causation in fact – ‘but for’ test – <i>Roberts</i> • Causation in law – operative and substantial test – <i>Cheshire</i> • Take your victim as you find them – thin skull test – <i>Blaue</i> <p>Define and explain the defence of duress – <i>Graham, Hasan</i>:</p> <ul style="list-style-type: none"> • A complete defence when victim acts under threats • Threat needs to be of death or serious bodily harm – <i>Valderrama-Vega</i> • Threat needs to be immediate or reasonably imminent – <i>Hudson and Taylor</i> • Limits of defence if defendant voluntarily becomes involved in criminal enterprise – <i>Sharp, Shepherd, Hasan</i> • Limit of defence in that not available to charge of murder or attempted murder – <i>Howe, Wilson, Gotts</i> <p>Define and explain defence of intoxication:</p> <ul style="list-style-type: none"> • Voluntary intoxication can be a defence to crimes of specific intent if the defendant is incapable of forming the necessary means <i>rea</i> – <i>Beard, Lipman, Majewski</i> • Intoxication before committing the offence likely to be Dutch Courage – <i>Gallagher</i> • Drunken mistake does not provide a defence – <i>O’Grady, O’Connor, Fotheringham</i> <p>Define and explain defence of self-defence:</p> <ul style="list-style-type: none"> • Can be used to protect self or another person • There can be a pre-emptive strike • There is no obligation to retreat or to demonstrate an unwillingness to fight – <i>Bird</i> 	25	<table border="1" data-bbox="1377 284 1736 494"> <thead> <tr> <th>AO1 Level</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 are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.</p> <p>A discussion focused solely on causation is restricted to level 3. No credit to be given for provocation.</p> <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 where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</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 where appropriate</p>	AO1 Level	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<ul style="list-style-type: none"> Reasonable force assessed for the position the defendant genuinely believed to exist – <i>Palmer, Whyte, Scarlett, Owino</i> If force is excessive there is no defence – <i>Palmer, Clegg</i> Defence not available if induced by intoxication - <i>O’Grady, O’Connor</i> 		<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>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify the offence of murder Identify the defence of duress Identify the defence of intoxication Identify the defence of self-defence</p> <p>In the case of Klaus stabbing Luke repeatedly and his death:</p> <ul style="list-style-type: none"> Possibility of murder as there is an actus reus of unlawful killing of a human being and the chain of causation is intact Evidence of intention as Klaus has bought a knife and stabs Luke repeatedly Duress will not work if the charge is murder Duress also unlikely to work as the threat to reveal an affair is not one of death or serious bodily harm Intoxication problematic as if Klaus drinks to give himself the nerve to kill Luke this will be Dutch courage and therefore no defence is available If Klaus’s fear leads him to become intoxicated it could be a defence if it prevents him forming the mens rea for the crime but this seems unlikely since he stabs Luke repeatedly Self defence is a possibility but the use of the knife probably renders it to be excessive force Defence not available if a result of self-induced intoxication <p>Reach any sensible conclusions.</p>	<p>20</p>	<table border="1"> <thead> <tr> <th>AO2 Level</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>	AO2 Level	AO2 marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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6*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <p>Define involuntary manslaughter:</p> <ul style="list-style-type: none"> • Unlawful killing of a human being without the high level of mens rea necessary for murder. <p>Define and explain unlawful and dangerous act/constructive manslaughter:</p> <ul style="list-style-type: none"> • Need for a positive and unlawful act – <i>Mitchell, Larkin, Church</i> • Unlawful act should be dangerous – <i>Dawson, Watson</i> • Requirement that the positive act be done intentionally – <i>Goodfellow, Newbury and Jones</i> • Requirement that the chain of causation be intact and death ensue • Reasonable man needs to foresee the risk of some harm to some other person but not necessarily the harm which results – <i>Church</i> <p>Define and explain gross negligence manslaughter:</p> <ul style="list-style-type: none"> • Was there a duty of care? • Was the duty of care breached? • Was there a risk of death and did death result? • Was the negligence such as to make the defendant criminally liable in the eyes of the jury? – <i>Adomako</i>. <p>Define and explain chain of causation:</p> <ul style="list-style-type: none"> • Causation in fact – defendant to be a ‘but for’ cause and make more than a minimal contribution to the death of the victim – <i>White, Kimsey</i> • Causation in law – was the defendant’s act the operative and substantial cause of harm? – <i>Pagett, Church</i> • Need to ‘take your victim as you find them’ – <i>Blaue</i> <p>Credit reference to subjective reckless manslaughter:</p> <ul style="list-style-type: none"> • Was there a risk of death or serious harm to the victim? • Did the defendant see the risk and decide to run it? – <i>Lidar</i>. 	25	<table border="1" data-bbox="1402 284 1760 496"> <thead> <tr> <th>AO1 Level</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 are unlikely to achieve the descriptor for level 5 AO1 and AO2 without identification, discussion and application of all the areas of law raised by the question.</p> <p>Discussion focused on causation restricted to level 3. No credit for discussion of murder.</p> <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 where appropriate</p> <p>Level 4 – being able to cite at least 5 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</p> <p>Level 3 – being able to cite at least 3 relevant cases accurately and clearly to support their argument and make reference to specific sections of the relevant statute where appropriate</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 where appropriate</p>	AO1 Level	AO1 marks	5	21-25	4	16-20	3	11-15	2	6-10	1	1-5
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	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>Identify involuntary manslaughter. Identify unlawful act/constructive manslaughter. Identify gross negligence manslaughter Identify subjective reckless manslaughter. In the case of Naomi: Unlawful act/constructive manslaughter appears to be the most likely charge:</p> <ul style="list-style-type: none"> • There has been a positive, unlawful and dangerous act as Mandy is driving her car whilst not fully in control as she is texting • Mandy’s act of texting is intentional • A reasonable man would see a risk of at least some harm from a driver not concentrating fully • Death is caused • Mandy would appear to be the factual cause of death using the ‘but for’ test • Mandy would appear to be the legal cause of death using the operative and substantial test • Mandy’s rare blood type and being given the wrong blood will not remove liability from Mandy using the ‘thin skull’ principle <p>Gross negligence manslaughter could be an alternative charge:</p> <ul style="list-style-type: none"> • Mandy owes a duty to other road users • That duty is breached when Mandy texts whilst driving • There is a risk of death and death is caused • A jury might decided that Mandy’s behaviour falls so far short of that expected of the reasonable competent motorist as to be criminal <p>Subjective reckless manslaughter could be an alternative charge:</p> <ul style="list-style-type: none"> • Mandy would have seen see the risk of death or serious bodily harm of driving whilst texting and decided to run the risk 	20	<table border="1" data-bbox="1402 360 1760 572"> <thead> <tr> <th>AO2 Level</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>	AO2 Level	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 Pam: Unlawful act/constructive manslaughter appears to be the most likely charge:</p> <ul style="list-style-type: none"> • There has been a positive, unlawful and dangerous act as Mandy is driving her car whilst not fully in control as she is texting • Mandy’s act of texting is intentional • A reasonable man would see a risk of at least some harm from a driver not concentrating fully • Death is caused • Mandy would appear to be the factual cause of death using the ‘but for’ test • Mandy would appear to be the legal cause of death using the operative and substantial cause test but the fact that Pam is elderly and dies two hours later of a heart attack is likely to break the chain of causation <p>Gross negligence manslaughter could be an alternative charge:</p> <ul style="list-style-type: none"> • Mandy owes a duty to other road users • That duty is breached when Mandy texts whilst driving • There is a risk of death and death is caused • A jury might decide that Mandy’s behaviour falls so far short of that expected of the reasonable competent motorist as to be criminal <p>Subjective reckless manslaughter could be an alternative charge:</p> <ul style="list-style-type: none"> • Mandy would see the risk of death or serious bodily harm of driving whilst texting and decides to run the risk 															
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SECTION C

Question	Answer	Marks	Guidance												
7 (a)	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that Natalya must be a trespasser because she has no permission to enter the shop if she is going to commit a crime</p> <p>P2 Reason that Natalya must enter a building or part of a building and this is clearly happening</p> <p>P3 Reason that Natalya must enter with an intention to commit theft, GBH or unlawful damage and that she satisfies this</p> <p>P4 Reason that the offence as defined in section 9(1)(a) is complete at the point of entry and when Natalya goes into the shop this will be sufficient</p> <p>P5 Conclude that the statement is accurate.</p>	5	<table border="1" data-bbox="1641 347 1995 560"> <thead> <tr> <th>AO2 Level</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> <p>Statement A – P2 can be awarded for definition including reference to building and then stating that Natalya has entered</p>	AO2 Level	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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(b)	<p>P1 Reason that Natalya commits the <i>actus reus</i> of theft as she has appropriated a bread roll</p> <p>P2 Reason that a bread roll is property which belongs to the shop</p> <p>P3 Reason that Natalya has an intention to permanently deprive in that she means to eat the roll because she is hungry</p> <p>P4 Reason that Natalya is dishonest because section 2(1)(b) does not apply and/or she is dishonest under the <i>Ghosh</i> test</p> <p>P5 Conclude that the statement is accurate.</p>	5													
(c)	<p>P1 Reason that there must first be a theft and Natalya commits this when she puts biscuits and coffee into her rucksack</p> <p>P2 Reason that under section 8 robbery requires the use or threat of force and Natalya has done this when she pushes the shopkeeper</p> <p>P3 Reason that the force must be before or at the time of stealing and Natalya pushes the shopkeeper after the theft is complete but this could be seen as a continuing act</p> <p>P4 Reason that the force or threat of force must be in order to steal and Natlaya has already completed the offence but again this could be a continuing act</p> <p>P5 Conclude that the statement is accurate.</p>	5													

Question		Answer	Marks	Guidance
		<p>P3a Credit alternative reasoning that when Natalya pushes the shopkeeper the theft is already complete</p> <p>P4a Therefore force is not used in order to steal</p> <p>P5a Conclude that the statement is inaccurate.</p>		
	(d)	<p>P1 Reason that Natalya must be a trespasser and she enters intending to commit a crime which makes her a trespasser under section 9(1)(b)</p> <p>P2 Reason that Natalya must enter a building or part of a building and this is clearly what happens</p> <p>P3 Reason that having entered as a trespasser Natalya must attempt or commit theft or GBH</p> <p>P4 Reason that Natalya does this because she steals</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	

Question		Answer	Marks	Guidance												
8		<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>P1 Reason that the <i>actus reus</i> of attempted murder requires an act which is more than merely preparatory</p> <p>P2 Reason that there is no <i>actus reus</i> because Stefan is only getting ready to commit a crime when he buys the knife</p> <p>P3 Reason that the <i>mens rea</i> of attempted murder is intention to kill</p> <p>P4 Reason that Stefan has no <i>mens rea</i> as he has no intention to kill but merely an intention to cause GBH</p> <p>P5 Conclude that the statement is inaccurate.</p>	5	<table border="1"> <thead> <tr> <th>AO2 Level</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 Level	AO2 Marks	5	5	4	4	3	3	2	2	1	1
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	(b)	<p>P1 Reason that the <i>actus reus</i> of attempted GBH requires an act which is more than merely preparatory</p> <p>P2 Reason that there is no <i>actus reus</i> as Stefan is simply waiting for Theo to return</p> <p>P3 Reason that the <i>mens rea</i> is an intention to cause GBH</p> <p>P4 Reason that the <i>mens rea</i> is present because Stefan wants to cause GBH</p> <p>P5 Conclude that the statement is inaccurate.</p>	5													
	(c)	<p>P1 Reason that the <i>actus reus</i> of attempted GBH requires an act which is more than merely preparatory</p> <p>P2 Reason that the <i>actus reus</i> is present because Stefan has moved from preparation to the crime proper when he thrusts the knife at Theo</p> <p>P3 Reason that the <i>mens rea</i> is intention to cause GBH</p> <p>P4 Reason that the <i>mens rea</i> is present as Stefan intends to hurt Theo badly</p> <p>P5 Conclude that the statement is accurate.</p>	5													

Question	Answer	Marks	Guidance
(d)	<p>P1 Reason that the <i>actus reus</i> of attempted murder requires an act which is more than merely preparatory and impossibility is no bar to conviction</p> <p>P2 Reason that the <i>actus reus</i> is present even though the offence is physically impossible because Stefan's wife is not there</p> <p>P3 Reason that the <i>mens rea</i> for attempted murder is intention to kill</p> <p>P4 Reason that the <i>mens rea</i> is present because Stefan has an intention to kill when he stabs wildly at the shape on the sofa</p> <p>P5 Conclude that the statement is accurate.</p> <p>P4a Credit alternative reasoning that <i>mens rea</i> is not present because Stefan may only intend GBH by stabbing wildly</p> <p>P5a Conclude that the statement is inaccurate.</p>	5	

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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