

# Suggested Scheme of Work

## Criminal Law (G143)

This is merely a suggestion as to the order of topics to be covered and also includes a more detailed explanation of the content.

### Weeks 1–2

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#### Principles of criminal liability

**Actus Reus - the conduct element** - basic principle that a crime needs an actus reus; without it no need to go further. Explanation of why its existence, if accompanied by relevant mens rea, is useful in terms of allocating blame and justifying punishment.

**Actus Reus** - definition and need for proof of a positive act.

**Actus Reus** - chain of causation and tests used to prove its existence such as 'but for' test, 'operative and substantial cause of harm' test, 'thin skull' test, principles relating to foreseeability and the doctrine of coincidence.

**Actus Reus** - consideration of omissions which create an actus reus in certain duty situations based on statute, contractual obligation and duties evolved through the common law such as family relationship, reliance and supervening fault. Discussion of the lack of a Good Samaritan law in the UK.

### Weeks 3-4

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**Mens Rea - the mental element** – most important discriminator in terms of allocating blame and justifying punishment; helps to give the system credibility.

**Mens Rea** – basic definition

**Mens Rea** – intention – most serious level of mens rea – explanation of direct intent; explanation of oblique intent based on s8 Criminal Justice Act 1968 and case law. Discussion on the evolution of the test for oblique intent.

**Mens Rea** – distinction between specific and basic intent.

**Mens Rea** – recklessness and its evolution from a subjective test to an objective one and recent reversion to a subjective test via case law.

**Mens Rea** – the concept of transferred malice to preserve liability.

## Week 5

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**Strict liability** – distinction between absolute liability where no mens rea needed and strict liability where no mens rea needed for at least one element of the actus reus.

**Consideration of statutory sources** – amount of offences and how they can be identified based on statutory wording, type of offence and sentencing.

**Discussion** - based on issues relating to interpretation, social utility of offences, the influence of policy, advantages and disadvantages of strict liability, existence and development of a due diligence defence.

## Week 6

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### Attempted crimes

**Actus Reus** – definition given in S.1(1) CAA 1981 of an ‘offence which is more than merely preparatory’ and its interpretation by the courts.

**Attempting the impossible** - consideration of S.1(2) and S.1(3).

**Mens Rea** – need to prove intention and influence of recklessness with regard to circumstances.

**Discussion** - consider the principles behind the law – personal freedom of thought and difficulty of convicting for minimal action as against public protection, deterrence to prevent criminal involvement and assistance for the agencies of law enforcement.

## Week 7-9

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### Offences against the person

#### Murder

**Actus Reus** – unlawful killing of a human being

**Mens Rea** – specific intent

#### Voluntary Manslaughter

**Diminished Responsibility** – S.2 Homicide Act 1957 – need for behaviour abnormal by the standards of the reasonable man, fitting with in categories specified in the Homicide Act and causing substantial impairment.

**Diminished Responsibility** – problems of defence and links to general defence of insanity.

#### Voluntary Manslaughter

**Provocation** – S.3 Homicide Act 1957 – need to prove existence of provocative behaviour leading to a sudden and temporary loss of self control which results in death by a defendant who possesses the characteristics of the reasonable man, with certain exceptions decided by the courts.

**Provocation** – consideration of the problems relating to elements of the definition, particularly the need to kill in the heat of the moment and relevant characteristics. Consideration of reform proposals.

#### Involuntary Manslaughter

**Constructive (unlawful act) manslaughter** – need to prove positive, intentional, unlawful and dangerous act which causes death and where the reasonable man would have seen a risk of harm although not necessarily a risk of serious harm or death.

**Gross negligence manslaughter** – need to prove a failure to act based on the existence of a duty which has been breached and caused death where the risk of death was foreseen and the jury believes that the conduct was so blameworthy as to be criminal.

**Reckless manslaughter** – death results from a positive act where the defendant sees risk of death or serious harm but continues to act and death results.

## Week 10

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### General Defences

**Insanity** – defence based on M’Naghten Rules 1843 – start from a presumption of innocence but defence may succeed if there is a defect of reason caused by a disease of mind so the defendant does not know the nature and quality of their act.

**Insanity** – may lead to special verdict and sentencing options governed by the Insanity (Criminal Proceedings and Unfitness to Plead) Act 1991.

**Discussion** - problems attached to raising the defence based on lack of medical clarity and accompanying social issues. Overlap with automatism.

**Automatism** – defence based on an involuntary act over which the defendant has no control. Distinguish from automatism which is self-induced.

**Discussion** - distinction between insane and non insane automatism

## Week 11

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**Duress** – defence based on a threat of death or serious bodily harm with some element of immediacy. Limitations in application to the members of criminal gangs, terrorists and the offence of murder. The development of duress of circumstances.

**Necessity** – used to justify something bad based on the concept of the greater good. Limitations of the defence. Overlap with duress of circumstances.

**Discussion** - moral and policy influences and limits on the defences.

## Week 12

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**Intoxication** – division between crimes of specific and basic intent. Division between voluntary and involuntary intoxication and the effect of the defence.

**Mistake** - relationship between the defences of intoxication and mistake.

**Discussion** - the effect of public policy in applying the defence.

## Week 13-15

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### Non Fatal Offences Against the Person

**Assault** – putting a person in fear of immediate and unlawful personal violence with a mens rea of intention or subjective recklessness. Use of S.39 CJA 1988.

**Battery** – unlawful or hostile touching with mens rea of intention or subjective recklessness. Use of S.39 CJA 1988.

**Assault occasioning actual bodily harm** – S.47 OAPA 1861 – what constitutes ABH; issues of mens rea

**Unlawful and malicious wounding/inflicting grievous bodily harm** – S.20 OAPA 1861 – difference between a wound and GBH; issues of how the actus reus is completed and mens rea

**Unlawful and malicious wounding/causing grievous bodily harm with intent** – S.18 OAPA 1861 - issues of how the actus reus is completed and mens rea

**Discussion** - potential reforms in the Law Commission proposals. Difficulties in the offences especially those relating to levels of harm, the concept of immediacy, amounts of mens rea and sentencing issues.

**Self defence/defence of another/prevention of crime** – need for some immediacy and proportionate force. Links to the defence of mistake.

**Consent** – use of defence and its limitations.

**Discussion** - the balance between personal freedom and social protection. Influence of public policy.

## **Week 16-17**

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### **Offences against property**

**Theft** – definition in S.1 Theft Act 1968

**S.2 – 6 Theft Act 1968** – explanation of key terms - dishonesty, appropriation, property, belonging to another and intention to permanently deprive.

**Discussion** - issues relating to appropriation and dishonesty and their interpretation by the courts.

## **Week 18**

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### **Other property offences**

**Robbery** – S.8 Theft Act 1968 – consideration of actus reus and mens rea.

**Burglary** – S.9 Theft Act 1968 – consideration of common terms – entry, building or part of a building and trespass. Distinction between offences in S.9(1)(a) and S.9(1)(b).