

**GCE**

**Law**

Unit **G153**: Criminal Law

Advanced GCE

**Mark Scheme for June 2016**

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.

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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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1. 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

## 2. 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 \*<sub>1</sub> (found in the 'Levels of Assessment' grid at the back of this document)

question specific indicative content given in the 'Answer' column\*<sub>2</sub>

question specific guidance given in 'Guidance' column\*<sub>3</sub>

the 'practice' scripts\*<sub>4</sub> provided in Scoris and accompanying commentaries

- \*<sub>1</sub> The levels of assessment criteria (found in the 'Levels of Assessment' grid) reflect the expectation of achievement for each Assessment Objective at every level.
- \*<sub>2</sub> 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.
- \*<sub>3</sub> 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.
- \*<sub>4</sub> 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.**

### **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 G155 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 a **BP** annotation.

This will demonstrate that every page of a script has been checked.

Question	Answer	Marks	Guidance												
1*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define attempt under The Criminal Attempts Act 1981:</p> <ul style="list-style-type: none"> <li>• <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, Boyle &amp; Boyle, Dagnall, Griffin, Toothill</i></li> <li>• <i>Mens rea</i> of an attempt – <i>Pearman, Widdowson, Whybrow, Mohan, Walker and Hayles</i>;</li> <li>• Particular relevance of recklessness in relation to circumstances – <i>Millard and Vernon, R v Khan &amp; Others, AG Ref. (No. 3 of 1992)(1994)</i>;</li> <li>• Conditional intent – <i>Easom, Hussey, AG Ref. (No. 1 and 2 of 1979)(1979)</i>;</li> <li>• Position relating to impossibility addressed in sections 1(2) and 1(3) CAA 1981 – <i>Anderton v Ryan, Shivpuri, Taaffe, Jones (2007)</i></li> <li>• An omission is not enough to satisfy the <i>actus reus</i> of an attempt</li> <li>• Credit reference to pre-act case law if used in an AO2 context.</li> </ul> <p>Credit any other relevant cases. Credit any other relevant points.</p>	25	<table border="1" data-bbox="1413 280 2051 512"> <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><b>Level 5</b> – 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 and a discussion of both <i>actus reus</i> and <i>mens rea</i>.</p> <p><b>Level 4</b> – 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, where appropriate</p> <p><b>Level 3</b> – 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, where appropriate</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><b>Level 2</b> – 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><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references may be confused</p> <p><b>NB: It is possible to achieve a L5 answer without discussing the pre-81 common law tests.</b></p>												
	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following areas:</p> <ul style="list-style-type: none"> <li>• Problems caused by having several tests at common law pre-81</li> <li>• Whether the 1981 Act solved or created further problem</li> <li>• Narrow and wide interpretations of more than merely preparatory test</li> <li>• The rationale behind a law of attempt as a need to stop criminal behaviour before harm is caused</li> <li>• The need to give the police the opportunity to stop criminals before an offence is committed</li> <li>• The need to balance this against intervention which is too early and could run the risk of punishing people</li> </ul>	<b>20</b>	<table border="1" data-bbox="1413 799 2056 1027" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">AO2 Levels</th> <th style="text-align: center;">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17-20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13-16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9-12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5-8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1-4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases and which covers both <i>actus</i></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>for mere contemplation or minimal activity in pursuit of a crime and whether this balance been achieved?</p> <ul style="list-style-type: none"> <li>• Legal principle v public policy considerations</li> <li>• Practical difficulties in implementing the test and the inconsistent decisions which have been reached as a consequence</li> <li>• Particular problems relating to impossibility and the line between a thought crime and an attempt;</li> <li>• Issues in relation to levels of mens rea, particularly evident in attempted murder</li> <li>• Comparisons with other legal systems</li> <li>• Proposals for reform</li> </ul> <p>Credit any other relevant comment.</p> <p>Reach any sensible conclusion.</p>		<p><i>reus and mens rea</i></p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – 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><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p>												
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2*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define <i>actus reus</i> of theft as stated in <b>section 1 Theft Act 1968</b></p> <p><b>Appropriation- section 3</b></p> <ul style="list-style-type: none"> <li>• Describe appropriation and the rights of an owner – <i>Pitham, McPherson, Morris, Gomez</i></li> <li>• Can be of any or all of the rights of the owner - <i>Morris</i></li> <li>• Relevance of consent in appropriation – <i>Lawrence, Morris, Gomez, Hinks</i></li> <li>• A gift can constitute appropriation – <i>Hopkins and Kendrick, Hinks</i></li> <li>• Appropriation takes place at one point in time - <i>Atakpu</i></li> </ul> <p><b>Property - section 4(1)</b></p> <ul style="list-style-type: none"> <li>• Describe what constitutes property – <i>Kelly, Oxford v Moss</i></li> <li>• Describe exceptions found in sections 4(2), 4(3) and 4(4)</li> </ul> <p><b>Belonging to another - section 5:</b></p> <ul style="list-style-type: none"> <li>• Describe what is meant by basic definition – ownership, possession or control – <i>Turner, Woodman, Rostron and Collinson</i></li> </ul>	25	<table border="1" data-bbox="1406 316 2056 547" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">AO1 Levels</th> <th style="text-align: center;">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">21-25</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">16-20</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">11-15</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">6-10</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – 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 and a discussion of all parts of the <i>actus reus</i>.</p> <p><b>Level 4</b> – 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, where appropriate</p> <p><b>Level 3</b> – 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, where appropriate</p>	AO1 Levels	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"> <li>• Exception in section 5(3) when money is given for a particular purpose – <i>Hall, Davidge v Bunnett, Wain</i></li> <li>• Exception in section 5(4) when property is acquired by mistake – <i>AG Ref (No. 1 of 1983)(1985), Gilks</i></li> </ul> <p>Credit any other relevant cases.</p> <p>Credit any other relevant points.</p>		<p><b>Level 2</b> – 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><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references may be confused</p> <p><b>NB: It is unlikely a candidate will achieve L5 without defining all elements of the <i>actus reus</i> of theft.</b></p>												
	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following areas:</p> <p>Appropriation:</p> <ul style="list-style-type: none"> <li>• Appropriation is now so wide that it overlaps with the offence which was covered by section 15 and now fraud</li> <li>• Problems Parliament was trying to solve and the need for a clear, workable law</li> <li>• Range of ways in which appropriation can occur</li> <li>• Difficulties of proof for juries</li> <li>• Problems in relation to consent and overlap with other offences</li> </ul>	<b>20</b>	<table border="1" data-bbox="1413 837 2056 1066"> <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><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases and which covers all parts of the <i>actus reus</i>.</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"> <li>• Issues relating to the continuation of an appropriation</li> <li>• Conflicts between the civil and criminal law in relation to gifts</li> <li>• Conflicts between moral and legal issues</li> </ul> <p>Property:</p> <ul style="list-style-type: none"> <li>• Items listed in section 4 are generally self-explanatory - money, personal property</li> <li>• Issues arising from the intricacies of section 4 - items that cannot be stolen and what constitutes real property</li> </ul> <p>Belonging to another</p> <ul style="list-style-type: none"> <li>• Problems due to breadth of definition</li> <li>• Particular difficulties created subsections</li> </ul> <p>Wider issues</p> <ul style="list-style-type: none"> <li>• Problems resulting from the wide interpretation of appropriation – overreliance on mens rea</li> <li>• Views of academics such as Professors Sir John Smith and Griew</li> <li>• Lack of proposals for reform and legislative activity since 1996 – Does this mean the law is good enough</li> </ul> <p>Credit any other relevant comment.</p> <p>Reach any sensible conclusion</p>		<p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases.</p> <p><b>Level 3</b> – 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><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question.</p> <p><b>NB: It is unlikely to achieve a L5 answer without discussing all elements of the <i>actus reus</i> of theft.</b></p>

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3*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define the defence of intoxication as meaning a failure to form <i>mens rea</i> due to alcohol, drugs or other substances</p> <p>Explain that the defence is found in common law and distinguishes between voluntary and involuntary intoxication</p> <p>Explain that in voluntary intoxication there is a difference between crimes of specific and basic intent – <i>Majewski</i>, <i>Heard</i></p> <p>Explain that the burden of proof falls on the defendant and there is no obligation for the court to raise the defence – <i>Groark</i></p>	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><b>Level 5</b> – 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 and a discussion of both voluntary and involuntary intoxication</p> <p><b>Level 4</b> – being able to cite at least 5 relevant cases to support their argument with accurate names and some factual description</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 voluntary intoxication:</p> <ul style="list-style-type: none"> <li>• Can negate the <i>mens rea</i> needed for a specific intent offence – <i>Beard, Sheehan and Moore, Lipman</i></li> <li>• A total lack of <i>mens rea</i> is required</li> <li>• For a number of crimes voluntary intoxication is, at best, only a partial defence</li> <li>• Has no relevance to a specific intent offence if intoxication is due to ‘Dutch courage’ – <i>Gallagher</i></li> <li>• The defence is not available to crimes of basic intent as the <i>mens rea</i> is provided by the intoxication– <i>Majewski, Richardson &amp; Irwin</i></li> </ul> <p>Define involuntary intoxication:</p> <ul style="list-style-type: none"> <li>• If pleaded successfully provides a complete defence</li> <li>• Provides a defence when prescribed medication is taken as directed and has an unpredictable effect – <i>Hardie, Bailey</i></li> <li>• Provides a defence where the defendant does not know they are taking an intoxicating substance, as in laced drinks, but there is no defence if the defendant has some awareness of intoxication – <i>Allen, Kingston</i></li> </ul> <p>Define the link between intoxication and mistake:</p> <ul style="list-style-type: none"> <li>• If a mistake is induced by intoxication there is rarely a defence, whether the crime is one of specific or basic intent – <i>Lipman, O’Grady, Hatton,</i></li> </ul>		<p>and make reference to specific sections of the relevant statute, where appropriate</p> <p><b>Level 3</b> – 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, where appropriate</p> <p><b>Level 2</b> – 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><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or statutes or references may be confused</p>

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	<p><i>Fortheringham, section 76 Criminal Justice and Immigration Act 2008</i></p> <ul style="list-style-type: none"> <li>Exception provided by section 5 Criminal Damage Act 1971 – <i>Jaggard v Dickinson</i></li> </ul> <p>Credit any other relevant cases</p> <p>Credit any other relevant points</p>														
	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Discuss any or all of the following areas:</p> <ul style="list-style-type: none"> <li>the issue of fault and intoxication in relation to <i>mens rea</i></li> <li>the issue with coincidence of intoxication and the crime committed</li> <li>the problems of fall back offences and the situation in relation to theft</li> <li>the arbitrary nature of distinctions between specific and basic intent</li> <li>whether a defendant should be liable when they exercised no choice about becoming intoxicated</li> <li>legal principle v public policy arguments</li> <li>economic arguments</li> <li>cultural arguments</li> <li>comparisons with other legal systems</li> <li>the proposals for reform and alternative solutions</li> </ul> <p>Credit any other relevant comment.</p>	20	<table border="1" data-bbox="1379 579 2027 810"> <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><b>Level 5</b> – a discussion which makes good use of cases to develop clear arguments based on judicial reasoning and with critical links between cases on both voluntary and involuntary intoxication</p> <p><b>Level 4</b> – a discussion which uses case law cited to make 3 developed points and analyses the basis of the decision in these cases</p> <p><b>Level 3</b> – a discussion of at least 3 points</p>	AO2 Levels	AO2 Marks	5	17-20	4	13-16	3	9-12	2	5-8	1	1-4
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	Reach any sensible conclusion.		<p>and making reference to the cases which have been used for the area of law being considered</p> <p><b>Level 2</b> – a discussion of the reasons for the decision in some cases and include comment on at least 1 cited case.</p> <p><b>Level 1</b> – an awareness of the area of law identified by the question</p>												
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4*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Explain common law assault and battery – charged under section 39 Criminal Justice Act 1988:</p> <ul style="list-style-type: none"> <li>• 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></li> <li>• Battery – application of unlawful personal violence/force accompanied by intention or subjective recklessness – <i>Collins v Wilcock, Thomas, DPP v Smith</i></li> </ul> <p>Explain assault occasioning actual bodily harm – section 47 Offences Against the Person Act 1861:</p> <ul style="list-style-type: none"> <li>• <i>Actus reus</i> – common assault which occasions actual bodily harm (harm which interferes with health or comfort of the victim– <i>Miller) R v T (unconsciousness)</i></li> <li>• Harm can be physical or psychological - <i>Chan-Fook, Constanza</i></li> <li>• <i>Mens rea</i> – intention or subjective recklessness for the battery– D need not foresee the level of injury - <i>Roberts, Savage</i>.</li> </ul>	25	<table border="1" data-bbox="1384 280 2024 512"> <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><b>Level 5</b> – 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><b>Level 4</b> – 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><b>Level 3</b> – 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><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to specific</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 inflicting grievous bodily harm – section 20 Offences Against the Person Act 1861:</p> <ul style="list-style-type: none"> <li>• <i>Actus reus</i> – infliction of a wound which breaks all layers of skin or serious harm –<i>Saunders, Eisenhower, Wood</i></li> <li>• Harm may be physical or psychological – <i>Ireland, Burstow, Dhaliwal</i></li> <li>• <i>Mens rea</i> – Intention or recklessness as to SOME harm albeit not necessarily serious harm <i>Parmenter</i></li> </ul> <p>Explain unlawful and malicious wounding or causing grievous bodily harm with intent or with intent to resist arrest – section 18 Offences Against the Person Act 1861:</p> <ul style="list-style-type: none"> <li>• <i>Actus reus</i> is causing serious harm or wounding as for <b>section 20</b></li> <li>• <i>Mens rea</i> –intention cause serious harm</li> </ul> <p>Credit reference to the CPS charging standards.</p>		<p>sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p>												
	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p>Identify common law assault and battery section 39 CJA 1988  Identify <b>section 47 OAPA 1861</b>  Identify <b>section 20 OAPA 1861</b>  Identify <b>section 18 OAPA 1861</b></p>	<b>20</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">AO2 Levels</th> <th style="text-align: center;">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">17-20</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">13-16</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">9-12</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">5-8</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">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
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	<p><b>In the case of Sandra grabbing Talya's hair:</b></p> <ul style="list-style-type: none"> <li>• Grabbing hold of the hair is sufficient for battery as an application of unlawful force</li> <li>• Since the grabbing was from behind it is unlikely that Talya saw Sandra coming so it would be difficult to prove an assault</li> <li>• Actions appear to be to applying unlawful force intentionally</li> <li>• Conclude actions constitute battery</li> </ul> <p><b>In the case of Tayla spraining her wrist:</b></p> <ul style="list-style-type: none"> <li>• Talya's sprained wrist is sufficient for section 47 as the battery in grabbing Talya's hair has occasioned actual bodily harm</li> <li>• Sandra's actions are at least subjectively reckless</li> <li>• It is irrelevant whether Sandra foresees the level of harm actually caused</li> <li>• Conclude that Sandra's actions constitute ABH</li> </ul> <p><b>In the case of Sandra shouting at Talya:</b></p> <ul style="list-style-type: none"> <li>• The shouting could make Talya apprehend immediate and unlawful personal violence by the use of words suggesting a charge of assault</li> <li>• Sandra's words are sufficient for an assault</li> <li>• Sandra is at least subjectively reckless</li> <li>• The conditional nature of Sandra's threat may negate the assault</li> </ul>		<p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – 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. Responses are unlikely to reach level 5 without a discussion of all aspects of the scenario</p> <p><b>Level 4</b> – identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p><b>Level 3</b> – 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><b>Level 2</b> – 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><b>Level 1</b> – 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>

Question	Answer	Marks	Guidance
	<p><b>In the case of Sandra pushing Talya down the steps knocking her unconscious:</b></p> <ul style="list-style-type: none"> <li>• Pushing Talya down the steps is sufficient for battery as an application of unlawful force</li> <li>• Actions appear to be to applying unlawful force intentionally</li> <li>• Loss of consciousness is at least an ABH injury and potentially GBH – credit any well-reasoned application</li> <li>• For ABH it does not matter if Sandra foresees the extent of the injuries or not but it would seem she intends the harm caused.</li> <li>• For GBH she at least foresees some harm (s.20) when she pushes Talya down the stairs and may intent serious harm (s.18) – credit any well-reasoned application</li> </ul> <p><b>In the case of Sandra kicking Talya knocking two teeth out:</b></p> <ul style="list-style-type: none"> <li>• Loss of teeth is at least an ABH injury and potentially GBH – credit any well-reasoned application</li> <li>• For ABH it does not matter if Sandra foresees the extent of the injuries or not but it would seem she intends the harm caused.</li> <li>• For GBH she at least foresees some harm (s.20) when she kicks Talya but arguably intends serious harm (s.18) when she kicks her whilst unconscious– credit any well-reasoned application</li> </ul>		

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	<p><b>In the case of Talya being unable to leave the house:</b></p> <ul style="list-style-type: none"> <li>• Talya’s fear is capable of amounting to at least ABH</li> <li>• Serious psychological injury can amount to GBH</li> <li>• If her fear is more than simply nervousness, distress, panic or a hysterical or nervous condition this could constitute GBH, if not, it will not amount to ABH</li> <li>• Credit any well-reasoned argument</li> </ul> <p>Reach a sensible conclusion.</p>														
	<p><b>Assessment Objective 3 – Communication and presentation</b>  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>	<b>5</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">AO1+AO2 marks</th> <th style="width: 50%; text-align: center;">AO3 mark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><b>37-45</b></td> <td style="text-align: center;"><b>5</b></td> </tr> <tr> <td style="text-align: center;"><b>28-36</b></td> <td style="text-align: center;"><b>4</b></td> </tr> <tr> <td style="text-align: center;"><b>19-27</b></td> <td style="text-align: center;"><b>3</b></td> </tr> <tr> <td style="text-align: center;"><b>10-18</b></td> <td style="text-align: center;"><b>2</b></td> </tr> <tr> <td style="text-align: center;"><b>1-9</b></td> <td style="text-align: center;"><b>1</b></td> </tr> </tbody> </table>	AO1+AO2 marks	AO3 mark	<b>37-45</b>	<b>5</b>	<b>28-36</b>	<b>4</b>	<b>19-27</b>	<b>3</b>	<b>10-18</b>	<b>2</b>	<b>1-9</b>	<b>1</b>
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5*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define offence of murder</p> <p><b>Actus Reus</b></p> <ul style="list-style-type: none"> <li>• Unlawful killing - not done in self defence</li> <li>• Credit reference to causation in fact – ‘but for’ test – <i>Pagett, White</i>, and in law – <i>Kimsey, Cheshire</i></li> <li>• Reasonable creature – human being</li> <li>• Under the Queen’s Peace – not in a time of war</li> </ul> <p><b>Mens Rea</b></p> <ul style="list-style-type: none"> <li>• Direct intent – death/GBH is the defendant’s purpose and they set out to bring it about – <i>Mohan</i></li> <li>• Oblique intent – foresight of consequences – <i>Nedrick, Woollin</i></li> </ul> <p>Explain the defence of diminished responsibility as defined by s.2 Homicide Act 1957 and amended by section 52 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none"> <li>• S.52 (1) Must be an abnormality of mental functioning – <i>Byrne, Seers, Gittens</i></li> <li>• S.52 (1) (a) Defendant must have a recognised medical condition – <i>Dietschmann, Jama, Seers, Brown</i></li> <li>• Credit reference to classificatory lists &amp; <i>Dowds</i>,</li> </ul>	25	<table border="1" data-bbox="1406 280 2051 512"> <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><b>Level 5</b> – 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 and considering both special defences</p> <p><b>Level 4</b> – 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><b>Level 3</b> – 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><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than</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><i>Sanders and Brennan</i></p> <ul style="list-style-type: none"> <li>• S.52(1)(b) Defendant must have been substantially impaired and unable to: <ul style="list-style-type: none"> <li>○ S.52 (1A)(a) understand nature of their act, or</li> <li>○ S.52 (1A)(b) form a rational judgment, or</li> <li>○ S.52 (1A)(c) exercise self-control <i>Campbell</i></li> </ul> </li> <li>• Substantial impairment – <i>Lloyd, Golds</i></li> <li>• S.52(1)(c) abnormality must provide an explanation for defendant's acts and omissions – must be causal link but need not be only one.</li> <li>• S.52 (1B) abnormality of mental functioning will provide an explanation for D's conduct if it causes, or is a significant contributory factor in causing D to carry out the conduct.</li> </ul> <p>Explain the defence of loss of self-control section 54 and section 55 Coroners and Justice Act 2009:</p> <ul style="list-style-type: none"> <li>• Section 54 (1) requires: <ul style="list-style-type: none"> <li>(a) a loss of control,</li> <li>(b) a qualifying trigger, and</li> <li>(c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D</li> </ul> </li> <li>• Section 54(2) says it does not need to be sudden and is a jury question</li> <li>• Section 55 requires one or both of two qualifying triggers to exist</li> <li>• Section 55(3) qualifying trigger of fear of serious violence <i>Ward, Lodge</i></li> </ul>		<p>accurately cited and make reference to specific sections of the relevant statute.</p> <p><b>Level 1</b> – 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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	<ul style="list-style-type: none"> <li>• qualifying trigger of a thing or things done or said Section 55(4) which constitute circumstances of an extremely grave character and cause D to have a justifiable sense of being seriously wronged <i>Hatter, Bowyer, Zebedee</i></li> <li>• Section 55(6) – disregard fear of serious violence which self-induced, sense of being seriously wronged if self-induced, sexual infidelity – <i>Clinton, Johnson, Dawes</i></li> <li>• Section 54(3) normal person test – takes into account age, gender and circumstances of defendant but a normal degree of tolerance and self-restraint is expected; all characteristics are relevant other than those which bear on general capacity for tolerance or self-restraint <i>Clinton, Asmelash</i></li> </ul> <p>Credit any other relevant point.</p> <p>Credit any other relevant cases.</p>														
	<p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p><b>Identify diminished responsibility</b> <b>Identify loss of control</b></p> <p><b>Liability for murder:</b></p> <ul style="list-style-type: none"> <li>• <i>Actus reus</i> is established as Alexi kills Barbara</li> <li>• <i>Mens rea</i> is established as Alexi at least intends GBH when hitting Barbara over the head with a cricket bat</li> </ul>	20	<table border="1" data-bbox="1413 991 2051 1222"> <thead> <tr> <th data-bbox="1413 991 1731 1027">AO2 Levels</th> <th data-bbox="1742 991 2051 1027">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1413 1035 1731 1072">5</td> <td data-bbox="1742 1035 2051 1072">17-20</td> </tr> <tr> <td data-bbox="1413 1080 1731 1117">4</td> <td data-bbox="1742 1080 2051 1117">13-16</td> </tr> <tr> <td data-bbox="1413 1125 1731 1161">3</td> <td data-bbox="1742 1125 2051 1161">9-12</td> </tr> <tr> <td data-bbox="1413 1169 1731 1206">2</td> <td data-bbox="1742 1169 2051 1206">5-8</td> </tr> <tr> <td data-bbox="1413 1214 1731 1251">1</td> <td data-bbox="1742 1214 2051 1251">1-4</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</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"> <li>• Alexi factually and legally causes Barbara's death</li> <li>• Alexi is potentially liable for murder</li> </ul> <p><b>In the case of diminished responsibility:</b></p> <ul style="list-style-type: none"> <li>• The fact that Alexi has been prescribed medication is likely to be enough to suggest an abnormality of mental functioning, especially since medication is a result of severe depression</li> <li>• The depression would be sufficient as a recognised medical condition</li> <li>• It is likely that Alexi is unable to form a rational judgement or to exercise self-control from the point Barbara arrives unannounced again</li> <li>• Alexi's depression is a likely explanation for him killing Barbara</li> <li>• Alexi is likely to be able to raise the defence of diminished responsibility leading to a conviction of voluntary manslaughter</li> </ul> <p><b>In the case of loss of self-control:</b></p> <ul style="list-style-type: none"> <li>• It is clear that Alexi has lost self-control</li> <li>• It does not matter that the loss of control is cumulative in nature</li> <li>• Qualifying trigger could be any or a combination of Barbara's words and actions</li> <li>• Due to the objective nature of the test for extremely grave and justifiable sense of being seriously wrong it is unlikely that the defence of loss of control will be successfully raised</li> </ul>		<p><b>Level 5</b> – 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. Responses are unlikely to reach level 5 without a discussion of all aspects of the scenario</p> <p><b>Level 4</b> – identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p><b>Level 3</b> – 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><b>Level 2</b> – 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><b>Level 1</b> – 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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	<ul style="list-style-type: none"> <li>• Using the reasonable person test it unrealistic for Alexi to behave as he does</li> <li>• On this basis the defence will fail</li> </ul> <p>Credit any other relevant comment</p> <p>Reach any sensible conclusion</p>															
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6*	<p>Potential answers may:</p> <p><b>Assessment Objective 1 – Knowledge and understanding</b></p> <p>Define three types of involuntary manslaughter:</p> <ul style="list-style-type: none"> <li>• Unlawful act/constructive</li> <li>• Gross negligence</li> <li>• Subjective reckless manslaughter.</li> </ul> <p>Define and explain unlawful and dangerous act/constructive manslaughter:</p> <ul style="list-style-type: none"> <li>• Requires a positive and an unlawful criminal act – <i>Franklin Mitchell, Larkin</i></li> <li>• Unlawful act should be objectively dangerous – <i>Dawson, Watson</i></li> <li>• Positive act be done intentionally – <i>Goodfellow</i></li> <li>• Requirement that chain of causation be intact and death ensue</li> <li>• Reasonable man needs to foresee risk of some harm to some other person but not necessarily harm which results – <i>Church, Newbury &amp; Jones</i></li> </ul> <p>Define and explain gross negligence manslaughter – <i>Bateman, Andrews, Adomako, Wacker</i></p> <ul style="list-style-type: none"> <li>• Needs to be duty to care</li> <li>• Duty to care must be breached</li> <li>• Must be risk of death and death occurs</li> <li>• Defendant’s negligence must be so gross that criminal in eyes of jury</li> </ul>	25	<table border="1" data-bbox="1406 280 2056 512" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">AO1 Levels</th> <th style="text-align: center;">AO1 Marks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">21-25</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">16-20</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">11-15</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">6-10</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1-5</td> </tr> </tbody> </table> <p>Responses will be unlikely to achieve the following levels without:</p> <p><b>Level 5</b> – 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><b>Level 4</b> – 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><b>Level 3</b> – 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><b>Level 2</b> – being able to cite at least 1 relevant case although it may be described rather than accurately cited and make reference to</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>Define and explain subjective reckless manslaughter</p> <ul style="list-style-type: none"> <li>• Was there risk of death or serious harm to the victim?</li> <li>• Did defendant see risk and decide to run it? – <i>Lidar</i>.</li> </ul> <p>Explain the role of causation</p> <ul style="list-style-type: none"> <li>• Essential element to establish actus reus in result crimes</li> </ul> <p>Explain causation in fact</p> <ul style="list-style-type: none"> <li>• ‘but for’ test – without defendant’s act prohibited consequence would not have occurred – <i>White, Pagett</i></li> </ul> <p>Explain causation in law:</p> <ul style="list-style-type: none"> <li>• Defendant’s act must be more than minimal cause of the harm – <i>Kimsey</i></li> <li>• Defendants act need not be the only cause of death – <i>Cheshire</i></li> <li>• Defendant must take victim as they find them – <i>Holland, Hayward, Dear</i></li> </ul> <p>Explain that the chain of causation can be broken by an intervening act:</p> <ul style="list-style-type: none"> <li>• Victim’s own act – <i>Roberts, Williams and Davis, Marjoram, Corbett, Kennedy No2</i></li> </ul> <p>Explain the law relating to omissions – situations where a failure to act when there is a duty to do so constitutes the actus reus of the offence:</p> <ul style="list-style-type: none"> <li>• Common law duty based on contract – <i>Pitwood, Adamako</i></li> <li>• Common law duty based on special relationship – <i>Gibbins &amp; Proctor, Smith, Stone and Dobinson</i></li> </ul>		<p>specific sections of the relevant statute.</p> <p><b>Level 1</b> – some accurate statements of fact but there may not be any reference to relevant cases or cases may be confused.</p> <p><b>NB: maximum marks can be achieved without reckless or unlawful act manslaughter</b></p>

Question	Answer	Marks	Guidance												
	<ul style="list-style-type: none"> <li>• Common law duty based on the creation of a dangerous situation – <i>Miller, Santa-Bermudez, Evans</i></li> </ul> <p>Explain gross negligence manslaughter – <i>Adomako</i>:</p> <ul style="list-style-type: none"> <li>• There needs to be a duty of care;</li> <li>• The duty to care must be breached;</li> <li>• There must be a risk of death and death occurs; <i>Misra</i></li> <li>• The negligence on the part of the defendant must be ‘so gross’ in the eyes of the jury as to be criminal.</li> </ul> <p>Credit any other relevant point.</p> <p>Credit any other relevant cases.</p> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p><b>In the case of Cyril creating a dangerous situation:</b></p> <ul style="list-style-type: none"> <li>• Cyril has set a series of events in motion and created a dangerous situation by not making sure his cigarette is fully extinguished;</li> <li>• On becoming aware of the cause of the events Cyril would be under a duty to take all steps within his power to prevent or minimise the harm;</li> <li>• Cyril fails to take such steps and would therefore be potentially liable for the consequences for this omission</li> </ul>		<table border="1" data-bbox="1408 922 2051 1153"> <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><b>Level 5</b> – identification of all relevant points of law in issue, applying points of law accurately and pertinently to a given factual situation and</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"> <li>• Since Cyril knows that fire and smoke would become life-threatening to Klaus he has a consequent duty to take reasonable steps to save Klaus' life</li> </ul> <p><b>In the case of Cyril and a special relationship duty</b></p> <ul style="list-style-type: none"> <li>• Cyril and Klaus are brothers and therefore, depending on the circumstances, the court may see this as constituting a special relationship</li> <li>• He breaches his duty by abandoning Klaus</li> <li>• There is a risk of death and having regard to this and the fact that Cyril knows Klaus is in the house, the breach is likely to be deemed gross</li> </ul> <p><b>In the case of George:</b></p> <ul style="list-style-type: none"> <li>• George owes a duty of care through official position</li> <li>• He breaches this by failing to give the right address</li> <li>• This may be seen as gross depending on the circumstances</li> <li>• He would be charged with a misconduct in a public office offence</li> </ul> <p><b>In the case of Doctor Malik:</b></p> <ul style="list-style-type: none"> <li>• Due to his job Doctor Malik has a contractual obligation to treat Klaus;</li> <li>• Thus he has a duty to care which is breached by falling below the standard reasonably expected of him;</li> <li>• This breach exposes Klaus to a risk of death as</li> </ul>		<p>reaching a cogent, logical and well informed conclusion. Responses are unlikely to reach level 5 without a discussion of all aspects of the scenario</p> <p><b>Level 4</b> – identification of the main points of law in issue, applying points of law clearly to a given factual situation, and reaching a sensible and informed conclusion</p> <p><b>Level 3</b> – 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><b>Level 2</b> – 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><b>Level 1</b> – 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>

Question	Answer	Marks	Guidance												
	<p>Doctor Malik believes, incorrectly, that Klaus is in a PVS;</p> <ul style="list-style-type: none"> <li>• The chain of causation would appear to be intact as, but for Doctor Malik, Klaus may well have survived and the misdiagnosis would appear to be the ‘operative and substantial’ cause of death;</li> <li>• However, courts are unwilling to find doctors responsible if their failure is simply a ‘mistake’ unless it falls far below the professional standard reasonably expected;</li> <li>• It seems likely that Doctor Malik would be liable as a jury would see his actions as so bad that they were criminal</li> </ul> <p>Credit any other relevant comment</p> <p>Reach any sensible conclusions</p>		<table border="1" data-bbox="1406 925 2078 1193"> <thead> <tr> <th data-bbox="1406 962 1731 995">AO1+AO2 marks</th> <th data-bbox="1731 962 2078 995">AO3 mark</th> </tr> </thead> <tbody> <tr> <td data-bbox="1406 995 1731 1029"><b>37-45</b></td> <td data-bbox="1731 995 2078 1029"><b>5</b></td> </tr> <tr> <td data-bbox="1406 1029 1731 1062"><b>28-36</b></td> <td data-bbox="1731 1029 2078 1062"><b>4</b></td> </tr> <tr> <td data-bbox="1406 1062 1731 1096"><b>19-27</b></td> <td data-bbox="1731 1062 2078 1096"><b>3</b></td> </tr> <tr> <td data-bbox="1406 1096 1731 1129"><b>10-18</b></td> <td data-bbox="1731 1096 2078 1129"><b>2</b></td> </tr> <tr> <td data-bbox="1406 1129 1731 1163"><b>1-9</b></td> <td data-bbox="1731 1129 2078 1163"><b>1</b></td> </tr> </tbody> </table>	AO1+AO2 marks	AO3 mark	<b>37-45</b>	<b>5</b>	<b>28-36</b>	<b>4</b>	<b>19-27</b>	<b>3</b>	<b>10-18</b>	<b>2</b>	<b>1-9</b>	<b>1</b>
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	<p><b>Assessment Objective 3 – Communication and presentation</b></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>														

Question		Answer	Marks	Guidance												
7	(a)	<p>Potential answers may:</p> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p><b>P1</b> Reason that automatism requires an involuntary act <b>and/or</b> reason that automatism requires an involuntary act which is not self-induced.</p> <p><b>P2</b> Reason that Kristen’s act is an involuntary act <b>and/or</b> that her involuntary act is self-induced when she fails to take her medication</p> <p><b>P2a</b> Reason that Kristen’s act is not involuntary as she punches Roger in annoyance when he stands on her foot</p> <p><b>P3</b> Reason that automatism requires an external cause</p> <p><b>P4</b> Reason that it is Kristen’s epilepsy (an internal cause) which leads to her breaking Roger’s jaw</p> <p><b>P5</b> Conclude that the statement is <b>inaccurate</b></p>	5	<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
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	(b)	<p><b>P1</b> Reason that insanity requires a defect of reason from a disease of the mind</p> <p><b>P2</b> Reason that Kristen’s epilepsy is a disease of the mind (an internal cause)</p> <p><b>P3</b> Reason that insanity requires not knowing the nature and quality of the act or that it was legally wrong</p> <p><b>P4</b> Reason that Kristen’s epilepsy has caused her to not know the nature and quality of her act</p> <p><b>P4a</b> Reason that Kristen does know the nature and quality of her act despite her epilepsy</p> <p><b>P5</b> Reason that the statement is <b>inaccurate</b></p> <p><b>P5a</b> Reason that the statement is <b>accurate</b></p>	5													



Question		Answer	Marks	Guidance
7	(c)	<p><b>P1</b> Reason that insanity requires a defect of reason from a disease of the mind</p> <p><b>P2</b> Reason that Kristen's epilepsy is a disease of the mind (an internal cause)</p> <p><b>P3</b> Reason that insanity requires not knowing the nature and quality of the act or that it was legally wrong</p> <p><b>P4</b> Reason that because Kristen does not remember anything it is evident that she does not know the nature and quality of her act</p> <p><b>P4a:</b> Reason that Kristen punches Roger in annoyance and does know the nature and quality of her act</p> <p><b>P5</b> Reason that this statement is <b>accurate</b></p> <p><b>P5a</b> Reason that the statement is <b>inaccurate</b></p>	5	
	(d)	<p><b>P1</b> Reason that the special verdict of 'not guilty by reason of insanity' only requires hospitalisation in murder cases.</p> <p><b>P2</b> Reason that as Kristen has not been charged with murder she is less likely to be hospitalised</p> <p><b>P2a</b> Reason that despite it not being a murder charge Kristen is violent and therefore may be hospitalised</p> <p><b>P3</b> Reason that where the charge is not murder a judge has a variety of disposal methods to choose from</p> <p><b>P4</b> Reason that the judge will choose the most appropriate method to deal with Kristen</p> <p><b>P5</b> Reason that this statement is <b>inaccurate</b></p> <p><b>P5a</b> Reason that this statement is <b>accurate</b></p>	5	

Question		Answer	Marks	Guidance													
8	(a)	<p>Potential answers may:</p> <p><b>Assessment Objective 2 – Analysis, evaluation and application</b></p> <p><b>P1</b> Reason that section 9 (1) (a) requires entry into a building or part of a building as a trespasser  <b>P2</b> Reason that Steve has not entered a building because the petrol station door is locked  <b>P3</b> Reason that section 9(1)(a) requires an intention to steal upon entry  <b>P4</b> Reason that Steve does have the intent to steal some cigarettes  <b>P5</b> Conclude that the statement is <b>accurate</b></p>	5	<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
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	(b)	<p><b>P1</b> Reason that robbery requires the use or threat of force  <b>P2</b> Reason that threatening Jill with the hammer would be enough for the threat of force  <b>P3</b> Reason that there must be a completed theft  <b>P4</b> Reason that he has not stolen as Jill hides and does not give him any cigarettes – there is no complete theft  <b>P5</b> Conclude that the statement is <b>inaccurate</b>.</p>	5														
	(c)	<p><b>P1</b> Reason that s. 9 (1) (b) requires entry into a building or part of a building as a trespasser.  <b>P2</b> Reason that Steve enters when he smashes the window and climbs into the petrol station  <b>P3</b> Reason that s. 9 (1) (b) requires theft or attempted theft, GBH or attempted GBH <b>and/or</b> criminal damage is not an ulterior offence  <b>P4</b> Reason that Steve commits criminal damage when he kicks over the shelves but does not commit or attempt to commit theft or GBH  <b>P5</b> Conclude that the statement is <b>inaccurate</b>.</p>	5														

Question	Answer	Marks	Guidance
(d)	<p><b>P1</b> Reason that robbery requires a completed theft</p> <p><b>P2</b> Reason that Steve commits theft when he leaves on Jill's bicycle</p> <p><b>P3</b> Reason that robbery requires the force to be used immediately before or at the time of stealing and in order to steal</p> <p><b>P4</b> Reason that Steve's theft of Jill's bicycle is not connected to the previous threat of force</p> <p><b>P5</b> Conclude that the statement is <b>inaccurate</b>.</p>	5	

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