



# *Support Materials*

**GCE Law H534:**

**Teacher Support Booklet:  
Criminal Law**



RECOGNISING ACHIEVEMENT

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## Exemplar candidate work Criminal Law (G153)

These materials should be read alongside the approved specimen question paper and mark schemes and specification.

### Section A Question 1:

**‘Strict liability offences are an exception to the general rule that the prosecution has the burden of proving that a person accused of a crime possesses the relevant guilty mind.’**

**Discuss, in the light of the above statement, whether you agree that the creation of strict liability offences can ever be justified.**

[50]

### Example Grade A Answer

In order therefore to answer whether these type of offences are ever justified it is necessary to examine the nature of strict liability and its use before discussing the justification for imposing such liability.

Normally the prosecution has the burden of proving that an accused possesses the two traditional ingredients of criminal liability, the actus reus (prohibited conduct) and the mens rea (guilty mind). Strict liability offences are the exception to this rule since a defendant can be found guilty upon proof that the prohibited conduct alone has taken place. The mind of the accused may be guilty or entirely innocent but that is irrelevant in establishing liability (although it may affect the sentence). This goes against the notion that a person is punished because they deserve to be in terms of their guilty mind. **AO2**

The vast majority of strict liability offences are created by Parliament in the form of legislation, both Acts and statutory instruments. Traditionally the courts have always presumed that an element of mens rea is required as a key ingredient in criminal liability, (*Sweet v Parsley*). However, where words, or sometimes the deliberate omission of words, in an Act of Parliament clearly indicate Parliament’s intention to make an offence one of strict liability then the courts have reluctantly **AO2** recognised that strict liability may be imposed, (*Cundy v Le Cocq*). This has been a question of statutory interpretation and there has been criticism that the courts have been inconsistent at times in this task. **AO2** For example, *Cundy v Le Coq*, mentioned above, can be contrasted with *Sherras v De Rutzen* even though both cases were prosecuted under the same statute, the Licensing Act 1872. In the neither case was there any word indicating the need for the prosecution to prove mens rea however the publican in *Cundy* was convicted of selling alcohol to someone who was already intoxicated whereas in *Sherras* a publican had his

conviction quashed. He had sold alcohol to a police officer who was still on duty because the officer wasn't wearing an armband and this usually indicated he was off duty. The previous subsection included reference to an offence of 'knowingly' allowing a police officer on duty to remain in the pub but the word 'knowingly' was not included in the section under which he was now charged with selling alcohol. The Divisional Court quashed his conviction indicating that the publican honestly believed the officer was off duty and had no way at all of knowing he was in the wrong.

This reluctance has been confirmed in recent times in the area of sexual offences where the courts have relaxed the rule concerning the belief of an accused as to the age of consent of a potential victim / partner. **AO2** Formerly belief as to a victim's age was deemed to be irrelevant as seen in the nineteenth century case of Prince where an accused's honest and, indeed, reasonable belief that a girl was over the age of 16 when he took her out of her parent's possession provided no defence since liability in this regard was considered to be strict. This reflected the concern to protect potentially vulnerable victims in this context. **AO2** More recently, however, the House of Lords have confirmed their traditional opposition **AO2** to strict liability in *B v DPP 2000* where D was accused of inciting a girl under the age of 14 to commit an act of indecency with him on the upper deck of a London bus by giving him a 'shiner' (oral sex). He claimed that he honestly believed she was at least 14 and had no mens rea. The House of Lords decided that the offence required proof of knowledge of her age and quashed his conviction despite the absence of words like 'knowingly' in the Sexual Offences Act 1956.

The courts have put forward a number of reasons to justify their acceptance of strict liability at different times but the most comprehensive list of justifications was advanced by the Privy Council in the case of *Gammon (HK) Ltd. v A-G for Hong Kong* in 1985. Lord Scarman emphasised that the presumption of mens rea can be displaced if it is clearly the intention of Parliament that this should happen, particularly where the statute is dealing with an issue of social concern, in this case the safe construction of high rise buildings. He went on to explain that the imposition of strict liability can be justified where the intention of the Act is to promote higher standards or greater vigilance in an area of social concern. **AO2** He also drew a distinction between 'truly criminal offences', such as offences against the person, and 'quasi crimes'. Quasi crimes have been described as being 'regulatory' in nature and not attracting the same degree of stigma that accompanies a 'true crime' such as murder or robbery. **AO2** We are all of us prone to commit a road traffic offence such as speeding or parking on double yellow lines but it is generally only where we commit a serious offence of this nature such as 'drink driving' that we are regarded as having done something 'really wrong', even though this too is a strict liability offence. **AO2**

In fact, there is often said to be a further justification for making an offence such as driving with excess alcohol in the blood. It would be only too easy for someone accused of an offence of this nature to claim that their drink had been spiked and very difficult for the prosecution to show that the accused was aware that they were over the limit so it is accepted that the forensic proof alone is enough to convict. **AO2** This also reflects the advantage to prosecuting authorities of so-called 'administrative convenience' and helps to reduce spurious not guilty pleas speeding up the criminal justice process in areas such as road traffic. **AO2**

A classic example where the courts have accepted the statutory right of Parliament to legislate imposing strict liability include S5 Road Traffic Act 1988 which makes it an offence to 'drive a vehicle with excess alcohol in their breath, blood or urine'. No mens rea is referred to in the Act

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and the courts have accepted the imposition of strict liability in the interests of roads safety. The leading cases reflect the various areas of social concern where it has been felt necessary to accept Parliament's intention to create strict liability offences. These include not only road traffic offences, referred to above, but also, food safety, pollution, the sale of alcohol, tobacco and lottery tickets and dangerous drugs.

In *Callow v Tillstone* a butcher was convicted of selling food unfit for human consumption despite his reliance on the advice of a qualified vet that the carcass in question was sound. In *Smedleys v Breed* producers of tinned peas were convicted of a similar offence when a caterpillar was found in one tin despite demonstrating that their quality control systems meant that they had produced over 3 million perfect tins of peas that year. Clearly the insistence on the highest standards of food production is absolutely essential and these seemingly harsh prosecutions reinforce this message to food producers and the public alike. **AO2**

In *Alphacell v Woodward* a company was convicted of 'causing polluted matter to enter a river' contrary to the Rivers (Prevention of Pollution) Act 1951 even though they had taken expensive measures to avoid this happening and had clearly not intended to pollute again reflecting social concern for the environment. **AO2**

On the other hand there are arguments against strict liability. It is morally unfair to blame someone who may be genuinely innocent. **AO2** It goes against the fundamental requirement of proof of mens rea. This criticism is tempered by the court's reluctance to accept the displacement of mens rea in a case such as *Sweet v Parsley* unless the legislation makes it clear to the contrary and also by the assertion of Lord Scarman in *Gammon* that, despite the recognition of parliamentary sovereignty, where the offence in question is 'truly criminal' in nature then the presumption in favour of the need for proof of mens rea is exceptionally strong and should only be displaced by very clear contrary intention.

Alternatively, some critics argue that it is not as effective as it might be because some companies are prepared to 'profit from risk', in other words they are prepared to chance being caught and pay fines because it would be even more costly to take expensive preventative measures. **AO2**

In conclusion strict liability offences may be seen as a necessary control on conduct in a modern society and can therefore be justified subject to careful regulation.

## Examiner's commentary

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This is clearly a Level 5 script. The candidate has produced a well structured answer focusing on the quotation and command in the question. There is no gratuitous content or evidence that the candidate has chosen to write what they thought the question should be rather than the question set.

The AO1 knowledge and understanding is founded upon nine key cases all well explained and used in context. Given the limited amount of time available in the examination context there seems very little reason to award anything other than the maximum marks available. The maximum mark is arrived at without having to exhaustively list every point in the mark scheme which is an indicative and not a prescriptive document and is designed to reward candidates on a consistent basis. There could be an argument that the citation of cases could be wider ranging, and sometimes is, but within the context of the understanding demonstrated this would be a spurious criticism. The leading illustrative cases are there.

**AO1 25 marks**

The candidate makes some sophisticated evaluative points throughout their answer to underpin their knowledge. They have provided some exceptional comparative analysis of two cases. There are also brief evaluative comments which are highly relevant and creative and these are rewarded under AO2. Critical comments are supported by relevant and up-to-date examples (AO1). Clearly this candidate understands the discussion points being made at almost every opportunity. Maximum marks are awarded here.

**AO2 20 marks**

With clear structure, an introduction and conclusion, almost no grammatical or spelling errors then it is at the top Level 4 for AO3.

**AO3 5 marks**

**Total marks 50**

### **Synopticism**

The candidate has an excellent appreciation of the topic area in the context of strict liability and the candidate is careful throughout to link comment back to the question and to issues such as the development of the law by Parliament, the role of the courts alongside legislation and the impact that they may have on development, as well as issues of justice. The confident and accurate use of both cases and statutes throughout the answer shows a high level of synoptic awareness.

### **Stretch and challenge**

Evidence of stretch and challenge does appear throughout this candidate's answer through the degree of sophistication in the understanding of the subject matter, the evaluation of the relevant issues inherent in the question and articulation of the arguments. The element of stretch and challenge is met by the quality of both the breadth and depth of this answer as indicated alongside the script.



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There is evidence throughout that the candidate not only understands the judicial reasoning behind the reluctance to accept the imposition of strict liability but is also able to critically develop arguments recognising the significance of parliamentary sovereignty in this context and the imperative to balance the justifications in favour of strict liability in the context of social concern along with the inherent fairness of only imposing criminal liability on those who deserve to be punished because they possess a guilty mind.

## Example Grade E Answer

Criminal law is about mens rea and actus reus being proved at the same time. Sometimes someone could of committed an act without being aware of it. These are cases of strict liability. There was a case about a man who took a girl away from her parents but he was found guilty even though he believed the girl was over 16. This doesn't seem fair because he no intention to do the crime but he was still guilty. **AO2**

The courts don't like strict liability **AO2** and will presume against it. In another case a lady rented her flat to students who smoked dope there. Even though she didn't know what was going on she was still guilty and lost her job. In another case a French woman was brought to England from Ireland in a boat and was arrested under the Illegal Aliens Act. She was guilty even though there was no way she could of prevented it from happening. In *Callow v Tilstone* a butcher was charged with selling unfit meat even though he was told by a vet that it was healthy. This doesn't seem fair as the butcher had no way of knowing the meat was rotten and it wasn't his fault. **AO2**

It is vital to society to have these offence because if we didn't it would be too easy for people to say I didn't know I was doing anything wrong. This makes it easier **AO2** for the police to catch people in important areas like road traffic. Most of these offences are strict liability so if you are speeding or parked on double yellow lines it is no good saying you didn't know about it because it's more important that the public are made safe. **AO2**

Sometimes the words used in an Act are important so if there is nothing to say that you have to have mens rea then you are not guilty. This was proved in a case called *Warner* where a drug dealer tried to claim that he thought that he was selling perfume in a closed box. He was actually selling drugs but because he was in possession of the box he was guilty.

If it is about food safety or pollution then it is much more likely to be held to be strict liability. In *Smedleys* some caterpillars were found in a tin of peas. The company said they tried their best to have good check on the peas they sold, but they were still guilty under strict liability. So it is a good idea to have strict liability because it helps to keep us all safer.



## Examiner's commentary

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The AO1 content in this script is clearly limited but does show general understanding of the relevant concepts and principles. There is limited citation. Level 2.

**AO1 marks 10**

The AO2 content meets the levels of assessment descriptor for Level 2. Some of the more obvious points are discussed although the quality of the argument is limited, evaluation is hinted at, and tends to be repetitive.

**AO2 marks 8**

There are some errors of spelling and grammar but the material does have a structure and the candidate has at least completed the answer in paragraphs with an introduction and brief conclusion.

**AO3 marks 3**

**Total marks 21**

### **Synopticism**

There is little evidence of synopticism in the answer. In the first paragraph there is implied recognition that criminal liability ought to and generally does consist of the combined elements of *actus reus* and *mens rea*. In paragraphs three and five there is some recognition of the wider social benefits which are claimed to be advanced or promoted by the imposition of strict liability. Finally, there is some evaluative closure in the concluding paragraph.

### **Stretch and challenge**

As would be expected from a grade E answer there is no evidence of stretch and challenge. The candidate has deployed both limited AO1 and AO2 skills, which is not always the case with such answers. However, none of the higher level skills are evident and none of the points have been properly developed.

### **Examiner's advice**

The candidate has shown some limited appreciation of the topic and is aware of the basic principles. There is some case law and has some critical awareness also. However, both the factual content and the comment lack any real development and are limited in scope and detail.

For AO1, while the candidate has covered a reasonable range of the topic, there is little, if any, really accurate detail. With more revision the candidate could have expanded more, explained the justifications for the imposition of strict liability in greater depth and used the cases named or impliedly referred to with greater purpose.

For AO2 the candidate, unusually at grade E, has understood a number of critical points. However, these are generally presented as perfunctory statements with no expansion. On other occasions the simple opportunity for even a glimmer of criticism has been ignored. For example, it would have been easy to supplement the implied reference to *Sweet v Parsley* with the obvious comment that the impact on the defendant of losing her job merely as the result of an unjustified prosecution was 'unfair' or 'harsh'. As a rough guide candidates, particularly in lower grades could improve their AO2 performance significantly if they strive to include a comment or



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criticism after each piece of information they give.

For AO3 the structure of the answer was quite reasonable, beginning with an attempt at a basic definition of strict liability a giving some rather random examples and including some critical comment. There were some noticeable errors of spelling and grammar but these did not detract excessively from what the candidate had communicated.

## Section B Question 4:

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**Victoria is the wife and assistant of a knife throwing expert. Both Carl and Victoria work for a circus. Carl is renowned for his hot temper and has recently been off work suffering from depression. Their act consists of Victoria being strapped to a board whilst Carl throws twenty knives all around her from a distance of five metres to within as little as ten centimetres of her body. They have been doing this for many years without a single mishap and Carl regards his technique as perfect.**

**One evening, just before their act begins, Victoria tells Carl that she is having an affair with the lion tamer, Wayne. Carl is shocked and enraged but immediately the fanfare strikes up for the start of their act and Carl and Victoria enter the ring to start their performance. The third knife Carl throws goes straight into Victoria's heart, killing her instantly.**

**Discuss Carl's liability for Victoria's death.**

[50]

## Example Grade A Answer

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In order to answer this question we must first consider whether Carl is liable for murder or manslaughter and then consider any defences he may have available. **AO2** The definition of murder comes from Lord Coke, the unlawful killing of a human being under the Queen's Peace with malice aforethought. Malice aforethought means an intention to kill or an intention to do serious harm.

When Carl throws the third knife and pierces Victoria's heart there is an argument that he may have directly intended to kill her. **AO2** His motive, jealousy, may have been a factor but it is not relevant in law. For direct intent to apply he must have the aim, purpose or desire, Mohan. As Carl regards his technique as perfect it seems that he may well have had a direct intent to kill as there appears to be no other explanation for his error. **AO2** He is not intoxicated. Also the fact that it is the third knife would suggest that he was able to control his throwing of the first two as normal so making it all the more likely he intended to kill with the third. **AO2**

If Carl is charged with murder he may have two special and partial defences available to him under the Homicide Act 1957 which would reduce his conviction to voluntary manslaughter and allow the judge discretion on sentencing. **AO2** These are S.2, diminished responsibility and S.3 provocation. **AO2**

To plead diminished responsibility he would have to bring medical evidence **AO2** to show that he was suffering from an abnormality of the mind which substantially impaired his responsibility for his actions. According to Lord Parker in Byrne this means so different from the mind of the ordinary person as to be regarded as normal. Byrne was a sexual psychopath who killed and mutilated a girl's body because he could not control his sexual urges and was allowed the defence. Depression arises as an internal source. As Carl has been off work with depression he may have this evidence **AO2** but he must be better now or he wouldn't be back on the job so he may not be able to rely on this. **AO2**

He could be better advised to rely on the defence of provocation. There are three elements to

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this defence. Firstly there must be evidence of provocation, this can be words or acts such as the discovery of an affair, Davies, or a slap in the face or even a baby's crying, Doughty. Secondly, there must be a sudden and temporary loss of control, this is a subjective question for the jury to answer. Did D suddenly and temporarily lose control or was there evidence that the act was planned, Ibrams? In Thornton and Ahluwalia two battered wives lost their provocation defence because there was evidence that they had waited before killing their husband and fetched a knife and some petrol respectively with which to kill them. According to Duffy there must be no time for the blood to cool and the defendant must be no longer the master of their own mind. This could be a problem for Carl. Although there is evidence of provocation when Victoria tells him she is having an affair with Wayne **AO2** and he is shocked and enraged by this he didn't kill her with the first knife he threw. The fact that he waited until the third knife to kill her might show that his blood had cooled for him to do a calculated act. **AO2** On the other hand the loss of self control does not have to be immediate but sudden so he might have suddenly 'lost it' seeing her there. **AO2** This is a question for the jury.

Even if they decide there was a sudden loss of self control Carl will also have to satisfy the objective test of provocation. Would a 'reasonable man' have lost control and done what he did in the circumstances? The reasonable man test allows a jury to take into account characteristics that are relevant to the accused. In Camplin 1978 it was said that you can take into account the defendant's age and sex. In that case the defendant was judged by the degree of control that could be expected of the reasonable 15 year old boy after he had been buggered by an older man whom he killed with a chip pan.

Since Camplin there have been a lot of cases which have looked at the characteristics that can be taken into account. In Humphreys an obsessive and immature personality disorder was taken into account and in Morhall being an addicted glue sniffer was allowed as a characteristic even though it was self-induced. More recently the House of Lords in Smith (Morgan James) appeared to say that almost any characteristic of the accused could be taken into account although they ruled out hot tempered so Carl may not be able to rely on that. **AO2** However, in the later cases of Rowland and Weller the Court of Appeal suggested that any characteristic could be relevant.

In 2005 the Privy Council in Holley said that Smith was wrong. They said you had to separate characteristics which affected to the gravity of the provocation to the accused, which could be anything relevant, from the characteristics that affected an accused's power of self-control. This latter limb should not include mental characteristics such as depression which should be proved by medical evidence under the defence of diminished responsibility. Although Holley was a Privy Council decision it has since been approved as persuasive precedent by the Court of Appeal in Karimi and James.

Therefore Carl may not be able to rely on provocation **AO2** and would be better to plead diminished responsibility if he can get the medical evidence. **AO2**

## Examiner's commentary

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Overall this is a Level 5 answer satisfying all three of the Assessment Objectives criteria at this level. The candidate has spent more time on the provocation issue than the diminished responsibility defence but has at least considered the latter and this certainly does not preclude being rewarded at Level 5.

AO1 does present wide ranging up-to-date and accurate citation with good definitions of the relevant law and there is a confident understanding of the provocation element in particular. There could have been a little more information provided on the diminished responsibility defence but the main ingredients are there. The candidate scores well on provocation.

**AO1 marks 22**

The AO2 content is excellent. The candidate has engaged with the question fully by not only identifying all the relevant issues but meaningfully analysing and applying the law to the actual facts of the scenario itself. Identifying the defences earned AO2 marks. These are neatly incorporated alongside the statements of law. It is a pity the candidate didn't justify the conclusion more fully by saying why Carl may not be able to rely upon provocation but the implication is there that his depression would now be effectively excluded as a characteristic unless it affected the gravity of the provocation to him, which is unlikely. The conclusion was a little rushed.

**AO2 marks 18**

The AO3 is clearly in the top Level 4 through evidence of a well structured and organised answer with no grammar or spelling errors.

**AO3 marks 5**

**Total marks 45**

### **Synopticism**

The candidate has a very good understanding of the topic area. The candidate has identified the relevant law and applied it appropriately and thoughtfully. These are both essential problem solving skills. The application is not only accurate but also shows a high level of competence in both logical reasoning and analysis. These skills have been developed progressively throughout the course. The discussion of the cases of *Camplin*, *Smith* and *Holley* shows a grasp of the development of the law relating to provocation and an ability to be up to date with these developments. The reference to *Karimi & James* also indicates an understanding of the operation of precedent as a development from the AS unit on Sources of Law.

### **Stretch and Challenge**

There are hints of stretch and challenge in the candidates answer which may be argued to justify an A\* grade but arguably insufficient overall.

Throughout the second paragraph there is some very praiseworthy logical reasoning which provides some evidence of stretch and challenge. The candidate is thinking rationally in an environment where he or she is faced with a set of previously unseen circumstances and they are responding in a reasoned way in order to reach conclusions. The arguments used are original and well expressed. Having identified a potential liability, in the third paragraph the candidate introduces the foundation for the application that follows by identifying the potentially relevant defences of diminished

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responsibility and provocation. The following paragraphs clearly indicate the candidate's appreciation that the development of the law is as a result of judicial interpretation of relevant legislation. The candidate also shows good problem solving techniques in relation to the provocation defence in particular.

### **Examiner's advice**

The candidate not only has a clear understanding of the law but also a critical awareness as well as clear legal reasoning ability at a very high level. The candidate may well have been able to achieve maximum marks had they spent a little more time and provided more detail on the potential defence of diminished responsibility.

The candidate has excellent selection of appropriate law and has generally introduced the application alongside the law. This approach often means that the candidate is more likely to apply each and every aspect of the law to the facts than the candidate who deals with all of the law that they have identified as relevant throughout the whole scenario in one go and then deals with the application all at one time. This latter approach may sometimes lead to issues being overlooked. On the other hand either approach may be equally as successful depending upon the nature of the scenario that is being addressed. Problem questions do demand their own discrete techniques and it is useful to refer to past examination papers, mark schemes and reports. Some textbooks also contain suggested outline answers to previous examination questions. Practice on problem solving techniques and use of authorities in argument is invaluable and generally well accepted by students as an interesting way of learning as well as improving skills.

## Example Grade E Answer

### Plan – Murder – Section 3

- Murder is the unlawful killing of a reasonable creature under the Queen's Peace / actus reus / mens rea
- Provocation Section 4
- Need to prove words or acts of provocation
- Reasonable man test
- Sudden and temporary loss of control – cases Rositer, Alacott, Ibrams
- However battered wife syndrome cases – Helena Kennedy – remarked women are like the last freyng elastic – Thornton
- Lord Lane – not so much a cooling down – a heating up period – result murder substituted with manslaughter so women do not get licence to kill

Under the Homicide Act 1957 Carl would be liable for murder **AO2** as he has killed his wife in what would appear to be cold blood. Murder is found under Section 3 of the Homicide Act stating that a person will be guilty of murder if they unlawfully kill a reasonable creature under the Queen's Peace. In order for murder to be proven both the mens rea and actus reus elements have to be proven and as murder is a crime of specific intent intention must be proven but if this is not done a murder conviction will not be obtainable.

In Carl's case he could try to plead provocation as a defence. **AO2** Provocation is found in Section 4 of the Homicide Act 1957. However for provocation to be a defence three things must be proven. There has to be words or acts of provocation a reasonable man must of acted in the same way that he did and there must be a sudden and temporary loss of self control. This meaning you can not have deliberately planned or set out to kill the victim as illustrated in the case of R v Ibrams were a pact was made against the victim to kill him due to his obsession with an ex girlfriend. However at the time of the trial the defendants tried to claim provocation on the basis that the way the victim was obsessing over his ex girlfriend acted as an act of provocation were the ex girlfriend's new boyfriend was concerned however the court upheld their conviction stating that no such act classes as provocation and that there was no sudden or temporary loss of control as the act had been planned.

Although in Carl's case his wife on the night in question was told by her about her affair this constitutes the words or act requirement of provocation. **AO2** However the reasonable man test is left to the jury to decide as to a reasonable person in his shoes would of reacted the same way.

The difficulty in proving the sudden and temporary loss of control with provocation in this case is that Carl had a cooling off period in terms of immediacy **AO2** however when looking at cases such as Alhualia and Humpreys the question is resolved.

In the case of Alhualia the concept of battered women's syndrome began to emerge as she had killed her husband as a result of years of being beaten she had a cooling off period before going upstairs and pouring petrol on her husband's feet which caused him burns which later resulted in his death. She was convicted of murder only for the court of Appeal and the house of Lords to quash her conviction and replace it with manslaughter due to diminished responsibility as she had snapped but just a little later than most people would.

When applied to this case it would appear that Carl would be able to prove provocation on the grounds of what he has been exposed to by Victoria's affair. **AO2** Carl should be able to prove or plead provocation have the murder charge replaced by a manslaughter one. **AO2** There is never an acquittal as the end result is still death. The reasonable man test is left to the jury to decide if somebody else would of reacted in the same way. If they do then the defence of provocation will be available to him. **AO2**

### Examiner's commentary

This candidate identifies murder and provocation but fails to consider diminished responsibility other than briefly mentioning it in connection with Ahluwalia. It would appear that the candidate had prepared for a 'battered woman syndrome' scenario and was confused when the 'murderer' turned out to be a man. There is some evidence of limited knowledge of provocation as a defence and this places it in Level 2. Citation is present but a great deal of it is muddled and / or irrelevant. This candidate has included a plan. This is usually a good idea although this particular plan is rather sketchy and already foretells of some errors. Limited credit can be awarded for relevant material not later referred to e.g. cases so it is best left rather than being crossed out.

AO1 is limited and error strewn, for example attributing the definition of murder to the Homicide Act. Nor is there a statement about the intention to kill or do serious harm which is required for the offence. Most credit under this Assessment Objective is gained by a limited but basically correct statement of the essential ingredients of provocation but there is no mention whatsoever of the 'characteristics' attributable to the 'reasonable man'.

**AO1 Marks 10**

Marks on problem questions are awarded for identification of issues and for application to the facts of the scenario. This script shows only limited ability to do either and consequently the argument put forward is also limited. Although the offence of murder and potential defence of provocation are recognised there is no identification of the potential diminished responsibility defence and there is only limited reference to or the application of the facts in the scenario itself. There is a limited attempt to argue to a conclusion.

**AO2 marks 8**

There is some attempt to produce a structured, although limited answer. Some use of legal terminology is evident although there are also some errors of grammar and spelling.

**AO3 marks 3**

**Total marks 21**

#### **Synopticism**

There is evidence of synopticism in the way in which the identification and application skills are evidenced even though the candidate has only provided a limited answer. The major offence and defence arising out of the scenario are there. The brief reference to 'battered woman syndrome' hardly counts.

#### **Stretch and challenge**

As would be expected from a grade E answer there is no evidence of stretch and challenge. The AO2 application skills are commensurate for an E grade candidate, however, the candidate has only a limited knowledge and understanding of the appropriate law.



## Section C Question 7:

John enters a supermarket intending to steal some food. He is in the shop when he notices that the door to the manager's office is open. He goes inside hoping to find something of value. There is no-one present but, as he is about to leave, he notices a wallet lying on the manager's desk. John picks the wallet up and takes a £20 note out of it. The manager, Sue, sees him leaving the office and shouts at him. John pushes Sue aside and runs out of the store

Evaluate the accuracy of each of the four statements A, B, C and D individually, as they apply to the facts in the above scenario.

**Statement A: John is guilty of burglary under S9(1)(a) Theft Act 1968**

**Statement B: John is guilty of theft under S.1 Theft Act 1968.**

**Statement C: John is guilty of robbery under S.8 Theft Act 1968.**

**Statement D: John is guilty of burglary under S9(1)(b) Theft Act 1968.**

[20]

## Example Grade A Answer

Statement A:

When John goes into the supermarket he has already formed the intention to steal some food. This means that although shoppers are normally allowed into a supermarket he is entering a building **AO2** as a trespasser because he is exceeding the permission for which he is allowed to enter. **AO2** Even if he steals nothing this secret dishonest intention would be enough to convict him of burglary under S9(1)(a). **AO2** He also enters the manager's office where he is not authorised to go. This makes him a trespasser in a part of a building under the Theft Act **AO2** and he commits two further offences of burglary although the taking of the £20 note would be under s9(1)(b). **AO2**

Statement B:

Although John may not steal the wallet if he leaves it behind he may be appropriating it because by picking it up he is assuming one of the rights of the owner. **AO2** If he leaves it behind it may be difficult to prove an intention to permanently deprive the owner of it when he appropriated it **AO2**. He certainly commits theft when he takes out the £20 note as he is dishonestly appropriating property belonging to another **AO2** and when he runs off he is intending to permanently deprive the owner of it. **AO2**

Statement C:

When he pushes Sue aside John is using force. **AO2** The use of force or the threat of force in order to steal amounts to robbery under the S8 Theft Act. **AO2** Theft can be a continuing offence **AO2** and John still has the £20 note so he is using the force at the time of the theft and is guilty of robbery. **AO2**

Statement D:

As I said before John is guilty of burglary under S9(1)(b) because although he may not have intended to steal anything when he went in he has still entered a part of a building as a trespasser **AO2** and he then goes on to steal the money so he is guilty under s9(1)(b) as well. **AO2**

n.b.

**Section C is new as a part of the A2 option papers. All the marks are awarded under the AO2 Assessment Objective since the candidates are being asked to purely identify relevant issues and apply their knowledge to each scenario in the context of each statement or proposition rather than display it. As a consequence citation of cases is not required in order to obtain maximum marks. In addition, marks are awarded holistically at the end of the complete answer.**

This candidate has chosen to organise his or her answer by looking at the statements in turn. This is a sensible approach in that it reduces the possibility of overlooking any particular issue raised by the scenario and each proposition. The candidate has tackled all of the statements in a coherent way arguing to a logical conclusion in each case. The candidate has focused on the critical issue in each question. The candidate applies the principles of law. The candidate does not use any cases and this is entirely appropriate for this style of question.

The response is a grade A because of the precision of the AO2. The candidate has a clear appreciation of the law and its applicability in each scenario.

In A the key issues identified by the candidate are that John has entered a building, the supermarket, with the intention to steal some food. The trespassory aspect has been identified by reference to exceeding the implied permission extended to shoppers. With the addition of the reference to conditional intent and a correct conclusion this is Level 5.

For B the candidate recognises the theft of the £20 note and also considers whether or not the wallet may have been stolen. A correct conclusion is also offered to reach Level 5 again.

The answer to C correctly identifies the three elements necessary and is supported by a correct conclusion.

For D the candidate has identified the significant elements of the offence and reasoned correctly that a burglary has occurred but does not state that the manager's office is the 'part of the building' referred to so only achieves Level 4 on this part as a result.

**AO2 marks 17**

### **Stretch and challenge**

There is ample evidence of stretch and challenge here. The candidate has good perception and incisive legal reasoning skills and also understands perfectly the demands of the different style of assessment.

When John enters the supermarket he is not yet committing an offence cos he is like all shoppers allowed in there. When he goes into the manager's office he could be guilty of a S9(1)(a) burglary if he was intending to steal something or cause criminal damage. **AO2** When he takes the £20 note out of the wallet he is committing a theft **AO2** cos it belongs to somebody else. Robbery is under the Theft Act 1968 s8 and is when someone uses force. Because John has used force he could be guilty of robbery. **AO2** It will depend how much force he used and if he only used a bit of force it could be an assault and battery instead.

When he goes into the manager's office he could of committed an offence cos it says in S9(1)(b) that if you have entered as a trespasser and then go on to steal then you are guilty. **AO2**

## Examiner's commentary

This is a good example of how **not** to tackle these Section C questions. Although some of the issues have been referred to in this answer they are not separately considered which makes it less likely that they will be individually argued to a logical conclusion.

Some issues, such as the analysis of the initial entry into the supermarket with the intention to steal food, have not been recognised and others, such as the analysis of robbery at the end, are clearly incorrect. Nevertheless, at least three issues have been correctly identified and therefore the candidate would just about attain a grade E or Level 2 on this section. This demonstrates that it is possible to gain marks here for accurate identification of offences, a skill, rather than for including a lot of citation since that is an AO1 requirement and is fully assessed in Sections A and B.

**Total marks 7**

### Stretch and challenge

As would be expected from a grade E answer there is no evidence of stretch and challenge. The candidate probably has limited understanding of the area and there is some limited application in some of the four answers. However, there is no detailed application of legal reasoning and so the higher level skills are not apparent to any extent.

### Examiner's advice

Unusually for an E grade the candidate has not really engaged in the style of assessment. Usually E grade candidates, who may, for instance, struggle with the critical skills required for Section A answers or lack the depth or detail necessary for Section B answers, take heart from the narrower model of assessment where they are able to deploy their understanding and legal reasoning to gain higher marks and lift their overall mark. However, as stated earlier some of the issues have been referred to in this answer but they are not separately considered which makes it less likely that they will be individually argued to a logical conclusion.

## Sample Classroom Activity Criminal Law (G153)

### Strict Liability Activity

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#### **Purpose of the Activity:**

This activity is designed to get students starting to think about the wider range of criminal offences. The law is not just about murder, robbery, theft etc! Many offences are aimed at imposing high standards on those with responsibility and protecting the vulnerable. However, the way this is done raises questions and it is an area of law with many advantages and disadvantages – this is what you are trying to get across.

#### **How to use the Activity:**

Use these scenarios to test awareness of strict liability offences – get the students to do these in groups when first teaching the topic – as indicated in the sample lesson plan. Asking each group to make a mini-presentation works well as it encourages them to put forward different ideas.

After teaching the topic return to these scenarios and repeat the exercise. This time you can expect the students to be able to identify at least one case relevant to the scenario, the reason behind the decision in the case and they can summarise what is good and bad about the decision.

Consider the following scenarios and give reasons for your answers:

#### **Scenario 1**

Charles, a vet, owns a house in a university town which he lets to students. The students pay their rent direct to a bank account Charles has set up and Charles never visits the house unless the students ask him to. Two of the students, Flavia and Jackie, start growing marijuana plants in the attic to sell to their friends but the police raid the house and find the marijuana plants. Charles has not been to the house for six months.

How do the laws relating to strict liability affect Flavia, Jackie and Charles? Is this good or bad?

#### **Scenario 2**

Dominique owns a wine bar and she employs Henri as a barman and waiter. Dominique tells Henri to check all customers for proof of age. Henri's niece, Chantelle, who is 16, visits the wine bar and asks Henri for a large glass of white wine. Henri says he cannot serve her as she is underage. Chantelle asks again and Henri sells her a large glass of white wine.

How do the laws relating to strict liability affect Dominique, Henri and Chantelle? Is this good or bad?



RECOGNISING ACHIEVEMENT

### **Scenario 3**

Raoul owns a shop and he has a franchise to sell lottery tickets. A crowd of school children wearing school uniform come into the shop and want to buy lottery tickets. Raoul asks if they are over 16 and they say they are. He sells a ticket to Lola, who is in fact 15, and in the Saturday draw Lola wins £1 million.

How do the laws relating to strict liability affect Raoul and Lola? Is this good or bad?

### **Scenario 4**

James owns a factory which processes chemicals. He employs Paul to clean the filter system daily, so that water used to process the chemicals is clean when it flows into the river next to the factory. In winter Paul thinks it is too cold to go outside and does not clean the filter system for three days. The local newspaper telephones James and says a local angler has seen hundreds of dead fish in the river next to James's factory.

How do the laws relating to strict liability affect James and Paul? Is this good or bad?

### **Scenario 5**

Greenfoods imports organic beans which it cooks, mixes with its own spicy tomato sauce and then cans. The beans are very popular and Greenfoods produce 2 million cans each year. Sasha heats up half a can of beans for her lunch. They are so good that she decides to eat the other half but when she tips the beans into a pan to heat them up a dead mouse falls out of the can into the pan.

How do the laws relating to strict liability affect Greenfoods and Sasha? Is this good or bad?

## Exemplar candidate work Criminal Law Special Study (G154)

These materials should be read alongside the approved specimen question paper and mark schemes and specification.

Question:

1) Discuss the extent to which the precedent in *Re A (Conjoined Twins)* [Source 10 page 6 and Source 11 page 7 Special Study Materials] represents a development of the law on necessity.

[16]

Example Grade A Answer:

Re A (Conjoined Twins) is an interesting case because it conflicts with what the law was previously thought to be. AO2 Doctors wanted to separate conjoined twins but this would result in the death of one twin. If the operation was not carried out both twins would die but with it one could be saved. The doctors were trying to use the defence of necessity AO2 but in *Dudley & Stephens* where shipwrecked sailors killed and ate a cabin boy when they had no food the court held that necessity could not be a defence to murder. AO2

In Re A the Court of Appeal authorised the separation and held that there were circumstances where necessity could be used as a defence to murder AO2 when the killing was in order to avoid a worse evil, AO2 in this case the certain death of the twin that could be saved. AO2 The court said that the defence could only be used if some strict requirements were met AO2 and these are identified by Brooke LJ in lines 19 to 22 of source 11. AO2 However, the court stressed that the defence could only be used very rarely AO2 and should not be taken as a precedent AO2 and would have to 'develop on a case by case basis' (line 9 source 11). AO2

## Examiner's commentary

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### General comments

This is a very good answer. While there are no marks for AO1 the candidate has introduced sufficient facts to show why the Court of Appeal considered the applicability of a defence that had not previously been accepted and showed why linking to the case of Dudley & Stephens and implicitly this shows development.

The candidate shows a clear understanding of the nature of the defence and makes three very good evaluative points:

- on the justification being avoiding a worse evil;
- on the requirements for the defence to apply; and
- the point on the case not acting as a precedent.

For the second and third of these the candidate has displayed good skill in a source based exam by making economical references to precise lines in the source.

As a result the candidate achieves Level 5 for AO2 because of good explanation and discussion of three key points at a high level and for excellent use of the source materials.

Communication of the points or precise use of the source is very effective and so the candidate achieves Level 4 for AO3.

### Mark

AO2	12
AO3	4
<b>Total mark</b>	<b>16</b>

### Synopticism

There is clear evidence of synopticism in the answer because the candidate has showed good understanding of the case in the context of the overarching theme, used a linked case very effectively to show both development and judicial creativity, and has also shown evaluative and analytical skills of a high level.

### Stretch and challenge

For the reasons identified in 'Synopticism' there is clear stretch and challenge in the answer. While there is no AO1 requirement, the candidate has deployed both AO1 and AO2 skills, the latter at a high level. More importantly the candidate understands the very different demands of the specific type of question and of source based questioning. This is a clear A\* answer.

### Examiner's advice

This is an excellent answer achieving maximum marks. The candidate might have made it even more impressive with some additional comment on the requirements for the defence to succeed.

## Example Grade E Answer:

Re A was about the separation of conjoined twins. J was capable of independent existence, but an operation to separate them would inevitably have resulted in the death of M who was only alive because a common artery circulated blood for both of them. If the operation wasn't carried out both twins would die. The judges allowed the separation because it was in J's best interests even though it was not in M's best interests because it would bring her life to an end. AO2 A balance had to be struck. AO2 The law had to allow an escape through the choosing the lesser of two evils. AO2 The conclusion had to be that carrying out the operation was the lesser evil and no unlawful act would be committed. AO2 The case is a development because of necessity (source 11).

## Examiner's commentary

### General comments

This candidate has tried to make use of the sources, albeit in a fairly unsophisticated way. Most of the answer is extracts from Source 10 repeated almost verbatim. The reference to Source 11 at the end is too generalised to gain credit. In fairness the candidate has been selective rather than taking whole passages but even then these references should have been properly cited using inverted commas.

The candidate does gain some credit because of this selectivity. The references to 'best interests', striking a 'balance', and to 'choosing the lesser of two evils' are all relevant points to come out of the case, as is the recognition of the use of the defence of necessity.

The candidate gains limited marks for recognition of these issues but could have secured much higher marks by explaining and developing the points.

For AO2 the candidate has hinted at, though not fully explained or developed two key points that necessity is being used as a successful defence to a killing; and that this is because it represents the lesser of two evils. These are good points put taken straight from the source and lacking any kind of development and so only achieve Level 2.

For AO3 the candidate has only communicated a limited amount of information and so effective communication is limited also for Level 2.

### Mark

AO2	5
AO3	2
Total mark	7

### Synopticism

There is little evidence of synopticism in the answer. The candidate has hinted at some evaluative comment but this is insufficiently developed to identify real deployment of higher level skills. The one skill demonstrated to any degree is selectivity from the sources but again this was done verbatim with no real development of points.

### **Stretch and challenge**

As would be expected from a grade E answer there is no evidence of stretch and challenge. The candidate has shown some limited AO2 skills but none of the higher level skills are evident to any extent.

### **Examiner's advice**

Better technique, more effective preparation and more confident answering could have increased the marks dramatically in the case of this candidate. The candidate understands enough of the demands of this type of question and of source based exams to read through the source selectively. However, the points that are made remain undeveloped. The candidate also gains no marks for the final sentence but could easily have done so merely by citing specific lines of the source. Since the candidate has relied so heavily on the source good marks could also have been gained for instance by referring to the requirements laid down in the case for the defence to succeed, or by using the source to demonstrate the meaning of 'lesser of two evils' or 'best interests' or even the comments of the judge on the position of the case in relation to precedent.

Question:

- 2) Lord Hailsham in *Howe* explains the defence of duress by saying that “*in such circumstances a reasonable man of average courage is entitled to embrace as a matter of choice the alternative which a reasonable man could regard as the lesser of two evils.*” [Source 2 page 2 lines 6-8 Special Study Materials].

Consider the extent to which the development of the restrictions on the use of duress really allow ‘*a reasonable man of average courage*’ to exercise such a choice.

[34]

Example Grade A Answer:

Many defences in criminal law apply because the defendant either lacks the necessary mens rea or has not voluntarily committed the guilty act. Duress is different to these AO2 because the defendant has both the mens rea and the actus reus of the crime but the courts are prepared to accept that there is a justification for his actions. AO2 The defence works because the defendant has been threatened with either death or injury either to himself or to his family unless he carries out the crime. The law considers that in these circumstances the defendant doesn't really have any choice but to carry out the crime because as Lord Hailsham says in source 2 lines 6-8 a reasonable man is entitled to choose ‘the lesser of two evils’. However, the courts have been very restrictive in when they will allow the defence AO2 and the defence is not available for all crimes. AO2 This is seen straightaway in source 3 where the House of Lords overruled Lynch and held that duress is not available on a charge of murder or attempted murder. So this limits the extent to which a reasonable man of average courage is able to exercise a choice. AO2

This was later confirmed in *Gotts* AO2 and is seen in source 4 lines 8-10 and lines 16-18. AO2 The judges will not allow the defence in these crimes because they are preserving the sanctity of human life. AO2 The fact that duress is not available to attempted murder seems unfair AO2 because it is available to a charge of grievous bodily harm under s18 OAPA AO2 and it would be possible for the victim to be harmed more under that offence. AO2 For instance the defendant could have shot at the victim and missed and the defence wouldn't be available but he could beat the victim to within an inch of his life and the defence could be available. AO2 This seems unfair that the availability of the defence depends on what charge the prosecution brings against him. AO2

Duress can only succeed if the two part test in *Graham* is satisfied. Firstly the defendant is impelled to act because of a threat of death or serious injury to himself or his family. Secondly that a man of sober firmness would have done exactly what the defendant did in the circumstances. This can be seen in source 1 lines 4-9.

The judges have also placed a number of other limitations on the defence which make it more difficult to use successfully. AO2 For instance the defence won't be available if the threat is not one of death or serious injury. In *Valderrama-Vega* the court said that a threat to reveal the defendant's homosexuality wasn't sufficient for the defence to apply unless there were also death threats. This seems unfair AO2 because the person might suffer as a result and still feel that he had no choice but to do what he was told to do. AO2 They might see the threat as just as serious as a threat of injury and that carrying out the crime was the lesser of two evils. AO2

## RECOGNISING ACHIEVEMENT

Another limitation AO2 is where the defendant has voluntarily associated with people that he knows to be violent who then make the threats to him. This was seen in Shepherd where the defendant was forced by threats to rob shops because of threats of violence made to him but failed in his defence. The reasoning is given by Lord Lane in Sharp in lines 5-8 of source 6. AO2 Sharp is different AO2 because he didn't know that the gang were violent. AO2 The reason for the difference is explained in lines 18-23 of source 6. AO2 Hasan is a more recent case where the same point was made. This seems fair because a reasonable man wouldn't join a gang of violent criminals. AO2

Another limitation AO2 is that the defence can't be used if the defendant had a safe means of escape. This was seen in Hudson & Taylor where two girls could have reported the threats to the police but didn't. Again this might seem to be unfair. AO2 As it says in lines 12-17 of source 5 we might expect the girls to act in this way. AO2 Abdul-Hussain is slightly different. AO2 This involved hijackers who were escaping from Iraq. The court held that the threat does not have to be immediate but it does have to be imminent. The defence can also only be used if the defendant carries out a crime that he is told to by the person threatening him. As in Cole lines 6-11 of source 5.

There are many criticisms of the defence. AO2 It is supposed to be a concession to human frailty but the fact that it isn't available to certain crimes means that we are expecting the defendant to be a hero but not many people are heroes. AO2 In any case the defendant might be prepared to be a hero if it is him that is threatened but if for example it was his children that were being threatened then there are not many people who would put their children at risk AO2 and they are likely to act in the same way as the defendant in that case and would consider it to be the lesser of two evils to carry out the crime. AO2 The Law Commission has also reported on the defence and said that it should be reformed and made available to all crimes. AO2

## Examiner's commentary

### General comments

The candidate has produced a very good answer which has both breadth and some depth as well as some good critical comment. The candidate has also shown good exam technique for a source based exam paper and made extensive and effective use of the sources.

The candidate has shown a clear understanding of the nature of the defence in the opening paragraph and has interestingly contrasted it with incapacitating defences to explain that, while the defendant has appropriate actus reus and mens rea there is an excuse for committing the defence based on the threats that he has been subjected to.

For AO1 the candidate knows what is in the sources and has made use of all the cases provided with explanations for most of the points. The candidate has also explained crimes for which the defence is unavailable and situations where the defence cannot apply and expressed these as limitations. In consequence the candidate is able to achieve Level 5 for AO1 because of the wide ranging knowledge.

## RECOGNISING ACHIEVEMENT

While the candidate could have commented more extensively, there is also some good comment and the candidate has tried to comment at each point in the essay and reach conclusions at the end. As a result the candidate achieves Level 5 for AO2.

The way in which the candidate has used the sources, citing relevant lines of specific sources accurately, is also a very economical and effective way of answering. There is a good structure and the explanations are very clear and the candidate achieves Level 5 for AO3 also.

### Mark

AO1	15
AO2	13
AO3	4
<hr/>	
Total mark	32

### Synopticism

There is significant evidence of synopticism in the answer. The candidate puts the defence in the context of other defences and in a comparative sense in the 1<sup>st</sup> paragraph; analyses and evaluates the restrictions of the defence in the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> paragraphs; discusses development in all but the 3<sup>rd</sup> paragraph; discusses the justness or otherwise in all but the 3<sup>rd</sup> paragraph; there is awareness of the judicial role throughout, and there is also some reference to suggested reforms in the 7<sup>th</sup> paragraph.

### Stretch and challenge

The candidate has shown extensive higher level skills. The fact that there is comment in all but one paragraph indicates that the candidate has an advanced critical awareness. The development in contrasting the availability of the defence to attempted murder and s18 in the 2<sup>nd</sup> paragraph is well considered and highly illuminating. Besides this the candidate produces a very measured conclusion with real focus on the central issue of the question in the 7<sup>th</sup> paragraph. Above this the candidate clearly understands the nature of source based papers and makes maximum use of material (both AO1 and AO2) from the sources with appropriate line citation. This is undoubtedly an A\* essay.

### Examiner's advice

The candidate has only fallen short of maximum marks because one or two of the cases, such as Hasan might have been developed more for AO1, and there might have been more developed comment in places, and particularly some comment on the basic test in Graham for AO2. The candidate might also have introduced Bowen fruitfully for extra discussion and may even have contrasted the rules on duress with the more relaxed situation in provocation. Nevertheless, this is a very informative and very readable discussion.

## Example Grade E Answer:

Howe was part of a gang who tortured and strangled two men. Howe claimed that he only took part in the killings because he was threatened by other members of the gang that they would kill him if he didn't. The House of Lords overruled DPP v Lynch and said that duress was not available for murder or attempted murder. In Howe, Lord Hailsham said that some degree of proportionality between the threat and the offence must be a prerequisite of the defence. He said that the concession to human frailty is no more than to say that in such circumstances a reasonable man of average courage is entitled to choose the alternative which is the lesser of two evils.

In Gotts the defendant was a boy of 16 who stabbed his mother because his father threatened him with violence unless he did kill his mother. The court followed Howe and said that duress was not available as a defence to attempted murder either. Lord Jauncey said that it would have been better if the development of the defence of duress had not taken place and that duress had been regarded as a factor to be taken into account in mitigation. AO2

There are other restrictions on the defence of duress. AO2 In Valderrama-Vega the defendant imported drugs and said that he had only done so because he was threatened by a gang involved in drug smuggling that if he didn't do so they would reveal that he was a homosexual. The court said that only a threat of violence was enough to use duress as a defence. In Graham on the other hand the defendant, who was also a homosexual was threatened with violence when he killed his wife. In Hudson and Taylor two young girls perjured themselves in court and said that they only did it because a man called Farrell had threatened that he would cut them up and he was in the court. They could have reported the threat to the police and had protection so they couldn't use duress. In Shepherd the defendant couldn't use duress because he had volunteered to join the gang who threatened him whereas in Sharp the defendant didn't know that the gang was violent so he could use the defence and the court distinguished the two cases. The reasons for this are given in source 6.

Duress is unfair AO2 because it doesn't apply to all crimes and there are so many restrictions on using it. AO2



## Examiner's commentary

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### General comments

The candidate has some understanding of the defence of duress of threats but the answer is fairly narrative in style, concentrating mainly on the facts of cases and would have benefited from more explanation and development. There is also little critical comment which is typical of a grade E answer, and which obviously limits marks for AO2.

The candidate does identify a number of cases and makes valid points from them for reasonable AO1 marks. However, this could have been improved with the inclusion of the Graham criteria and more explanation of the basis of using the defence. Nevertheless the candidate still achieves Level 3 for AO1 as there is clearly adequate, if undeveloped, knowledge.

There is very little in the way of AO2 and critical comment is generally confined to the final rather brief paragraph. Besides this the candidate does gain some credit for recognising the case law used as imposing limitations on the defence. However, the comment is quite limited and undeveloped and so can only achieve a low Level 2.

The candidate has extracted some information from source 2 in the first paragraph and source 3 in the second paragraph but has more or less copied and not used inverted commas as would be appropriate. The candidate also gets no credit for the reference to source 6 because there is no reference to specific lines.

Because of the extent of the AO1 and the use of the source materials the candidate achieves Level 3 for AO3.

### Mark

AO1	9
AO2	4
<u>AO3</u>	<u>3</u>
Total mark	16

### Synopticism

There is little evidence of synopticism in the answer. The answer is very narrative and uncritical. There is only very little comment and the higher level skills are not really evident.

### Stretch and challenge

As would be expected from a grade E answer there is no evidence of stretch and challenge. The candidate has shown only limited AO2 skills, some bald comment but little in the way of analysis or evaluation.

### Examiner's advice

The candidate has achieved a high grade E, not quite a grade D, as a result of some breadth of knowledge. The AO1 itself could be improved significantly with less case facts and more explanation of principles, as well as a basic definition of the defence and explanation of the Graham test. Even without additional case law this in itself could have achieved a good Level 4.



## RECOGNISING ACHIEVEMENT

The addition of cases such as Cole, Abdul-Hussain, Hasan could have enhanced the mark still further.

The major shortcoming in the essay is in the paucity of AO2. There is a wealth of comment that could have usefully been included and developed on this particular title, discussion of the justification for the defence, the inconsistency in approach with the defence not being available to all offences, whether or not the defence is in fact operating as a concession to human frailty, and allowing the defendant to reasonably choose the lesser of two evils, the breadth and nature of the various restrictions.



Question:

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- 3) Mara, Ian and Claire are all students of Christine's in the law school where Christine works as a lecturer.

Consider whether or not Christine would have a defence of duress available in each of the following situations:

- a) Mara, who has failed EU law, comes to Christine's room with a gun and threatens to kill Christine unless Christine goes directly to the EU lecturer's room and kills her with the knife that Mara gives her. Christine goes to the room enters and attempts to kill the lecturer but she quickly holds a large book up in front of her preventing the knife from touching her. [10]
- b) Ian comes to Christine's room and threatens that unless Christine immediately steals volumes of law reports for Ian from the research library that he will reveal to the Dean of School that Christine is having an affair with one of the third year students. Christine steals the law reports for Ian. [10]
- c) Claire, who has failed all his first year modules, phones Christine from Spain during the vacation after hearing her results and threatens Christine that unless Christine burns down the law school she will kill her when she returns from Spain. Christine does set fire to the law school. [10]
- [30]

Example Grade A Answer:

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(a)

Christine has been threatened with death by Mara unless she kills the EU lecturer. This is an appropriate threat and a reasonable person in Christine's position would do the same as Christine AO2

However, after Howe duress is not available as a defence to a charge of murder or attempted murder AO2 so the defence would fail. AO2

(b)

This is like Valderrama-Vega. AO2

The threat is not one of violence to Christine or Christine's family. AO2

A reasonable person would not act in the same way as Christine. AO2

Therefore her defence will fail. AO2

(c)

Christine has been threatened with death by Claire unless she burns down the law school.

The threat would have the same effect on a reasonable person as it had on Christine. AO2

However the situation is like Hudson v Taylor AO2 Christine had plenty of time to report Claire and seek protection because Claire phones Christine from Spain. AO2

Therefore Christine will not be able to use the defence of duress. AO2

## General comments

The candidate has used a note style to answer and this is perfectly acceptable for question 3. The important thing is that the candidate correctly applies the principles of law.

The candidate secures sufficient marks for grade A because appropriate principles are applied to all three scenarios and because most marks for question 3 are given for AO2. In each answer for instance there is a reasoned explanation of why the defence would fail.

The candidate has applied the Graham test and might have identified Graham in all three situations. The candidate could have used Gotts for part (a) although the point was made on attempted murder in obiter in Howe. The candidate might have given more detailed explanation for (b). For (c) the candidate could have also referred to Abdul Hussain. In general though the candidate has applied the law effectively with some appropriate citation.

For AO1 the candidate receives Level 4 as the candidate has clear understanding of the appropriate tests but more, or more pertinent citation could be given.

For AO2 the candidate has applied the law well although additional points could have been made but still manages to achieve Level 5.

## Mark

AO1	7
AO2	<u>17</u>
Total mark	24

## Synopticism

There is clear evidence of synopticism in the answer because the candidate has deployed legal problem solving skills effectively in all three situations.

## Stretch and challenge

There is some evidence of stretch and challenge in the answer. The candidate is able to move freely between different situations and identify the appropriate law for individual aspects of each situation. The candidate is also able to respond to the different style of problem solving in the Special Study paper and answer succinctly. However, the application overall is insufficiently developed to warrant a A\* grade.

## Examiner's advice

The candidate needed a little more development of both AO1 and AO2 for higher marks but this could easily have been achieved.

For AO1 this might have involved an acknowledgement of Graham as the source of the two part test, and Gotts would have been a preferable citation for (a), and Abdul Hussain might also have been used effectively for (c).

For AO2 the candidate could have applied the Graham test more thoroughly to each scenario and have explained the link with Valderrama-Vega more in (b) in more depth, and have applied Abdul Hussain in (c).

## Example Grade E Answer:

(a)

Christine can't use duress here AO2 because the defence isn't available for a charge of attempted murder or murder. AO2

(b)

This is like Valderrama-Vega AO2 where the threat was that people would be told that the defendant was a homosexual unless she committed the crime. This wasn't a threat of violence so she couldn't use the defence AO2 and neither could Christine. AO2

(c)

This is like the case with the two girls. AO2 Christine can't use the defence AO2 because she has time to get away. AO2

## Examiner's commentary

### General comments

The candidate's answers are a bit simplistic and lacking in depth or detail although they also show some understanding.

For (a) the candidate has not applied the Graham test or used appropriate case law but has the basic understanding that the defence is unavailable for the particular offence.

For (b) the candidate again has not applied the Graham test but spots the possible link with Valderrama-Vega although the application is quite limited.

For (c) again the candidate has not applied the Graham test and has not referred to either the imminence or immediacy of the threat. However the candidate has made an oblique reference to Hudson & Taylor and shows understanding of the basic point.

For AO1 the candidate is aware of some of the basic limitations on the defence, of part of the Graham test and has used two cases in support of application (one indicated but not named). As a result limited knowledge has been shown for Level 2.

For AO2 the candidate has recognised the significance of the offence in (a) and applied the basic point; has spotted the importance of the threat for (b) and also the link with an appropriate case, again with fairly basic application; and for (c) again has spotted the relevant limitation and is aware of an appropriate case with some limited application of these results. This is Level 2 application, making some of the more relevant points.

The candidate could have secured much higher marks even just by developing all of the points made.

### Mark

AO1	4
<u>AO2</u>	<u>8</u>
Total mark	12

### Synopticism

There is limited evidence of synopticism in the answer because the skills deployed are limited. The candidate has quite reasonable identification skills for problem solving but has only applied the law to a limited extent.

### Stretch and challenge

As would be expected from a grade E answer there is no evidence of stretch and challenge. The candidate has deployed both AO1 and AO2 skills but in a limited way and none of the higher level skills are evident to any extent.

### Examiner's advice

The candidate needs to apply the law in depth so both AO1 and AO2 need more development.

For AO1 the candidate could have explained the Graham two part test, cited Howe or preferably Gotts for (a), dealt with Valderrama-Vega more extensively for (b), and named Hudson & Taylor and also used Abdul Hussain for (c).

For AO2 the candidate has identified well in each case but has only partly applied the Graham test and only in one instance, (b). The candidate might also have made in any case much more of the second part of the test for both (b) and (c), and also have applied the cases used in much more depth.

## Sample Classroom Activity Criminal Law Special Study (G154)

### Note

These activities are based on the special study theme and materials for the equivalent unit from the GCE Law H124/H524 specification. The nature of the classroom activities remains the same regardless of the special study theme.

Please seek advice from OCR as to what the current special study theme is.

### Activity 1 – Identifying the key points in cases for question 1

Read Source 2 and Source 3 on *R v Howe* and the case or other text materials on the case and identify the critical points from the judgment of the case. Use the completed list as a revision aid.

#### Suggested list of critical points that can be found in the case:

- In *Lynch v DPP for Northern Ireland* the House of Lords had originally held that duress was available as a defence to accessories as distinct from principals to a murder;
- In *Howe* the House of Lords used the Practice Statement 1966 to overrule its own previous decision in *Lynch*;
- Its justification for doing so was that the distinction between secondary participants to murder and principal offenders had no basis in logic;
- The House of Lords also felt that the justification for duress was that a man of average courage is entitled to make the choice which is the lesser of two evils;
- But in circumstances like the case in hand the killer could not claim to have chosen the lesser of two evils but merely using the end to justify the means;
- The House of Lords also felt that it would be unjust to withdraw protection from innocent victims to protect those who would kill them to save themselves;
- However, the case also shows potential injustice in imposing such high standards of heroism on the person subjected to duress when the majority of people are not heroes;
- There is also the potential inconsistency and possible injustice of allowing duress for some crimes but not for others.

### Activity 2 – Identifying critical comment in Sources in the Special Study Materials booklet for AO2 in question 2

Read Source 9 and identify critical points as a series of bullet points citing the lines in which the critical comment can be found. Use the completed list as a revision aid.

#### Suggested list of critical comment that can be found in source 9:

- 'In 1974 the Law Commission proposed ... a general defence of necessity ... [but] ... three years later it rejected the idea' (lines 1 to 2)
- [it said] 'if a defence of necessity already existed in common law it should be abolished' (lines 2 to 3)
- 'It felt that allowing such a defence to a charge of murder could effectively legalise euthanasia' (lines 3 to 4)
- [it] 'felt that specific statutory provisions already covered those areas where the defence might be most needed' (lines 5 to 6)
- 'For minor offences ... prosecutions were unlikely and ... sentencing policy ... was such that people convicted in those situations would probably receive a minimal sentence' (lines 6 to 8)
- 'At the same time as making these 'totally negative' proposals the Law Commission was recommending that duress be extended to *all* crimes' (lines 10 to 11)
- 'The absurdity of this position was exposed by the ... Criminal Code Bill [which] emphasised that it was unacceptable to rely on prosecutorial discretion' (lines 11 to 13)
- 'It is unfortunate that the Draft Bill perpetuates the terminology of 'duress of circumstances'' (line 15)
- 'The courts have come a long way in a short time in recognising that blame is inappropriate in circumstances of necessity' (lines 19 to 20).

## Suggested Reading List GCE A2 Criminal Law (G153)

As the areas of law covered by this course are subject to constant change it is important to use the most up to date textbooks available. The list below is currently regarded as the most suitable for the course and includes internet sites which are constantly updated.

### Main Student Textbooks

<i>Criminal Law</i>	Elliott & Quinn	Pearson	2006
<i>Criminal Law for A2</i>	Jacqueline Martin	Hodder	2006
<i>Criminal Law</i>	Storey & Lidbury 4 <sup>th</sup> ed.	Willan	2007 (June)
<i>Criminal Law</i>	Diana Roe	Hodder	2005

### Other Texts Useful for Additional Classroom Material

<i>Looking at Criminal Law</i>	Chris Turner	Hodder	2003
<i>Criminal Law Key Facts</i>	Martin & Turner	Hodder	2004

### A Selection of Useful Internet Sites

- [www.venables.co.uk](http://www.venables.co.uk) a very useful 'portal' website with access to dedicated student resources through hyperlinked sites
- [www.stbrn.ac.uk](http://www.stbrn.ac.uk) detailed course and case notes updated regularly
- [www.e-lawstudent.com](http://www.e-lawstudent.com) an online service that can be bought by a teaching centre under licence
- [www.lawteacher.net](http://www.lawteacher.net) sources and links to other sites
- [www.opsi.gov.uk/legislation/](http://www.opsi.gov.uk/legislation/) a full text of Acts of Parliament and statutory instruments

- [www.publications.parliament.uk](http://www.publications.parliament.uk) a full list of judgments of the House of Lords
- [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk) a full list of judgments of the Court of Appeal
- [www.timesonline.co.uk](http://www.timesonline.co.uk) a law section is published every Tuesday and there is free access to very recent judgments and articles

# Suggested Reading List GCE A2 Criminal Law Special Study (G154)

Candidates should be familiar with the Special Study Materials.

Where available to candidates they should research the appropriate chapters in the texts and reports on the cases used in the Special Study Materials.

Suggested text:

Jacqueline Martin. *Criminal Law for A2 2<sup>nd</sup> Edition*. Hodder Arnold. 2008. Chapter 14