

Mark Scheme for January 2013

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

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

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

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

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Annotations

Annotation	Meaning
	Not Relevant or no response or response achieves no credit
	Repetition
	Use of word 'significance', 'importance' etc (Q1) / AO1 (Q2) / Case (Q3)
	AO2
	Critical Point (Q1 and Q3) / Case: no development (Q2)
	Developed case (highlighted)
	Link to case (Q1)
	Vague
	AP1 (Q1&Q3)
	AP2 (Q1&Q3)
	AP3 (Q1&Q3)
	AP4 (Q1&Q3)
	AP5 (Q1)
	AP6 (Q1) / Conclusion (Q3)
	Page checked for response

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 *₁ (found in the 'Levels of Assessment' grid at the back of this document)
- question specific indicative content given in the 'Answer' column*₂
- question specific guidance given in 'Guidance' column*₃
- the 'practice' scripts*₄ provided in Scoris and accompanying comment (where provided)

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

For answers marked by levels of response:

- a. **To determine the level** – start at the highest level and work down until you reach the level that matches the answer
- b. **To determine the mark within the level**, consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Just enough achievement on balance for this level	Above bottom and either below middle or at middle of level (depending on number of marks available)
Meets the criteria but with some slight inconsistency	Above middle and either below top of level or at middle of level (depending on number of marks available)
Consistently meets the criteria for this level	At top of level

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.

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:



You must also check any additional items eg A, A1 etc. This will demonstrate that every page of a script has been checked.

Question	Answer	Marks	Guidance													
1*	<p>Potential answers may:</p> <p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>CP Discuss the development of the law in <i>Bratty</i> in that Lord Denning in the House of Lords (in Source 5 lines 3-5) provided a definition of automatism: <i>‘the requirement that (the act of the accused) should be a voluntary act is essential...in every criminal case. No act is punishable if it is done involuntarily’</i>. Lord Denning stated non-insane automatism: <i>‘...means an act which is done by the muscles without any control by the mind such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing such as an act done whilst suffering from concussion or whilst sleepwalking’</i>. Thus the ‘crime’ is caused by an external factor.</p> <p>AP1 Discuss in his speech in <i>Bratty</i>, Lord Denning while referring to insanity stated that <i>‘Any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind’</i>. Therefore the suggestion is that with automatism the cause would be unlikely to reoccur and manifest itself in violence. This was referred to, by Lord Denning, as the <i>‘continuing danger’</i> theory.</p> <p>AP2 Recognise that the Court stated if the only cause of the ‘unconscious’ act was a defect of reason caused by a disease of the mind (epilepsy) and this was rejected by the jury, there was no room for the alternative defence of automatism. A trial judge would be right in not leaving that defence to the jury.</p> <p>AP3 Discuss that there are in law two types of automatism, namely, insane and non-insane automatism. Discuss that a judge is only under a duty to leave the issue of automatism of either type to the jury where the defence can provide proper positive evidence. This is a question of law for the judge to decide.</p> <p>AP4 Discuss that it is insufficient for a defendant to simply say that they had a ‘blackout’. According to Lord Denning in <i>Bratty</i>, that was <i>‘one of the first refuges of a guilty conscience and a popular exercise’</i>. Nor will an act be seen as involuntary simply because the defendant cannot control his impulse to do it.</p>	12	<table border="1"> <thead> <tr> <th data-bbox="1413 217 1641 248">AO2 Levels</th> <th data-bbox="1641 217 1868 248">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1413 248 1641 280">5</td> <td data-bbox="1641 248 1868 280">11–12</td> </tr> <tr> <td data-bbox="1413 280 1641 312">4</td> <td data-bbox="1641 280 1868 312">9–10</td> </tr> <tr> <td data-bbox="1413 312 1641 344">3</td> <td data-bbox="1641 312 1868 344">7–8</td> </tr> <tr> <td data-bbox="1413 344 1641 376">2</td> <td data-bbox="1641 344 1868 376">4–6</td> </tr> <tr> <td data-bbox="1413 376 1641 408">1</td> <td data-bbox="1641 376 1868 408">1–3</td> </tr> </tbody> </table>	AO2 Levels	AO2 Marks	5	11–12	4	9–10	3	7–8	2	4–6	1	1–3	<p>CP – Max 3 marks Linked to the material point/ratio – 1 mark is available for the facts of the case but these are not essential to get full marks. An accurate source and line reference is adequate for the facts of the case to receive the one mark available. Where given, the ratio of the case needs to be given an AO2 slant to achieve a mark</p> <p>AP – Max 6 marks for any Applied Point(s) These may be six single points, three points which are developed, two points which are well-developed or a combination of these up to a maximum of 6 marks</p> <p>LC – Max 3 marks for a relevant, linked case The case must be linked for the purpose of showing development. Marks may be achieved as follows, for example: 1 mark for the name of the case, 1 mark for some development and 1 mark for a link to the question</p> <p>Re: AP6 Please note credit can only be given for comment that has direct relevance to <i>Bratty</i>. Hence any generic comment should not be credited.</p> <p>Re: Linked case Please note credit can only be given for the link case where there is a specific link to <i>Bratty</i>.</p>
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Question		Answer	Marks	Guidance											
		<p>AP5 Discuss that where both defences are raised problems regarding the burden of proof/standard of proof can arise. The burden of proof with automatism is on the prosecution to it is a voluntary act. The standard of proof with automatism is beyond all reasonable doubt in contrast with insanity.</p> <p>AP6 Consider any other relevant point eg the Law Commission's Scoping Paper of 2012, Lord Denning's obiter statement regarding reflex actions as being automatism was not followed in <i>Ryan</i>, synoptic links eg appeal process from Northern Ireland etc.</p> <p>LC Link to any other relevant non-insane automatism case eg <i>Broome v Perkins</i>, <i>Attorney-General's Reference (No.2 of 1992)</i>, <i>Hill v Baxter</i>, <i>C (2007)</i>, <i>Ryan (1967)</i>, <i>Sullivan</i>.</p>													
		<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"> <thead> <tr> <th>AO2 Marks</th> <th>AO3 Mark</th> </tr> </thead> <tbody> <tr> <td>10–12</td> <td>4</td> </tr> <tr> <td>7–9</td> <td>3</td> </tr> <tr> <td>4–6</td> <td>2</td> </tr> <tr> <td>1–3</td> <td>1</td> </tr> </tbody> </table>	AO2 Marks	AO3 Mark	10–12	4	7–9	3	4–6	2	1–3	1	
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10–12	4														
7–9	3														
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1–3	1														

Question	Answer	Marks	Guidance													
2*	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> • Explain that insanity is the subject of the <i>M’Naghten</i> Rules 1843 • Explain that every person is presumed to be sane, unless it can be proved by the defendant, on a balance of probabilities, that he was not • Explain that a ‘successful’ plea of insanity results in the ‘special verdict’. Murder used to be the exception, however following the 2004 Act, murder no longer carries automatic, indefinite hospitalisation • Define the essential elements of the defence of insanity from the <i>M’Naghten</i> Rules: defect of reason, <i>Clarke</i>; disease of the mind (prone to recur and manifest itself in violence) <i>Kemp</i>; nature and quality of act (<i>Codere</i>), wrong, <i>Windle</i>, <i>Johnson</i> • Explain that ‘insanity’ is a purely legal definition which has been broadened to cover the operation of the mind in all aspects – <i>Sullivan</i>, <i>Bratty</i> and the policy of controlling dangerous offenders • Recognise the defence of diminished responsibility is a partial, special defence to murder in relation to the mind section 52 Coroners and Justice Act 2009 ‘<i>abnormality of mental functioning</i>’. BUT insanity is a general defence to all crimes • Recognise that insanity may be raised by the prosecution or judge as well as the defence • Refer to the relationship between insanity and automatism and the danger of people who suffer from diabetes and epilepsy, <i>Quick</i>, <i>Hennessey</i>, <i>Sullivan</i>, <i>Burgess</i>, <i>Bilton</i> etc • Recognise the powers of disposition given to the courts by the Criminal Procedure Insanity Act 1964 as amended by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and the Domestic Violence, Crime and Victims Act 2004 where the defendant is found ‘not guilty by reason of insanity’ • Credit any other relevant point of knowledge and understanding • Recognise the powers of disposition given to the courts by the 	16	<table border="1"> <thead> <tr> <th>AO1 Levels</th> <th>AO1 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>14–16</td> </tr> <tr> <td>4</td> <td>11–13</td> </tr> <tr> <td>3</td> <td>8–10</td> </tr> <tr> <td>2</td> <td>5–7</td> </tr> <tr> <td>1</td> <td>1–4</td> </tr> </tbody> </table>	AO1 Levels	AO1 Marks	5	14–16	4	11–13	3	8–10	2	5–7	1	1–4	<p>Level 5 Responses are unlikely to achieve level 5 without wide ranging, accurate detailed knowledge with a clear and confident understanding of relevant concepts and principles of the law in this area. This would include wide ranging, developed explanations and wide ranging, developed definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 5 without including 8 relevant cases of which 6 are developed*. Responses are likely to use material both from within the pre-release materials (LNK) and from beyond the pre-release materials which have a specific link to the area of law.</p> <p>Level 4 Responses are unlikely to achieve level 4 without good, well-developed knowledge with a clear understanding of the relevant concepts and principles of the law in this area. This would include good explanations and good definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 4 without including 6 relevant cases, 4 of which will be developed*.</p>
AO1 Levels	AO1 Marks															
5	14–16															
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1	1–4															

Question	Answer	Marks	Guidance
	Criminal Procedure Insanity Act 1964 as amended by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and the Domestic Violence, Crime and Victims Act 2004 where the defendant is found 'not guilty by reason of insanity'		<p>Level 3 Responses are unlikely to achieve level 3 without adequate knowledge showing reasonable understanding of the relevant concepts and principles of the law in this area. This would include adequate explanations and adequate definitions of this area of law to include statutory/common law provisions, where relevant. Responses are unlikely to achieve level 3 without including 4 relevant cases, 2 of which will be developed*.</p> <p>Level 2 Responses are unlikely to achieve level 2 without limited knowledge showing general understanding of the relevant concepts and principles of the law in this area. This would include limited explanations and limited definitions of this area of law. Responses are unlikely to achieve level 2 without 2 relevant cases, neither of which are required to be developed.</p> <p>Level 1 Responses are unlikely to achieve level 1 without very limited knowledge of the basic concepts and principles of the law in this area. This would include very limited explanations and very limited definitions of this area of law. Responses are not required to discuss any cases.</p> <p>*Developed = case name + facts (minimal) or ratio (minimal)</p>

Question	Answer	Marks	Guidance												
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <ul style="list-style-type: none"> • Evaluate the definition of insane automatism [insanity] and potential criticism of the antiquity and operation of such a plea despite the mitigating effect of the 1991 and 2004 Acts • Evaluate the reluctance of the courts to release potentially dangerous people back into society • Evaluate the unavailability of the defence of insanity to the psychopath (as they are aware of their actions, but unable to control them) and the availability of diminished responsibility to such defendants, but only to the charge of murder, <i>Byrne</i>, Coroners and Justice Act 2009 • Evaluate the need for medical evidence to establish the defence and the associated problems posed for jurors faced with technical psychiatric terminology/evidence • Evaluate that the defence is established or rebutted on the evidence of medical experts. Should such people be delivering opinions on legal matters when the decision should lie with the jury • Evaluate the reluctance of defendants in raising the defence given its social stigma which may deny many (e.g. diabetics) their right to the defence by pleading guilty to minor offences instead • Evaluate the pressure on a jury or court to ignore the defence of insanity in high profile homicide cases due to public and media pressure eg <i>Sutcliffe</i>, <i>Huntley</i> • Evaluate proposals for reform e.g. The Butler Committee 1975 and the Law Commission’s Draft Criminal Code in 1989. • Evaluate the most recent proposals for reform from the Law Commission in 2012 • Reach any sensible conclusion. 	14	<table border="1" data-bbox="1413 236 1868 451"> <thead> <tr> <th data-bbox="1413 236 1641 272">AO2 Levels</th> <th data-bbox="1641 236 1868 272">AO2 Marks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1413 272 1641 309">5</td> <td data-bbox="1641 272 1868 309">13–14</td> </tr> <tr> <td data-bbox="1413 309 1641 346">4</td> <td data-bbox="1641 309 1868 346">10–12</td> </tr> <tr> <td data-bbox="1413 346 1641 383">3</td> <td data-bbox="1641 346 1868 383">7–9</td> </tr> <tr> <td data-bbox="1413 383 1641 419">2</td> <td data-bbox="1641 383 1868 419">4–6</td> </tr> <tr> <td data-bbox="1413 419 1641 451">1</td> <td data-bbox="1641 419 1868 451">1–3</td> </tr> </tbody> </table> <p>Level 5 Responses are unlikely to achieve level 5 without sophisticated analytical evaluation of the relevant areas of law, being very focused on the quote and providing a logical conclusion* with some synoptic content.</p> <p>Level 4 Responses are unlikely to achieve level 4 without good analytical evaluation of the relevant areas of law and good focus on the quote.</p> <p>Level 3 Responses are unlikely to achieve level 3 without adequate analytical evaluation of the relevant areas of law and limited focus on the quote.</p> <p>Level 2 Responses are unlikely to achieve level 2 without at least some limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p> <p>Level 1 Responses are unlikely to achieve level 1 without at least some very limited analytical evaluation of the relevant areas of law. Responses are unlikely to discuss the quote.</p>	AO2 Levels	AO2 Marks	5	13–14	4	10–12	3	7–9	2	4–6	1	1–3
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					* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (NB conclusion does not need to appear at end).										
			<p>Assessment Objective 3 – Communication and presentation</p> <p>Present logical and coherent arguments and communicate relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.</p>	4	<table border="1"> <thead> <tr> <th>AO1 + AO2 Marks</th> <th>AO3 Marks</th> </tr> </thead> <tbody> <tr> <td>24–30</td> <td>4</td> </tr> <tr> <td>17–23</td> <td>3</td> </tr> <tr> <td>9–16</td> <td>2</td> </tr> <tr> <td>1–8</td> <td>1</td> </tr> </tbody> </table>	AO1 + AO2 Marks	AO3 Marks	24–30	4	17–23	3	9–16	2	1–8	1
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3	<p>Potential answers may:</p> <p>Assessment Objective 1 – Knowledge and understanding</p> <ul style="list-style-type: none"> Explain insanity by using the <i>M'Naghten</i> Rules: everyone is presumed sane; the defendant must prove that at the time of committing the act, he was: labouring under such a defect of reason, from a disease of the mind, as to not know the nature and quality of the act or if he did, he didn't know what he was doing was wrong; the defence is proven on a balance of probabilities; if the defendant is found to be insane he is found 'not guilty by reason of insanity'. Explain automatism using the definition in <i>Bratty</i>: an involuntary act caused by the muscles without any control by the mind such as a spasm, reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing; the cause of the act must be external; reduced or partial control will not be sufficient for automatism. 	10	<table border="1" data-bbox="1413 245 2069 459"> <thead> <tr> <th>Mark Levels</th> <th>AO1 Marks</th> <th>AO2 Marks</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> <td>17–20</td> </tr> <tr> <td>4</td> <td>7–8</td> <td>13–16</td> </tr> <tr> <td>3</td> <td>5–6</td> <td>9–12</td> </tr> <tr> <td>2</td> <td>3–4</td> <td>5–8</td> </tr> <tr> <td>1</td> <td>1–2</td> <td>1–4</td> </tr> </tbody> </table> <p>Marks should be awarded as follows (per part question):</p> <table border="1" data-bbox="1413 603 1868 817"> <thead> <tr> <th>Mark Levels</th> <th>(a), (b) or (c)</th> </tr> </thead> <tbody> <tr> <td>5</td> <td>9–10</td> </tr> <tr> <td>4</td> <td>7–8</td> </tr> <tr> <td>3</td> <td>5–6</td> </tr> <tr> <td>2</td> <td>3–4</td> </tr> <tr> <td>1</td> <td>1–2</td> </tr> </tbody> </table> <p>NB A maximum of 3 marks can be allocated for AO1 for each part question.</p> <ul style="list-style-type: none"> Max 3 marks for the critical point (CP) Max 6 marks for applied points (AP) Max 1 mark for a logical conclusion*/assessment of the most likely outcome in terms of liability (CON) <p>In order to reach level 5, responses must include a discussion of the Critical Point, a relevant case and a conclusion*.</p> <p>Responses are unlikely to achieve level 5 if the conclusion* is incorrect <u>and</u> contradicted by the reason offered.</p>	Mark Levels	AO1 Marks	AO2 Marks	5	9–10	17–20	4	7–8	13–16	3	5–6	9–12	2	3–4	5–8	1	1–2	1–4	Mark Levels	(a), (b) or (c)	5	9–10	4	7–8	3	5–6	2	3–4	1	1–2
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			* Conclusion – response has to provide a conclusion to answer and response must show more than 50% commitment (conclusion does not need to appear at end).
	<p>Assessment Objective 2 – Analysis, evaluation and application</p> <p>In the case of (a):</p> <p>AP1 Identify automatism can only be used as a defence if Samia's action of crashing into William's car was involuntary. <i>Woolmington v. DPP</i>. If Samia's actions were voluntary, then the defence would not operate.</p> <p>AP2 Discuss the cause of the actions must be external. That the external factor must be something that she had no control in order to plead automatism. <i>Hill v Baxter</i>.</p> <p>AP3 Discuss that for Samia to plead automatism it must be satisfied that hers was '<i>an act done by the muscles without any control by the mind, such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing...</i>' <i>Bratty</i>. Here, it may be that she was unconscious due to the monotony of the road. Discuss whether the 'continuing danger' theory would allow automatism as a defence.</p> <p>CP Discuss that if Samia's actions were simply reduced or she only had partial control of her actions as a result of 'road-blindness' due to the monotony of the driving, then this will not be sufficient for automatism. There must be a 'total destruction of voluntary control'. <i>A-G's Ref No.2 of 1992, Kay v. Butterworth</i>.</p> <p>AP4 Consider if Samia's actions of continued driving could be deemed reckless. Had she been aware of the risk of causing injury by continuing to drive? Had she continuing to take the risk to drive?</p> <p>CON Reach any sensible conclusion.</p>	20	

Question	Answer	Marks	Guidance
(b)	<p>In the case of (b):</p> <p>AP1 Identify automatism can only be used as a defence if Molly's action of hitting Pablo was involuntary. <i>Woolimington v. DPP</i>. If this is the case, then Molly could have this defence because the <i>actus reus</i> done by her is not voluntary.</p> <p>AP2 Discuss that the cause of Molly's actions must be external in order to plead automatism. The cause could be a blow to the head or attacked by a swarm of bees, <i>Hill v Baxter</i>. In Molly's case the wasp is the potential external factor which causes her to try and get rid of using her hand.</p> <p>AP3 Discuss that for Molly to plead automatism it must be satisfied that hers was 'an act done by the muscles without any control by the mind, such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing...' <i>Bratty</i>. Here the action of 'swatting' the wasp could be considered a reflex action. Discuss whether the 'continuing danger' theory would allow automatism as a defence.</p> <p>CP Discuss that if Molly's actions were simply reduced or she only had partial control of her actions and had some control over whether or not to get rid of the wasp, e.g. move away, then this will not be sufficient for non-insane automatism. There must be a 'total destruction of voluntary control' <i>A-G's Ref No.2 of 1992</i>.</p> <p>AP4 Consider that if Molly's actions were deemed reckless by trying to hit the wasp in a (potentially) crowded place. Had she been aware of the risk of causing injury? Had she continued to take the risk?</p> <p>CON Reach a sensible conclusion.</p>		

Question	Answer	Marks	Guidance
(c)	<p>In the case of (c):</p> <p>AP1 Identify that Sylvia will be presumed sane. For the defence of insanity to be successful, Sylvia must prove all of the defence's elements under the <i>M'Naghten</i> Rules. This is proved on a balance of probabilities.</p> <p>AP2 Discuss that Sylvia must be suffering from a 'defect of reason'. This means that Sylvia must be completely deprived of the powers of reasoning and not simply failing or choosing not to use them. This is likely here when she takes the items as she cannot remember doing so (<i>Clarke</i>).</p> <p>CP Discuss that the 'defect of reason' if present in Sylvia's case must be as a result of a 'disease of the mind'. To determine whether Sylvia has a 'disease of the mind', Sylvia will need to satisfy the following:</p> <ul style="list-style-type: none"> • Whether her condition is prone to reoccur and manifest itself in violence: which is possible here if she further fails to take her insulin (<i>Hennessey</i>); • Whether it was caused by an external or internal factor. This may be considered an internal factor due to the diabetes causing a hyperglycaemic episode; • The physical state of brain is irrelevant, it is whether the mental faculties of reason, memory and understanding are impaired or absent (<i>Kemp</i>) <p>AP3 Discuss that if Sylvia is suffering from a 'disease of the mind', this must prevent her from knowing the 'nature and quality' of her act or that it was 'wrong'. This means legally, and not just 'morally' wrong, (<i>Windle, Johnson</i>). It is likely that as a result of the hyperglycaemia Sylvia would not be aware of her actions</p> <p>AP4 Discuss the issue of potential self-induced automatism, <i>Quick, Bailey</i> etc. Given Sylvia has been told by her doctor she must take the insulin, her actions could be deemed reckless.</p> <p>CON Reach a sensible conclusion.</p>		

APPENDIX 1

Advanced GCE Law Levels of Assessment

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

Level	Assessment Objective 1	Assessment Objective 2	Assessment Objective 3 (includes QWC)
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of relevant concepts and principles. Where appropriate candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism, showing good understanding of current debate and proposals for reform, or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to a given factual situation, and reach a cogent, logical and well-informed conclusion.	
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation, and reach a sensible and informed conclusion.	An accomplished presentation of logical and coherent arguments and communicates relevant material in a very clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Where appropriate candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	A good ability to present logical and coherent arguments and communicates relevant material in a clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles, and where appropriate with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	An adequate ability to present logical and coherent arguments and communicates relevant material in a reasonably clear and effective manner using appropriate legal terminology. Reward grammar, spelling and punctuation.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and/or unselective.	A limited attempt to present logical and coherent arguments and communicates relevant material in a limited manner using some appropriate legal terminology. Reward grammar, spelling and punctuation.

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